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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1022

Bulletin 2021–03: Consumer Reporting of Rental Information

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Enforcement compliance bulletin and policy guidance.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing this Enforcement compliance bulletin and policy guidance (Bulletin) regarding consumer reporting of rental information in light of upcoming heightened risks to renters associated with inaccurate consumer reporting information. As pandemic-related government interventions aimed at protecting renters begin to expire over the coming months, the Bureau will be paying particular attention to consumer reporting agencies' (CRAs') and furnishers' compliance with their accuracy and dispute obligations under the Fair Credit Reporting Act (FCRA) and Regulation V with respect to rental information. The Bureau will hold CRAs and furnishers accountable for failing to comply with the FCRA and Regulation V. The economic recovery of renters and their ability to secure new rental housing should not be impeded by noncompliance with the law.

DATES: This bulletin is applicable on July 7, 2021.

FOR FURTHER INFORMATION CONTACT: Susan Stocks, Assistant Deputy Enforcement Director for Policy and Strategy, Office of Enforcement; Amanda Quester, Pavneet Singh, Laura Stack, or Priscilla Walton-Fein, Senior Counsels, Office of Regulations, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Rental information in consumer reports plays a critical role in consumers' access to rental housing, credit, and other opportunities.[1] As the eviction moratoria and other government interventions aimed at alleviating the economic and public health impacts of the 2019 novel coronavirus (COVID–19) pandemic begin to expire, the Bureau anticipates that many renters will face eviction from their homes, rental arrearages, and collection attempts to recover unpaid rent.[2] Consumers have complained to the Bureau about the financial impacts of the pandemic on their ability to stay current on rental payments and about negative rental information related to the pandemic in consumer reports.[3] An increase in negative rental information in the consumer reporting system, combined with an increase in the number of consumers seeking rental housing, may create new risks that inaccurate negative rental information will be included in tenant-screening reports and that such inaccuracies will affect increased numbers of consumers. Inaccurate rental information in tenant-screening reports can have devastating impacts on consumers, including impairing the ability of renters negatively impacted by the pandemic to secure new rental housing and otherwise recover from the pandemic's economic effects. An increase in housing instability caused by inaccurate rental information could undermine the nation's efforts to recover from the pandemic.

On January 31, 2020, the Department of Health and Human Services declared a public health emergency for the entire United States to aid the nation's healthcare community in responding to the COVID–19 pandemic.[4] On March 13, 2020, then-President Trump declared a national emergency concerning the COVID–19 pandemic, citing the strain on the healthcare system and the need for additional measures to contain and combat the spread of COVID–19.[5] Income shocks resulting from the pandemic, such as a job loss, reduced work hours, or the death or illness of a family member, contributed to an increase in housing and financial insecurity for many households.[6] The financial impact of the pandemic was especially pronounced for renters.[7] Survey data indicate that about half of all renters saw their incomes fall during the pandemic due to lost employment or reductions in hours worked.[8] In August 2020, some estimates projected that up to 30 to 40 million individuals in 13 to 17 million renter households were at risk of eviction over the course of the

[1] The term ''rental information'' in this Bulletin is used to refer to consumer reporting information about a rental relationship, including eviction information and information about unpaid rent. Other types of information, including criminal background information and credit information, have important impacts on the ability of renters to secure housing and access other opportunities, but are not the focus of this Bulletin. Rental information is included in consumer reports issued by tenant-screening companies and other CRAs. Sources of rental information include public records and information provided by furnishers, including debt collectors and landlords. Consumer reports issued by tenant-screening companies may include automated scores or recommendations provided to users as well as rental payment, eviction, and other information.

[2] *See generally* Eviction Lab, Princeton Univ., *https://evictionlab.org/eviction-tracking/* (last visited June 21, 2021).

[3] Bureau of Consumer Fin. Prot., *Complaint Bulletin: COVID–19 issues described in consumer complaints* (July 2021), *https://files.consumerfinance.gov/f/documents/cfpb_covid-19-issues-described-consumer-complaints_complaint-bulletin_2021-07.pdf* (CFPB Complaint Bulletin).

[4] Press Release, U.S. Dep't of Health & Human Servs., *Secretary Azar Declares Public Health Emergency for United States for 2019 Novel Coronavirus* (Jan. 31, 2020), *https://www.hhs.gov/about/news/2020/01/31/secretary4azar-declares-public-health-emergency-us-2019-novel-coronavirus.html.* By the end of August 2020, there were over 5,500,000 COVID–19 cases identified in the United States and over 174,000 deaths related to the disease. *See* 85 FR 55292, 55292 (Sept. 4, 2020). As of June 27, 2021, the Centers for Disease Control and Prevention (CDC) estimates a total of 601,221 deaths related to COVID–19 in the United States. Ctrs. for Disease Control & Prevention, *United States COVID–19 Cases, Deaths, and Laboratory Testing (NAATs) by State, Territory, and Jurisdiction, https://covid.cdc.gov/covid-data-tracker/#cases_totaldeaths* (last visited June 27, 2021).

[5] 85 FR 15337 (Mar. 18, 2020). The national emergency was continued on February 24, 2021. 86 FR 11599 (Feb. 26, 2021).

[6] *See* Bureau of Consumer Fin. Prot., *Housing Insecurity and the COVID–19 Pandemic,* at 5 (Mar. 1, 2021), *https://files.consumerfinance.gov/f/documents/cfpb_Housing_insecurity_and_the_COVID-19_pandemic.pdf* (CFPB Housing Insecurity Report).

[7] *See id.* at 6.

[8] *See, e.g.,* Joint Ctr. for Hous. Studies, Harvard Univ., *Renters' Responses to Financial Stress During the Pandemic* 1, 14–15, 19–20 (Apr. 2021), *https://www.jchs.harvard.edu/sites/default/files/research/files/harvard_jchs_renter_responses_covid_airgood-obrycki_etal_2021.pdf.*

pandemic.[9] In comparison, approximately 900,000 renter households are evicted in a typical year.[10]

On September 4, 2020, the Centers for Disease Control and Prevention (CDC) published an agency order entitled ''Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID–19'' (CDC Order).[11] Citing the historic threat to public health posed by the COVID–19 pandemic, the CDC Order established an eviction moratorium that generally limits the circumstances in which certain persons may be evicted from residential property.[12] The CDC Order initially was set to expire on December 31, 2020.[13] The CDC Order has been extended four times and currently is set to expire on July 31, 2021.[14]

In addition to the CDC's eviction moratorium, Federal, State, and local governments have taken a variety of other actions to alleviate the rental housing-related impacts of the COVID–19 pandemic, including establishing other eviction moratoria and rental assistance programs. For instance, section 4024 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) [15] provided a temporary moratorium on eviction filings [16] as well as other protections for tenants in certain rental properties with Federal assistance or federally related financing.[17] In addition, as discussed in more detail below, the Federal Emergency Rental Assistance (ERA) programs established by the U.S. Department of the Treasury (Treasury) have made billions of dollars available to eligible households by funding rental assistance programs administered by State and local governments.[18] State and local governments have also implemented temporary eviction moratoria, rent freezes, and additional rental assistance programs.[19]

These governmental actions have reduced evictions so far.[20] However, the Bureau is aware of concerns that some landlords may have evicted tenants in violation of applicable eviction moratoria and that other tenants may have preemptively moved out of rental housing to avoid an eviction filing or been subject to other types of informal evictions outside the judicial eviction process.[21] The Bureau's analysis of recent consumer complaints indicates that renters have expressed concerns about debt collection activities following evictions, including attempts to collect questionable charges and fees.[22] These reports and complaints are an area of concern for the Bureau, and Bureau staff will be monitoring and investigating eviction practices to ensure that they are complying with the law. Evicting tenants in violation of the CDC Order, State, or local moratoria, or evicting or threatening to evict them without apprising them of their legal rights under such moratoria, may violate prohibitions against deceptive and unfair practices under the Fair Debt Collection Practices Act and the Federal Trade Commission Act.[23]

Moreover, as the CDC Order and other measures begin to expire, many households will face difficulties navigating significant rental payment arrearages.[24] Low-income and minority renters have been disproportionately affected by the economic effects of the COVID–19 pandemic, including job losses.[25] Although economic conditions have improved in recent months,[26] 13 percent of adult renters were behind on rent in May 2021.[27] Renters in low-income households were more likely to report they were behind on rental payments than those in higher-income households. As of May 2021, more than one in six renters with household incomes under $25,000 reported that they were behind on their rent.[28] An estimated 19 percent of renters with children report being not caught up on rent, compared to 10 percent not living with anyone under 18.[29] Minority renters were more likely to report that their household was not caught up on rent: 21 percent of Black renters, 17 percent of Hispanic renters, and 17 percent of Asian renters said they were not caught up on rent, compared to 9 percent of white renters.[30] Accordingly,

[9] CFPB Housing Insecurity Report, *supra* note 6, at 15 (citing Aspen Inst., *The COVID–19 Eviction Crisis: An Estimated 30–40 Million People in America Are at Risk* (Aug. 7, 2020), *https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/*).

[10] *Id.* (citing Eviction Lab, Princeton Univ., *https://evictionlab.org/national-estimates/* (May 11, 2018)).

[11] 85 FR 55292 (Sept. 4, 2020).

[12] *See id.; see also* 42 U.S.C. 264 and its implementing regulation 42 CFR 70.2.

[13] 85 FR 55292, 55297 (Sept. 4, 2020).

[14] Section 502 of title V, Division N of the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 1182, 2078 (2020), extended the original CDC Order until January 31, 2021. On January 29, 2021, following an assessment of the ongoing pandemic, the CDC Director renewed the CDC Order until March 31, 2021. 86 FR 8020 (Feb. 3, 2021). On March 29, 2021, the CDC Director extended the CDC Order until June 30, 2021. 86 FR 16731 (Mar. 31, 2021). On June 24, 2021, the CDC Director extended the CDC Order until July 31, 2021. 86 FR 34010 (June 28, 2021).

[15] CARES Act section 4024, Public Law 116–136, 134 Stat. 281, 492 (2020).

[16] The temporary eviction moratorium under the CARES Act expired in July 2020. *Id.*

[17] These protections included a prohibition on charging fees, penalties, or other charges to the tenant related to the nonpayment of rent while the temporary moratorium was in place. CARES Act section 4024(b)(2), 134 Stat. 494.

[18] *See infra* note 31.

[19] *See, e.g.,* Eviction Lab, *COVID–19 HOUSING POLICY SCORECARD, https://evictionlab.org/covid-policy-scorecard/* (last visited June 17, 2021); Perkins Coie LLP, *COVID–19 Related Eviction and Foreclosure Orders/Guidance 50-State Tracker* (June 17, 2021), *https://www.perkinscoie.com/en/news-insights/covid-19-related-eviction-and-foreclosure-ordersguidance-50-state-tracker.html.*

[20] CFPB Housing Insecurity Report, *supra* note 6, at 3.

[21] *See, e.g.,* 86 FR 21163, 21166–67 (Apr. 22, 2021); *see also* Ashley Balcerzak, *NJ renters still being locked out by landlords despite COVID eviction freeze* (Mar. 11, 2021), *https://www.northjersey.com/story/news/2021/03/11/njrental-assistance-covid-eviction-freeze-ignoredsome-landlords/6892203002/;* Annie Nova, *The CDC banned evictions. Tens of thousands have still occurred,* CNBC (Jan. 14, 2021), *https://www.cnbc.com/2020/12/05/why-home-evictions-are-still-happeningdespite-cdc-ban.html;* Jeff Ernsthausen *et al., Despite Federal Ban, Landlords Are Still Moving to Evict People During the Pandemic,* ProPublica (Apr. 16, 2020), *https://www.propublica.org/article/despite-federal-ban-landlords-are-still-moving-to-evict-people-during-the-pandemic.*

[22] CFPB Complaint Bulletin, *supra* note 3.

[23] 86 FR 21163, 21163–64 (Apr. 22, 2021); *see also, e.g.,* Press Release, Bureau of Consumer Fin. Prot., *CFPB Acting Director Uejio & FTC Acting Chairwoman Slaughter Issue Joint Statement on Preventing Illegal Evictions* (Mar. 29, 2021), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-acting-director-uejio-and-ftc-acting-chairwoman-slaughter-issue-joint-statement-on-preventing-illegal-evictions/.*

[24] *See generally* Eviction Lab, Princeton Univ., *https://evictionlab.org/eviction-tracking/* (last visited June 21, 2021). For many households, a return to pre-pandemic levels of income may allow them to make rental payments going forward, but may not permit them to pay back rent owed. According to one report, almost half of all renter households were rental cost-burdened at the time the pandemic hit, based on 2018 numbers. *See* Emily Benfer *et al., The COVID–19 Eviction Crisis: An Estimated 30–40 Million People in America Are at Risk,* Aspen Inst. (Aug. 7, 2020), *https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/* (citing *https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_Americas_Rental_Housing_2020.pdf*). Rental cost burden is defined as households that pay over 30 percent of their income towards rent. *Id.* Also in 2018, 10.9 million renter households (25 percent of all renter households) were spending over 50 percent of their income on rent each month. *Id.*

[25] *See* CFPB Housing Insecurity Report, *supra* note 6, at 8, 18; *see also* Pew Research Ctr., *Economic Fallout From COVID–19 Continues To Hit Lower-Income Americans the Hardest* (Sept. 24, 2020), *https://www.pewresearch.org/social-trends/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/.*

[26] *See, e.g.,* Press Release, Board of Governors of the Fed. Reserve Sys., *Federal Reserve Issues FOMC Statement* (June 16, 2021), *https://www.federalreserve.gov/newsevents/pressreleases/monetary20210616a.htm.*

[27] CFPB analysis of U.S. Census Bureau, Census Household Pulse Survey, Week 30 (May 12–May 24, 2021), *https://www2.census.gov/programs-surveys/demo/tables/hhp/2021/wk30/housing1b_week30.xlsx.*

[28] *Id.*

[29] *Id.*

[30] *Id.*

low-income and minority renters are more likely to be affected by the expiration of the CDC's eviction moratorium and other temporary measures aimed at reducing evictions and supporting renters unable to make their rental payments.

The Federal ERA programs were established to address the concerns about rental arrearages.[31] ERA funds may be used to provide assistance to eligible households and their landlords to pay rent, utilities, and certain other housing costs, including arrearages for rent and utility payments.[32] Grantees of ERA funds have been working to ramp up their deployment of funds.[33] As the CDC has noted, though there are indications that emergency rental assistance has started to reach increasing numbers of households over recent months, there are likely hundreds of thousands of applications for assistance that currently remain outstanding as programs accelerate their activity.[34] The Bureau is concerned that renters may be evicted for nonpayment of rent even as they are attempting to access these funds. The Bureau encourages landlords and renters to consider their options under these programs. In addition to the extensive information about rental assistance programs under the ERA available on Treasury's website,[35] information about rental assistance programs under the ERA is also available on the Bureau's website.[36]

The Bureau anticipates that many tenants who face eviction or have experienced economic shocks during the pandemic will seek alternative housing in the rental market. In addition to current renters seeking new housing, the Bureau also anticipates a likely rise in consumers who are currently homeowners seeking rental housing as pandemic-related mortgage forbearance programs and foreclosure moratoria come to an end.[37]

The Bureau is concerned that information concerning evictions and rental payment arrearages related to the pandemic's effects may not be a reliable predictor of a consumer's future performance given the extent of the economic dislocation caused by the pandemic. The use of pre-pandemic relationships and scoring models on pandemic data may lead to unreliable conclusions regarding a consumer's future performance and may hinder public policy efforts to protect consumers during the pandemic and promote an equitable recovery from the pandemic. Some States and local governments have taken steps to prevent the reporting or use of information related to evictions and rental arrearages arising during the pandemic.[38] For example, some States have taken or are considering taking steps to make it easier to seal or expunge eviction records.[39]

In the upcoming transition period during which the Bureau anticipates both an increase in negative rental information in the consumer reporting system and an increase in consumers seeking rental housing, the Bureau is concerned that existing problems with the accuracy of tenant-screening and other consumer reports will be exacerbated. According to a 2019 report by the National Consumer Law Center (NCLC), the vast majority of landlords use tenant-screening reports to screen rental-housing applicants.[40] These reports, which are obtained from one of the nation's many tenant-screening companies,[41] may include traditional credit report data, criminal background history, and rental information. Inaccuracies in negative rental information included in consumer reports can have significant damaging consequences for tenants' future access to rental housing, credit, and other opportunities. For example, an applicant whose tenant-screening report shows past litigation or a poor rental payment history may find it difficult or more expensive to rent property, and many landlords will not rent to an applicant if their screening report shows

[31] Eligible grantees of ERA funds include States (including the District of Columbia), U.S. territories, local governments with more than 200,000 residents, the Department of Hawaiian Home Lands, and Indian tribes or the tribally designated housing entity of an Indian tribe, as applicable. *See* U.S. Dep't of the Treasury, *Emergency Rental Assistance Program, https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program* (last visited June 25, 2021). Treasury has established two separate ERA programs: ERA1, which provides up to $25 billion in rental assistance under the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 1182 (2020), and ERA2, which provides up to $21.55 billion in rental assistance under the American Rescue Plan Act of 2021, Public Law 117–2, 135 Stat. 4 (2021). *Id.* At the same time that funds were allocated for rental assistance under ERA2, the Federal government also implemented additional guidance to increase access to funds by renters most in need of assistance to avoid evictions. For example, Treasury guidance now makes clear that emergency rental assistance provided under ERA2 must be offered directly to renters when landlords do not accept payment. The new guidance also allows rental assistance programs under ERA2 to offer assistance directly to renters before reaching out to landlords. *See* U.S. Dep't of the Treasury, *Emergency Rental Assistance Fact Sheet* (May 7, 2021), *https://home.treasury.gov/system/files/136/FACT_SHEET-Emergency-Rental-Assistance-Program_May2021.pdf.* The Treasury guidance was updated again on June 24, 2021 to further support the deployment of ERA funds. *See* U.S. Dep't of the Treasury, *Emergency Rental Assistance Fact Sheet* (June 24, 2021), *https://home.treasury.gov/system/files/136/Treasury_Fact_Sheet_6-24-21.pdf.* Treasury has published frequently asked questions (FAQs) related to the ERA programs, which are available at: *https://home.treasury.gov/system/files/136/ERA_FAQs_6-24-21.pdf.*

[32] *See* U.S. Dep't of the Treasury, *Emergency Rental Assistance Program, https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program* (last visited June 25, 2021).

[33] *See* U.S. Dep't of the Treasury, *Emergency Rental Assistance Fact Sheet* (June 24, 2021), *https://home.treasury.gov/system/files/136/Treasury_Fact_Sheet_6-24-21.pdf.*

[34] 86 FR 34010, 34013 (June 28, 2021).

[35] U.S. Dep't of the Treasury, *Emergency Rental Assistance Program, https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program* (last visited June 28, 2021).

[36] *See* Bureau of Consumer Fin. Prot., *Federal Help With Paying Your Rent, https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/renter-protections/emergency-rental-assistance-for-renters/* (last visited June 25, 2021).

[37] Under the CARES Act, if a homeowner attests to a hardship related directly or indirectly to the COVID–19 pandemic, homeowners with mortgages backed by the government-sponsored enterprises (GSEs) and federally backed mortgages have the right to request and obtain a forbearance for up to 180 days, and an extension for another 180 days. CARES Act section 4022(b), 134 Stat. 490. Guidance from the GSEs and Federal agencies allow up to 18 months of forbearance. Many servicers and investors of privately owned mortgages not covered by the CARES Act offer similar protections. Further, the CARES Act and guidance from the GSEs and Federal agencies have prohibited lenders and servicers of GSE and federally backed loans from beginning foreclosures through July 2021. When forbearance periods and the foreclosure moratoria end, some homeowners who are significantly behind on their mortgage payments may have limited options to avoid foreclosure if they do not reach agreement with their servicers on a workout option. *See* CFPB Housing Insecurity Report, *supra* note 6, at 11–13. To the extent these homeowners enter foreclosure and lose their homes, many are likely to seek housing options in the rental market.

[38] *See, e.g.,* 2021 Or. Laws Ch. 39 (S.B. 282) (preventing landlords from reporting to a CRA nonpayment of rent, charges, and fees accrued on or after April 1, 2020, and before July 1, 2021, and from considering, when evaluating a rental applicant, an action to recover possession if entered on claims that arose on or after April 1, 2020, and before March 1, 2022, or an applicant's unpaid rent, including rent reflected in judgments or referrals of debt to a collection agency, that accrued on or after April 1, 2020, and before March 1, 2022).

[39] *See, e.g.,* 735 Ill. Comp. Stat. 5/9–122 (providing that the court file shall be sealed upon the commencement of any residential eviction action during the period beginning March 9, 2020, and ending March 31, 2022).

[40] The NCLC report states that 90 percent of landlords run background checks on prospective tenants. Nat'l Consumer Law Ctr., *Broken Records Redux: How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing* 3 (Dec. 2019), *https://www.nclc.org/images/pdf/criminal-justice/report-broken-records-redux.pdf.*

[41] *See, e.g.,* Tex Pasley *et al.,* Shriver Ctr. on Poverty Law, *Screened Out: How Tenant Screening Reports Undermine Fair Housing Laws and Deprive Tenants of Equal Access to Housing in Illinois* (Jan. 2021), *https://www.povertylaw.org/report/tenant-screening-report/.*

an eviction filing.[42] Concerns about lack of access to rental housing are further heightened during the continuing pandemic. For example, a basis for the CDC's eviction moratorium is the concern that individuals moving into close quarters in congregate or shared living settings, such as homeless shelters, puts individuals at higher risk of contracting COVID–19.[43] CRAs and debt collectors and landlords that furnish information for inclusion in consumer reports have important obligations under the FCRA and Regulation V relating to the accuracy of information included in consumer reports,[44] and the Bureau urges CRAs and furnishers to ensure they are complying with these obligations.

Concerns about the accuracy of information included in consumer reports are long-standing,[45] and the Bureau is especially concerned about the effects of these accuracy problems in light of the economic and public health impacts of COVID–19. The Bureau has received consumer complaints alleging that inaccuracies in tenant-screening reports have caused landlords to deny some consumers rental housing and charge others higher security deposits than they would have otherwise.[46] The Bureau is particularly concerned that the procedures that some tenant-screening companies use to match public records and other rental information to specific consumers may create a high risk that inaccurate data will be included in tenant-screening reports,[47] a risk that may be further heightened by increased volumes of negative rental information resulting from the pandemic. The risk of mismatching may be greater among Hispanic, Black, and Asian individuals because there is less surname diversity than among the white population.[48]

In addition, the Bureau is concerned that tenant-screening companies may report information, such as information about an eviction filing, in a consumer report without having reasonable procedures to report information about the disposition of the eviction filing or to prevent the inclusion of multiple entries for the same eviction action in the same consumer report.[49] The Bureau is also concerned that tenant-screening companies may lack reasonable procedures to exclude from consumer reports eviction information that has been sealed or expunged.[50]

CRAs frequently include rental information, such as eviction records, that comes from public records; landlords and debt collectors also furnish information about rental housing payments and debts to CRAs. The FCRA and Regulation V set forth important requirements for furnishers concerning both the accuracy of information furnished and the handling of consumer disputes related to the accuracy of information included in consumer reports.[51] The Bureau is concerned that existing accuracy problems related to the furnishing of rental information may be exacerbated by the anticipated increase in the amount of negative rental information furnished.

For example, furnishers may fail to account for COVID–19-related aid or protections when reporting overdue rent amounts. In addition to providing a temporary moratorium on eviction filings for tenants in certain rental properties with Federal assistance or federally related financing, the CARES Act prohibited landlords of these rental properties from charging fees, penalties, or other charges related to the nonpayment of rent during the Act's eviction moratorium.[52] State and local laws may also in some cases prohibit landlords from charging certain late fees or penalties to renters. The Bureau is concerned that furnishers may include prohibited penalties or fees when reporting rental arrearages. In addition, under many rental assistance programs, funds to make rental payments may be provided to landlords to pay the rent of specific tenants who are eligible for the program. If furnishers providing rental information do not appropriately account for funds received pursuant to these programs and fail to offset overdue rent amounts, this could lead to inaccuracies in consumer reports.

Finally, the dispute-resolution obligations the FCRA and Regulation V impose on CRAs and furnishers are also critical to ensuring that consumer reports are accurate. CRAs and furnishers must conduct reasonable and timely investigations of consumer disputes to verify the accuracy of the information furnished.[53] An increase in the amount of negative rental information in public records and furnished to CRAs is likely to lead to a corresponding increase in dispute volumes. A reasonable and timely investigation of a consumer dispute is critical to mitigating the harmful impact that inaccurate negative information in a consumer report may have on the

[42] *See, e.g.,* CFPB Complaint Bulletin, *supra* note 3 (noting that, in their complaints to the Bureau, consumers have expressed concerns that an eviction would have detrimental effects on their ability to secure future housing and have reported facing homelessness because an eviction had negatively affected their credit, making it more difficult to secure housing); Kaveh Waddell, *How Tenant Screening Reports Make It Hard for People to Bounce Back from Tough Times,* Consumer Reports (Mar. 11, 2021), *https://www.consumerreports.org/algorithmic-bias/tenant-screening-reports-make-it-hard-to-bounce-back-from-tough-times/.*

[43] 86 FR 16731, 16733–34 (Mar. 31, 2021). *See also* 86 FR 34010, 34013 (June 28, 2021) (noting that ''[e]victed renters must move, which leads to multiple outcomes that increase the risk of COVID–19 spread'').

[44] *See, e.g.,* 15 U.S.C. 1681e(b), 1681i, 1681s–2; 12 CFR pt. 1022.

[45] *See, e.g.,* Fed. Trade Comm'n, *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003* (Dec. 2012), *https://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf* (finding that one in five consumers had an error on at least one of their three nationwide credit reports). More recently, the Bureau and the Federal Trade Commission hosted a full-day public workshop to discuss issues affecting the accuracy of both traditional credit reports and employment and tenant background screening reports. Fed. Trade Comm'n, *Accuracy in Consumer Reporting Workshop* (Dec. 10, 2019), *https://www.ftc.gov/news-events/events-calendar/accuracy-consumer-reporting-workshop.*

[46] *See, e.g.,* CFPB Complaint Bulletin, *supra* note 3.

[47] *See, e.g.,* Lauren Kirchner & Matthew Goldstein, *How Automated Background Checks Freeze Out Renters,* N.Y. Times (May 28, 2020), *https://www.nytimes.com/2020/05/28/business/renters-background-checks.html;* Complaint, *United States* v. *Appfolio, Inc.,* No. 1:20–cv–03563 (D.D.C. Dec. 8, 2020), *https://www.ftc.gov/system/files/documents/cases/ecf_1_-_us_v_appfolio_complaint.pdf* (alleging failure to follow reasonable procedures relating to the use of identifiers to match criminal and eviction records to consumers for purposes of preparing tenant-screening reports); Complaint, *FTC* v. *RealPage, Inc.,* No. 3:18–cv–02737–N (N.D. Tex. Oct. 16, 2018), *https://www.ftc.gov/system/files/documents/cases/152_3059_realpage_inc_complaint_10-16-18.pdf* (alleging failure to follow reasonable procedures relating to the matching criteria used to match criminal records to consumers for purposes of preparing tenant-screening reports).

[48] Joshua Comenetz, U.S. Census Bureau, *Hispanic Surnames Rise in Popularity* (Aug. 9, 2017), *https://www.census.gov/library/stories/2017/08/what-is-in-a-name.html* (''Twenty-six surnames cover a quarter of the Hispanic population and 16 percent of Hispanic people reported one of the top 10 Hispanic names. The pattern is similar for Asians and blacks.'').

[49] *See, e.g.,* Complaint, *United States* v. *Appfolio, Inc., supra* note 47 (alleging failure to follow reasonable procedures to assure that the eviction and criminal record information included in tenant-screening reports accurately reflected the disposition, offense name, and offense type and to prevent the inclusion of multiple entries for the same criminal or eviction action in the same report).

[50] *See, e.g.,* Consent Order, *In re Gen. Info. Servs., Inc.,* 2015–CFPB–0028 (Oct. 29, 2015), *https://files.consumerfinance.gov/f/201510_cfpb_consent-order_general-information-service-inc.pdf* (alleging that an employment background screening company violated FCRA section 607(b) by, among other things, failing to use reasonable procedures to prevent the inclusion of expunged criminal records in consumer reports).

[51] *See, e.g.,* 15 U.S.C. 1681s–2; 12 CFR 1022.40–.43.

[52] CARES Act section 4024, 134 Stat. 492–94.

[53] 15 U.S.C. 1681i, 1681s–2; 12 CFR 1022.43.

consumer. Moreover, proper handling of disputes not only ensures that inaccuracies in the disputing consumer's report are resolved, it also facilitates CRA and furnisher identification of systemic problems related to their consumer reporting and furnishing practices.[54]

II. Compliance Guidance

As pandemic-related government interventions aimed at protecting renters begin to expire, the Bureau will continue to look carefully at consumer reporting agencies' and furnishers' compliance with their FCRA accuracy obligations with respect to rental information. CRAs and furnishers should take immediate steps to ensure they are fulfilling their obligations under the law. If the Bureau determines that a CRA or furnisher has engaged in any acts or practices that violate the FCRA, Regulation V, or other Federal consumer financial laws, the Bureau will take appropriate enforcement action to address violations and seek all appropriate corrective measures, including remediation of harm to consumers.

The Bureau plans to pay particular attention to the areas outlined below.

For CRAs Reporting Rental Information

1. Whether CRAs are reporting accurate rental information.
2. Whether CRAs are using a sufficient number of identifiers to match consumer report information to the consumer who is the subject of the report, including whether CRAs are using name-matching procedures or limited identifiers likely to heighten the risk of inaccurate matching.
3. Whether CRAs are reporting eviction information that is inaccurate, incomplete, or misleading (such as may result from a failure to have reasonable procedures to report information about the disposition of an eviction filing, to prevent the inclusion of multiple entries for the same eviction action in the same consumer report, or to prevent the inclusion of eviction information that has been sealed or expunged).
4. Whether CRAs are complying with their obligations to investigate disputed information in a consumer report, including whether they are conducting timely and reasonable investigations.

For Furnishers Providing Rental Information

1. Whether furnishers are providing accurate rental information to CRAs.
2. Whether furnishers are providing information about rental arrearages that include amounts that were already paid on behalf of a tenant through a government grant or relief program, such as the Emergency Rental Assistance programs.
3. Whether furnishers are providing information about rental arrearages that include fees or penalties that CARES Act section 4024(b) or other laws prohibit charging.
4. Whether furnishers are complying with their obligations to investigate disputed information in a consumer report, including whether they are conducting timely and reasonable investigations.

III. Conclusion

The Bureau issues this Bulletin to highlight that the Bureau will hold CRAs and furnishers accountable if they do not comply with their accuracy and dispute obligations under the FCRA and Regulation V with respect to rental information.

IV. Regulatory Requirements

This Bulletin constitutes a general statement of policy exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act.[55] It summarizes existing legal requirements and articulates considerations relevant to the Bureau's exercise of its enforcement discretion for institutions under its jurisdiction. It does not impose any legal requirements on external parties, nor does it create or confer any substantive rights on external parties that could be enforceable in any administrative or civil proceeding. Because no notice of proposed rulemaking is required in issuing this Bulletin, the Regulatory Flexibility Act also does not require an initial or final regulatory flexibility analysis.[56] The Bureau has also determined that the issuance of this Bulletin does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.[57]

Dated: July 1, 2021.

David Uejio,

Acting Director, Bureau of Consumer Financial Protection.

[FR Doc. 2021–14459 Filed 7–6–21; 8:45 am]

BILLING CODE 4810–AM–P

[54] *See, e.g.,* Fed. Trade Comm'n, *40 Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report with Summary of Interpretations* 67 (July 2011), *https://www.ftc.gov/sites/default/files/documents/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720fcrareport.pdf* (noting that ''when a CRA learns or should reasonably be aware of errors in its reports that may indicate systematic problems (by virtue of information from consumers, report users, from periodic review of its reporting system, or otherwise), it must review its procedures for assuring accuracy and take any necessary steps to avoid future problems'').

[55] 5 U.S.C. 553(b).

[56] 5 U.S.C. 603(a), 604(a).

[57] 44 U.S.C. 3501 *et seq.*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0293; Product Identifier 2017–SW–052–AD; Amendment 39–21610; AD 2021–13–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Airbus Helicopters Deutschland GmbH (Airbus Helicopters) Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, and EC135T3 helicopters. This AD requires modifying the tail rotor (T/R) control installation, a functional test, and corrective actions as necessary. This AD was prompted by cases of insufficient clearance between a certain T/R control bearing connection and the helicopter structure, which were detected on the production line. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 11, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of August 11, 2021.

ADDRESSES: For service information identified in this final rule, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. Service information that is incorporated by reference is also available at *https://www.regulations.gov*

by searching for and locating Docket No. FAA–2019–0293.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0293; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, any comments received, and other information. The street address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: David Hatfield, Aviation Safety Engineer, Aircraft Systems Section, Technical Innovation Policy Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *david.hatfield@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Airbus Helicopters Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, and EC135T3 helicopters with serial number (S/N) up to and including 1254 (except S/N 1235). The NPRM published in the **Federal Register** on April 16, 2021 (86 FR 20089). In the NPRM, the FAA proposed to require modifying the T/R control within 360 hours time-in-service (TIS) by installing a Teflon washer and performing a functional test in accordance with specified portions of Airbus Helicopters Alert Service Bulletin ASB EC135–67A–031, Revision 0, dated March 30, 2017 (ASB EC135–67A–031). Based on the results of the functional test, the NPRM proposed to require making repairs in accordance with FAA-approved procedures. The NPRM was prompted by EASA AD 2017–0147, dated August 10, 2017 (EASA AD 2017–0147), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Airbus Helicopters Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, EC135T3, EC635P2+, EC635P3, EC635T1, EC635T2+, and EC635T3 helicopters. EASA advises that several cases of insufficient clearance between a certain T/R bearing connection and the helicopter structure were detected during inspections of helicopters on the production line. EASA states that this condition, if not corrected and in the case of an unglued bearing, could lead to blockage of the pedal controlling the T/R thrust and loss of the T/R control. EASA further advises that this could result in a forced landing with damage to the helicopter and injury to the occupants.

Accordingly, EASA AD 2017–0147 requires modifying the T/R control installation by adding a Teflon washer, which reduces the degree of freedom in case of a drifting bearing at the affected connection. EASA AD 2017–0147 also requires a functional test for clearance, and depending on the results, either accomplishing additional corrective actions or contacting Airbus Helicopters for instructions.

Comments

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

Conclusion

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters.

Related Service Information Under 1 CFR Part 51

The FAA reviewed ASB EC135–67A–031 for Airbus Helicopters Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, EC135T3, EC635P2+, EC635P3, EC635T1, EC635T2+, and EC635T3 helicopters. For S/Ns up to 1254 inclusive, except S/N 1235, this service information specifies retrofitting a Teflon washer on the T/R controls, performing a functional test of the modified T/R control installation to inspect for clearance, and making any necessary adjustments. This service information advises that S/N 1255 and up will have the Teflon washer installed in production.

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

Differences Between This AD and the EASA AD

The EASA AD sets compliance times at 12 months, while this AD requires compliance within 360 hours TIS. The EASA AD applies to Airbus Helicopters Model EC635T1, EC635T2+, EC635T3, EC635P2+, and EC635P3 helicopters; this AD does not because these models do not have an FAA type certificate. The EASA AD requires contacting Airbus Helicopters for approved repair procedures; this AD requires a repair using FAA-approved procedures. The EASA AD requires revising the ''aircraft maintenance program,'' whereas this AD does not because not all U.S. operators are required to have a maintenance program.

Costs of Compliance

The FAA estimates that this AD affects 331 helicopters of U.S. registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Modifying the T/R control installation and conducting a functional test takes about 3 work-hours and parts cost about $25 for an estimated cost of $280 per helicopter and $92,680 for the U.S. fleet.

If required, adjusting the clearance takes about 1 work-hour for an estimated cost of $85 per helicopter.

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 helicopters identified in this rulemaking action.

Regulatory Findings

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

responsibilities among the various levels of government.

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

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

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–13–05 Airbus Helicopters Deutschland GmbH: Amendment 39–21610; Docket No. FAA–2019–0293; Product Identifier 2017–SW–052–AD.

(a) Effective Date

This airworthiness directive (AD) is effective August 11, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Deutschland GmbH Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, and EC135T3 helicopters with serial number (S/N) up to and including 1254 (except S/N 1235), certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6720, Tail Rotor Control System.

(e) Unsafe Condition

This AD defines the unsafe condition as interference between the tail rotor (T/R) control bearing connection close-tolerance bolt and the helicopter structure, which could lead to blockage of the pedal controlling the T/R thrust. This condition could result in loss of T/R control, prompting a forced landing.

(f) Compliance

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

(g) Required Actions

Within 360 hours time-in-service, modify the T/R control by installing a Teflon washer and perform a functional test of the modification in accordance with the Accomplishment Instructions, paragraphs 3.B.2 through 3.B.4.2., of Airbus Helicopters Alert Service Bulletin ASB EC135–67A–031, Revision 0, dated March 30, 2017. If, during the functional test, the clearance between the end of the close-tolerance bolt, castellated nut, and the lower stringer is less than 1.0 mm, repair in accordance with FAA-approved procedures.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (i)(1) of this AD. Information may be emailed to: *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.

(i) Related Information

(1) For more information about this AD, contact David Hatfield, Aviation Safety Engineer, Aircraft Systems Section, Technical Innovation Policy Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *david.hatfield@faa.gov.*

(2) The subject of this AD is addressed in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2017–0147, dated August 10, 2017. You may view the EASA AD at *https://www.regulations.gov* in Docket No. FAA–2019–0293.

(j) Material Incorporated by Reference

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

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

(i) Airbus Helicopters Alert Service Bulletin ASB EC135–67A–031, Revision 0, dated March 30, 2017.

(ii) [Reserved]

(3) For Airbus Helicopters service information identified in this AD, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on June 10, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–14343 Filed 7–6–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0333; Project Identifier MCAI–2020–00252–R; Amendment 39–21609; AD 2021–13–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Helicopters Model AS332C, AS332C1, AS332L, and AS332L1 helicopters. This AD was prompted by a report of a yaw control failure that was the result of the disconnection of the tail rotor hub (TRH) pitch control rod from the tail rotor servo-control, which resulted from a seized TRH bearing. The TRH bearing had grease dissolving after contamination by leaked hydraulic fluid from the tail rotor servo-control that came through the TRH assembly boot. This AD requires repetitive inspections for hydraulic leaks, corrective actions if necessary, and an optional modification which constitutes terminating action, 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 is effective August 11, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 11, 2021.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact

the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* internet: *www.easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0333.

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–2021–0333; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Hal Jensen, Aerospace Engineer, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; phone: (202) 267–9167; email: *hal.jensen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0021, dated February 6, 2020 (EASA AD 2020–0021) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus Helicopters Model AS332C, AS332C1, AS332L, and AS332L1 helicopters. Although EASA AD 2020–0021 applies to all Model AS332C, AS332C1, AS332L, and AS332L1 helicopters, this AD applies to helicopters with an affected part installed instead.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Helicopters Model AS332C, AS332C1, AS332L, and AS332L1 helicopters. The NPRM published in the **Federal Register** on April 22, 2021 (86 FR 21238). The NPRM was prompted by a report of a yaw control failure that was the result of the disconnection of the TRH pitch control rod from the tail rotor servo-control, which resulted from a seized TRH bearing. The TRH bearing had grease dissolving after contamination by leaked hydraulic fluid from the tail rotor servo-control that came through the TRH assembly boot. The NPRM proposed to require repetitive inspections for hydraulic leaks, corrective actions if necessary, and an optional modification which constitutes terminating action, as specified in an EASA AD.

The FAA is issuing this AD to address seized TRH bearings, which could reduce the effectiveness of the pitch control of the tail rotor system, possibly resulting in reduced yaw control of the helicopter. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

EASA AD 2020–0021 describes procedures for repetitive inspections for hydraulic leaks, corrective actions if necessary (*i.e.,* replacement of the pitch control rod bearing of the affected TRH assembly), and an optional modification (*i.e.,* installation of a TRH assembly having certain part numbers) which constitutes terminating action. 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.

Costs of Compliance

The FAA estimates that this AD affects 10 helicopters 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 per inspection cycle	$0	$85 per inspection cycle	$850 per inspection cycle.

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. The FAA has no way of determining the number of helicopters that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
6 work-hours × $85 per hour = $510	$509	$1,019

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–13–04 Airbus Helicopters: Amendment 39–21609; Docket No. FAA–2021–0333; Project Identifier MCAI–2020–00252–R.

(a) Effective Date

This airworthiness directive (AD) is effective August 11, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Model AS332C, AS332C1, AS332L, and AS332L1 helicopters, certificated in any category, with a tail rotor hub (TRH) assembly, having part number (P/N) 332A33–0001–05 or P/N 332A33–0001–06, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 6420, Tail rotor head.

(e) Reason

This AD was prompted by a report of a yaw control failure that was the result of a disconnection of the TRH pitch control rod from the tail rotor servo-control, which resulted from a seized TRH bearing. The TRH bearing had grease dissolving after contamination by leaked hydraulic fluid from the tail rotor servo-control that came through the TRH assembly boot. The FAA is issuing this AD to address seized TRH bearings, which could reduce the effectiveness of the pitch control of the tail rotor system, possibly resulting in reduced yaw control of the helicopter.

(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 2020–0021, dated February 6, 2020 (EASA AD 2020–0021).

(h) Exceptions to EASA AD 2020–0021

(1) Where EASA AD 2020–0021 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2020–0021 does not apply to this AD.

(3) Where EASA AD 2020–0021 refers to flight hours (FH), this AD requires using hours time-in-service.

(4) Where paragraph (1) of EASA AD 2020–0021 requires doing inspections ''in accordance with the instructions of the ASB [alert service bulletin],'' this AD requires accomplishing a visual inspection for any hydraulic fluid leak at the TRH boot.

(5) Where EASA AD 2020–0021 refers to February 28, 2004 (the effective date of Direction Générale de l'Aviation Civile (DGAC) AD F–2004–031, dated February 18, 2004), this AD requires using the effective date of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *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.

(j) Related Information

For more information about this AD, contact Hal Jensen, Aerospace Engineer, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; phone: (202) 267–9167; email: *hal.jensen@faa.gov*.

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2020–0021, dated February 6, 2020.

(ii) [Reserved]

(3) For EASA AD 2020–0021, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* internet: *www.easa.europa.eu*. You may find this material on the EASA website at *https://ad.easa.europa.eu*. You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu*.

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. 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–2021–0333.

(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,* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued on June 10, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–14340 Filed 7–6–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2021–0292]

RIN 1625–AA08

Special Local Regulation; Back River, Baltimore County, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for certain waters of Back River. This action is necessary to provide for the safety of life on these navigable waters located in Baltimore County, MD, during activities associated with an air show event from July 9, 2021, through July 11, 2021. This regulation prohibits persons and vessels from entering the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or the Coast Guard Event Patrol Commander.

DATES: This rule is effective from 4 p.m. on July 9, 2021, through 4 p.m. on July 11, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0292 in the ''SEARCH'' box and click ''SEARCH.'' Next, in the Document Type column, select ''Supporting & Related Material.''

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

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On April 21, 2021, Tiki Lee's Dock Bar of Sparrows Point, MD, and David Schultz Airshows, LLC of Clearfield, PA, notified the Coast Guard, it will be conducting the 1st Annual Shootout on the River Airshow—Sparrows Point in Back River, between Lynch Point and Walnut Point, in Baltimore County, MD on July 10, 2021, and July 11, 2021. In response, on May 27, 2021, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Special Local Regulation; Back River, Baltimore County, MD'' (86 FR 28516). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended June 11, 2021, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the date of the event, it would be impracticable to make the regulation effective 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 it would delay the safety measures necessary to respond to potential safety hazards associated with this marine event. Hazards from the air show include risks of injury or death resulting from aircraft accidents, dangerous projectiles, hazardous materials spills, falling debris, and near or actual contact among participants and spectator vessels or waterway users if normal vessel traffic were to interfere with the event. Additionally, such hazards include participants operating near a designated navigation channel, as well as operating adjacent to waterside residential communities. Immediate action is needed to protect participants, spectators, and other persons and vessels during the air show event on these navigable waters.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port Maryland-National Capital Region (COTP) has determined that potential hazards associated with the air show being held from July 9, 2021, through July 11, 2021, will be a safety concern for anyone intending to operate within certain waters of Back River in Baltimore County, MD, operating in or near the event area.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published May 27, 2021. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes special local regulations from 4 p.m. on July 9, 2021, through 4 p.m. on July 11, 2021. The regulated area will cover all navigable waters of Back River, within an area bounded by a line connecting the following points: From the shoreline at Lynch Point at latitude 39°14′46″ N, longitude 076°26′23″ W, thence northeast to Porter Point at latitude 39°15′13″ N, longitude 076°26′11″ W, thence north along the shoreline to Walnut Point at latitude 39°17′06″ N, longitude 076°27′04″ W, thence southwest to the shoreline at latitude 39°16′41″ N, longitude 076°27′31″ W, thence south along the shoreline to the point of origin, located in Baltimore County, MD. This rule provides additional information about areas within the regulated area and their definitions. These areas include ''Aerobatics Box'' and ''Spectator Area.'' The size of the regulated area and duration of the special local regulations are intended to ensure the safety of life on these navigable waters before, during, and after activities associated with the air show, scheduled from 5 p.m. to 6 p.m. on July 9, 2021, and from 2 p.m. to 3 p.m. both days on July 10, 2021, and July 11, 2021. The COTP and the Coast Guard Event Patrol Commander (PATCOM) will have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area will be required to immediately comply with the directions given by the COTP or Event PATCOM. If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue them a citation for failure to comply, or both.

Except for 1st Annual Shootout on the River Airshow—Sparrows Point participants and vessels already at berth, a vessel or person will be required to get permission from the COTP or Event PATCOM before entering the regulated area. Vessel operators will be able to request permission to enter and transit through the regulated area by contacting the Event PATCOM on VHF–FM channel 16. Vessel traffic will be able to safely transit the regulated area once the Event PATCOM deems it safe to do so. A vessel within the regulated area must operate at safe speed that minimizes wake. A person or vessel not registered with the event sponsor as a participant or assigned as official patrols will be considered a spectator. Official Patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign. Official Patrols enforcing

this regulated area can be contacted on VHF–FM channel 16 and channel 22A.

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

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 location, size and duration of the regulated area, which will impact a small designated area of Back River for 9 total enforcement hours. This waterway supports mainly recreational vessel traffic, which at its peak, occurs during the summer season. The Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the status of the regulated area. Moreover, the rule will allow vessels to seek permission to enter the regulated area, and vessel traffic will be able to safely transit the regulated area once the Event PATCOM deems it safe to do so.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area lasting for 9 total enforcement hours. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Memorandum for the Record supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your

message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 46 U.S.C. 70034 ; 33 CFR 1.05–1.

■ 2. Add § 100.501T05–0292 to read as follows:

§ 100.501T05–0292 1st Annual Shootout on the River Airshow—Sparrows Point, Back River, Baltimore County, MD.

(a) *Locations.* All coordinates are based on datum WGS 1984. (1) *Regulated area.* All navigable waters of Back River, within an area bounded by a line connecting the following points: From the shoreline at Lynch Point at latitude 39°14′46″ N, longitude 076°26′23″ W, thence northeast to Porter Point at latitude 39°15′13″ N, longitude 076°26′11″ W, thence north along the shoreline to Walnut Point at latitude 39°17′06″ N, longitude 076°27′04″ W, thence southwest to the shoreline at latitude 39°16′41″ N, longitude 076°27′31″ W, thence south along the shoreline to the point of origin, located in Baltimore County, MD. The aerobatics box and spectator area are within the regulated area.

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

(3) *Spectator Area.* The designated spectator area is a polygon in shape measuring approximately 1,000 yards in length by 500 feet in width. The area is bounded by a line commencing at position latitude 39°16′33.7″ N, longitude 076°26′40.7″ W, thence east to latitude 39°16′34.5″ N, longitude 076°26′34.7″ W, thence south to latitude 39°16′05.0″ N, longitude 076°26′31.1″ W, thence west to latitude 39°16′04.4″ N, longitude 076°26′37.4″ W, thence north to the point of origin.

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

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

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

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

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

Participant means all persons and vessels registered with the event sponsor as participating in the ''1st Annual Shootout on the River Airshow—Sparrows Point'' event, or otherwise designated by the event sponsor as having a function tied to the event.

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

Spectator Area is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a spectator area within the regulated area defined by this part.

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

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

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

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

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

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

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

(e) *Enforcement period.* This section will be enforced from 4 p.m. to 7 p.m. on July 9, 2021, from 1 p.m. to 4 p.m. on July 10, 2021, and, from 1 p.m. to 4 p.m. on July 11, 2021.

Dated: June 30, 2021.

David E. O'Connell,

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

[FR Doc. 2021–14361 Filed 7–6–21; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 111

Addressing Standards

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is extending its effort to improve the

delivery point validation and address standardization of mail receiving postage discounts by amending the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) in various sections of 602, *Addressing,* to update addressing standards.

DATES: *Effective Date:* October 1, 2022.

FOR FURTHER INFORMATION CONTACT: James Wilson at (901) 681–4600, Kai Fisher at (901) 681–4634, or Garry Rodriguez at (202) 268–7281.

SUPPLEMENTARY INFORMATION: On February 22, 2021, the Postal Service published a revised notice of proposed rulemaking (86 FR 10507–10509) to update addressing standards. In response to the revised proposed rule, the mailing industry provided many valuable comments.

Eleven formal responses were received. Several expressed concern that the change would create cost increases for lower volume mailers that currently process their lists quarterly and would be required to process more frequently, increasing the cost paid to mail service providers that offer the address matching services. Other comments questioned the 60-day requirement from address matching to the mailing date with a product release that is still valid for use beyond that time frame. This final rule will clearly outline the ways in which the addressing standard rules have changed.

Currently, DMM section 602.6.0, *ZIP Code Accuracy Standards,* provides that a ZIP Code™ may be used on a mail piece within 12 months after having been verified using a Postal Service approved method. Once a ZIP Code is used on a mailpiece, the address associated with that ZIP Code is considered to meet Postal Service addressing standards for an additional 12 months from the date first used in the mail.

DMM sections 602.7.0, *Carrier Route Accuracy Standard, and 9.0, Coding Accuracy Support System (CASS),* provide that Address Matching and Coding Update standards require coding to be performed within 90 days before the mailing date for carrier route mailings and 180 days for all non-carrier route mailings using the most current USPS database. The current product release schedule allows for use of a database that is valid for 105 days and may be used in generating discounted mailings for an additional 6 months beyond that timeframe. As such, an address added or modified in the database may not be updated on a mailing list for nearly 1 year after the change was made.

In 2012, the Postal Service implemented address management product fulfillment via an electronic product fulfillment method designed to provide subscription products to customers more efficiently. The database product updates are posted each month to a secure site where customers can log in to simply download the product files. A survey of licensed Address Management data products indicates that CASS and Multiline Accuracy Support System (MASS) Certified software and service providers are retrieving and using the monthly updates during the address matching and coding processes.

The Postal Service is implementing a database product cycle that aligns with the release of other mailing products. This will provide consistency across all mailing products and the method by which the data files are available and distributed. The USPS will now require the use of monthly updates for both carrier route and non-carrier route mailings and reduces the risk of using data that is no longer current.

The updated release schedule allows for 120 days of use for generating discounted mailings and an overlap in dates for product use. Mailers that currently process their lists quarterly would still be compliant as long as they do not mail beyond the ''last permissible mailing date'' for the ''product date'' as shown in the USPS Product Cycle in Exhibit 9.3.1. Mailers will be expected to update their systems with the latest data files as soon as practicable and should not wait until the ''last permissible use'' date.

The Postal Service is implementing this change effective October 1, 2022. This implementation date allows mailers eighteen months to adjust to the new update standards, however, mailers may opt to use the new monthly update cycles for both carrier route and non-carrier route mailings immediately.

We believe this revision will provide customers with a more efficient process and will reduce the risk of using address information that is not current.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

600 Basic Standards for All Mailing Services

* * * * *

602 Addressing

* * * * *

6.0 ZIP Code Accuracy Standards

6.1 Basic Standards

Except for mail bearing a simplified address, addresses used on pieces in a mailing at all commercial First-Class Mail, nonbarcoded presorted Periodicals, USPS Marketing Mail, Parcel Select Lightweight, and Bound Printed Matter presorted and carrier route prices are subject to the ZIP Code accuracy standard and must meet these requirements:

[Revise the text of items a and b to read as follows:]

a. Each address and associated 5-digit ZIP Code on the mailpieces in a mailing must be verified and corrected within 6 months before the mailing date with one of the USPS-approved methods in 6.2.

b. If an address used on a mailpiece in a mailing at one class of mail and price is verified and corrected with an approved method, the same address may be used during the following 6 months to meet the ZIP Code accuracy standard required for mailing at any other class of mail and price.

6.2 USPS-Approved Methods

The following methods meet the ZIP Code accuracy standard:

* * * * *

b. For manually maintained lists or small computerized lists, options include the following:

[Delete item b1 and renumber items b2 through b5 as items b1 through b4.]

* * * * *

7.0 Carrier Route Accuracy Standard

7.1 Basic Standards

* * * Addresses used on pieces claiming any Periodicals carrier route

prices, any USPS Marketing Mail Enhanced Carrier Route prices (including DALs or DMLs used with Product Samples), or any Bound Printed Matter carrier route prices are subject to the carrier route accuracy standard and must meet the following requirements:

[Revise the text of item a to read as follows:]

a. Each address and associated carrier route code used on the mailpieces (or DALs or DMLs) in a mailing must be updated with one of the USPS-approved methods in 6.2 using a product release that is within the USPS Product Cycle as provided in Exhibit 9.3.1.

* * * * *

[Delete item c.]

* * * * *

9.0 Coding Accuracy Support System (CASS)

* * * * *

9.3 Date of Address Matching and Coding

9.3.1 Update Standards

[Revise the text of 9.3.1 to read as follows:]

Unless Z4CHANGE is used, all automation and carrier route mailings bearing addresses coded by any AIS product must be coded with current CASS-certified software and the current USPS database. Coding must be done using a product release that is within the USPS Product Cycle as provided in Exhibit 9.3.1. All AIS products may be used immediately on release. New product releases must be included in address matching systems no later than after the first of the month following the product date. The overlap in dates for product use allows mailers adequate time to install the new data files and test their systems. Mailers are expected to update their systems with the latest data files as soon as practicable and need not wait until the ''last permissible use'' date. The mailer's signature on the postage statement certifies that this standard has been met when the corresponding mail is presented to the USPS. The ''current USPS database'' product cycle is defined by the table in Exhibit 9.3.1.

[Delete current table under 9.3.1 and add new table as Exhibit 9.3.1 to read as follows:]

EXHIBIT 9.3.1—USPS DATABASE PRODUCT CYCLE

Release date (posted)	Product date	Expiration date (last permissible use date)	Last permissible mailing date
Use of file released in * * *	(Publish date)	And must end no later than * * *	
Mid-November	December 1	February 28/29	March 31.
Mid-December	January 1	March 31	April 30.
Mid-January	February 1	April 30	May 31.
Mid-February	March 1	May 31	June 30.
Mid-March	April 1	June 30	July 31.
Mid-April	May 1	July 31	August 31.
Mid-May	June 1	August 31	September 30.
Mid-June	July 1	September 30	October 31.
Mid-July	August 1	October 31	November 30.
Mid-August	September 1	November 30	December 31.
Mid-September	October 1	December 31	January 31.
Mid-October	November 1	January 31	February 28/29.

* * * * *

9.5 Documentation

* * * * *

9.5.5 Using a Single List

[Revise the text of 9.5.5 by deleting the last sentence.]

* * * * *

Ruth B. Stevenson,

Attorney, Federal Compliance.

[FR Doc. 2021–14319 Filed 7–6–21; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2020–0459; FRL–10025–49–Region 4]

Air Plan Approval; FL; Prevention of Significant Deterioration Infrastructure Elements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Florida State Implementation Plan (SIP), submitted by the Florida Department of Environmental Protection (FDEP), Division of Air Resources Management, to EPA on August 26, 2020. The Clean Air Act (CAA or Act) requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each national ambient air quality standard (NAAQS) promulgated by EPA, commonly referred to as an ''infrastructure SIP.'' This submission addresses certain greenhouse gas (GHG) Prevention of Significant Deterioration (PSD) permitting requirements for the 2008 and 1997 8-hour Ozone and the 1997 Annual and 2006 24-hour Fine Particulate Matter ($PM_{2.5}$) NAAQS. Additionally, EPA is converting the previous disapprovals of Florida's infrastructure SIPs related to the CAA GHG PSD permitting requirements for the above NAAQS to full approvals.

DATES: This rule is effective August 6, 2021.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2020–0459. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your

inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Pearlene Williams, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9144. Ms. Williams can also be reached via electronic mail at *williams.pearlene@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 110(a)(1) of the CAA, states are required to submit SIP revisions meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. States were previously required to submit such SIPs for the 2008 and 1997 8-hour Ozone and the 1997 Annual and 2006 24-hour $PM_{2.5}$ NAAQS to EPA within three years of promulgation of the respective NAAQS.

Through previous rulemakings, EPA disapproved portions of several SIP submissions from Florida regarding the 2008 and 1997 8-hour Ozone, as well as the 1997 Annual and 2006 24-hour $PM_{2.5}$ NAAQS, because at the time, Florida's SIP did not address or provide adequate legal authority for the implementation of a GHG PSD program in Florida.[1] However, on May 19, 2014 (79 FR 28607), EPA approved Florida's December 19, 2013, SIP revision that amended the State's definition of ''PSD pollutant''. This Florida SIP revision addressed the Federal GHG requirements for PSD as specified in the June 3, 2010, GHG Tailoring Rule.[2]

On August 6, 2020, Florida submitted a SIP revision to approve various infrastructure SIP elements that were previously disapproved by EPA. The submittal requested approval for the following elements from the 1997 and 2008 Ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS as it relates to Florida's regulation of greenhouse gases under the PSD program: (1). Sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) Prong 3, and 110(a)(2)(J) infrastructure elements for Florida's 2008 Ozone Infrastructure SIP; (2). Sections 110(a)(2)(C) and 110(a)(2)(J) infrastructure elements for Florida's 1997 Ozone Infrastructure SIP; (3). Section 110(a)(2)(D)(i)(II) Prong 3 infrastructure elements for Florida's 2006 $PM_{2.5}$ Infrastructure SIP; and (4). Section 110(a)(2)(D)(i)(II) Prong 3 infrastructure elements for Florida's 1997 $PM_{2.5}$ Infrastructure SIP. This action only pertains to sections 110(a)(2)(C), (D)(i)(II), and (J) as they relate to GHG under a SIP-approved PSD permitting program.

Thus, in a notice of proposed rulemaking (NPRM) published on March 2, 2021, (86 FR 12143), EPA proposed to determine that Florida's SIP and practices are adequate for GHG PSD permitting of major sources and major modifications related to the 2008 8-hour Ozone NAAQS for sections 110(a)(2)(C), (D)(i) (prong 3), and (J); the 1997 8-hour Ozone NAAQS for sections 110(a)(2)(C) and (J); and the 1997 Annual and 2006 24-hour $PM_{2.5}$ NAAQS for section 110(a)(2)(D)(i)(ii) prong 3. Consequently, EPA proposed to convert the previous disapprovals of Florida's infrastructure SIPs related to the CAA GHG PSD permitting requirements for the 2008 and 1997 8-hour Ozone and the 1997 Annual and 2006 24-hour $PM_{2.5}$ NAAQS to full approvals. The March 2, 2021, NPRM provides additional detail regarding the background and rationale for EPA's action. Comments on the March 2, 2021, NPRM were due on or before April 1, 2021. EPA received no comments on the March 2, 2021, NPRM.

II. Final Action

EPA is approving revisions to the Florida SIP, submitted on August 26, 2020, related to sections 110(a)(2)(C), (D)(i) (prong 3), and (J) as they relate to new major sources and major modifications in areas of the State designated attainment or unclassifiable. EPA has made the determination that Florida's SIP and practices are adequate for GHG PSD permitting of major sources and major modifications related to the 2008 8-hour Ozone NAAQS for sections 110(a)(2)(C), (D)(i) (prong 3), and (J); the 1997 8-hour Ozone NAAQS for sections 110(a)(2)(C) and (J); and the 1997 Annual and 2006 24-hour $PM_{2.5}$ NAAQS for section 110(a)(2)(D)(i)(ii) prong 3. Consequently, EPA is converting the previous disapprovals of Florida's infrastructure SIPs related to the CAA GHG PSD permitting requirements for the 2008 and 1997 8-hour Ozone and the 1997 Annual and 2006 24-hour $PM_{2.5}$ NAAQS to full approvals.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 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. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible

[1] EPA partially disapproved the 1997 8-hour Ozone infrastructure SIP to the extent that it relied on the GHG PSD permitting requirements to meet the 110(a)(2)(C) and 110(a)(2)(j)requirements; see 77 FR 44485 (July 30, 2012). EPA disapproved the State's prong 3 of section 110(a)(2)(D)(i) as it relates to GHG PSD permitting requirements for the 1997 and 2006 Fine Particulate Matter NAAQS, See 78 FR 19998 (April 3, 2013). EPA also disapproved section 110(a)(2)(D)(i)(II) concerning visibility requirements; and the portions of sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J) related to the regulation of GHG emissions for the 2008 8-hour Ozone NAAQS, See 78 FR 65559 (November 1, 2013).

[2] 75 FR 31514.

methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

Dated: June 28, 2021.

John Blevins,

Acting Regional Administrator, Region 4.

For the reason stated in the preamble, the EPA amends 40 CFR parts 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart K—Florida

■ 2. Section 52.520(e) is amended by adding four new entries for ''110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards,'' ''110(a)(1) and (2) Infrastructure Requirements for the 1997 Annual Fine Particulate Matter National Ambient Air Quality Standards,'' ''110(a)(1) and (2) Infrastructure Requirements for the 2006 24-hour Fine Particulate Matter National Ambient Air Quality Standards,'' and ''110(a)(1) and (2) Infrastructure Requirements for the 2008 8-Hour Ozone National Ambient Air Quality Standards'' at the end of the table to read as follows:

§ 52.520 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED FLORIDA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	**Federal Register** notice	Explanation
*	*	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards.	8/26/2020	7/7/2021	[Insert citation of publication].	Approving SIP submission for sections 110(a)(2)(C) & 110(a)(2)(J) as it relates to GHG PSD permitting requirements.
110(a)(1) and (2) Infrastructure Requirements for the 1997 Annual Fine Particulate Matter National Ambient Air Quality Standards.	8/26/2020	7/7/2021	[Insert citation of publication].	Approving SIP submission for prong 3 of section 110(a)(2)(D)(i) as it relates to GHG PSD permitting requirements.
110(a)(1) and (2) Infrastructure Requirements for the 2006 24-hour Fine Particulate Matter National Ambient Air Quality Standards.	8/26/2020	7/7/2021	[Insert citation of publication].	Approving SIP submission for prong 3 of section 110(a)(2)(D)(i) as it relates to GHG PSD permitting requirements.
110(a)(1) and (2) Infrastructure Requirements for the 2008 8-Hour Ozone National Ambient Air Quality Standards.	8/26/2020	7/7/2021	[Insert citation of publication].	Approving SIP submission for section 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J) as it relates to the regulation of GHG emissions.

§ 52.522 [Amended]

■ 3. Section 52.522 is amended by removing and reserving paragraph (b).

§ 52.523 [Removed and Reserved]

■ 4. Remove and reserve § 52.523.

[FR Doc. 2021–14176 Filed 7–6–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2020–0129; FRL–10025–80-Region 4]

Air Plan Approval; AL; NO_X SIP Call and Removal of CAIR

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a State Implementation Plan (SIP) revision submitted by the State of Alabama through a letter dated February 27, 2020, to add regulations maintaining compliance with the State's nitrogen oxides (NO_X) SIP Call obligations for large non-electricity generating units (non-EGUs), to repeal the State's previously sunsetted NO_X Budget Trading Program regulations, and to repeal the State's Clean Air Interstate Rule (CAIR) regulations. EPA is also conditionally approving into the SIP state regulations that establish monitoring and reporting requirements for units subject to the NO_X SIP Call, including alternative monitoring options for certain sources for NO_X SIP Call purposes. In addition, EPA is making ministerial changes to reflect the State's renumbering of an existing regulation for ''New Combustion Sources.''

DATES: This rule is effective August 6, 2021.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2020–0129. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation

Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Steven Scofield, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9034. Mr. Scofield can also be reached via electronic mail at *scofield.steve@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Under Clean Air Act (CAA or Act) section 110(a)(2)(D)(i)(I), also called the good neighbor provision, states are required to address the interstate transport of air pollution. Specifically, the good neighbor provision requires that each state's implementation plan contain adequate provisions to prohibit air pollutant emissions from within the state that will significantly contribute to nonattainment of the national ambient air quality standards (NAAQS), or that will interfere with maintenance of the NAAQS, in any other state.

In October 1998 (63 FR 57356), EPA finalized the ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone'' (NO_X SIP Call). The NO_X SIP Call required eastern states, including Alabama, to submit SIPs that prohibit excessive emissions of ozone season NO_X by implementing statewide emissions budgets.[1] The NO_X SIP Call addressed the good neighbor provision for the 1979 ozone NAAQS and was designed to mitigate the impact of transported NO_X emissions, one of the precursors of ozone.[2] EPA developed the NO_X Budget Trading Program, an allowance trading program that states could adopt to meet their obligations under the NO_X SIP Call. This trading program allowed the following sources to participate in a regional cap and trade program: Generally EGUs with capacity greater than 25 megawatts (MW); and large industrial non-EGUs, such as boilers and combustion turbines, with a rated heat input greater than 250 million British thermal units per hour (MMBtu/hr). The NO_X SIP Call also identified potential reductions from cement kilns and stationary internal combustion engines.

To comply with the NO_X SIP Call requirements, in 2001, the Alabama Department of Environmental Management (ADEM) submitted a revision to add new rule sections to the SIP-approved version of Alabama Administrative Code Chapter 335–3–1, General Provisions, and Chapter 335–3–8, Control of Nitrogen Oxides Emissions. EPA approved the revision as compliant with Phase I of the NO_X SIP Call in 2001. *See* 66 FR 36919 (July 16, 2001). The approved revision required EGUs and large non-EGUs in the State to participate in the NO_X Budget Trading Program beginning in 2004. In 2005, Alabama submitted, and EPA approved, a SIP revision to address additional emissions reductions required for the NO_X SIP Call under Phase II. *See* 70 FR 76694 (December. 28, 2005).

In 2005, EPA published CAIR, which required several eastern states, including Alabama, to submit SIPs that prohibited emissions consistent with revised ozone season (and annual) NO_X budgets. *See* 70 FR 25162 (May 12, 2005); *see also* 71 FR 25328 (April 28, 2006). CAIR addressed the good neighbor provision for the 1997 ozone NAAQS and 1997 fine particulate matter ($PM_{2.5}$) NAAQS and was designed to mitigate the impact of transported NO_X emissions with respect to ozone and $PM_{2.5.}$ CAIR established several trading programs that EPA implemented through federal implementation plans (FIPs) for EGUs greater than 25 MW in each affected state, but not large non-EGUs; states could submit SIPs to replace the FIPs that achieved the required emission reductions from EGUs and/or other types of sources.[3] When the CAIR trading program for ozone season NO_X was implemented beginning in 2009, EPA discontinued administration of the NO_X Budget Trading Program; however, the requirements of the NO_X SIP Call continued to apply.

On October 1, 2007 (72 FR 55659), EPA approved changes to Alabama's SIP that incorporated requirements for CAIR. Consistent with CAIR's requirements, EPA approved a SIP revision in which Alabama regulations: (1) Sunset its NO_X Budget Trading Program requirements, and (2) incorporated CAIR annual and ozone season NO_X state trading programs. *See* 72 FR 55659. Participation of EGUs in the CAIR ozone season NO_X trading program addressed the State's obligation under the NO_X SIP Call for those units, and Alabama also chose to require non-EGUs subject to the NO_X SIP Call to participate in the same CAIR trading program. In this manner, Alabama's CAIR rules incorporated into the SIP addressed the State's obligations under the NO_X SIP Call with respect to both EGUs and non-EGUs.

The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR in 2008, but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR. *See North Carolina* v. *EPA,* 531 F.3d 896, *modified on rehearing,* 550 F.3d 1176 (D.C. Cir. 2008). The ruling allowed CAIR to remain in effect temporarily until a replacement rule consistent with the court's opinion was developed. While EPA worked on developing a replacement rule, the CAIR program continued to be implemented with the NO_X annual and ozone season trading programs beginning in 2009 and the SO_2 annual trading program beginning in 2010.

Following the D.C. Circuit's remand of CAIR, EPA promulgated the Cross-State Air Pollution Rule (CSAPR) to replace CAIR and address good neighbor obligations for the 1997 ozone NAAQS, the 1997 $PM_{2.5}$ NAAQS, and the 2006 $PM_{2.5}$ NAAQS. *See* 76 FR 48208 (August 8, 2011). Through FIPs, CSAPR required EGUs in eastern states, including Alabama, to meet annual and ozone season NO_X emission budgets and annual SO_2 emission budgets implemented through new trading programs. Implementation of CSAPR began on January 1, 2015.[4] CSAPR also contained provisions that would sunset CAIR-related obligations on a schedule coordinated with the implementation of the CSAPR compliance requirements. Participation by a state's EGUs in the CSAPR trading program for ozone season NO_X generally addressed the state's obligation under the NOx SIP Call for EGUs. CSAPR did not initially contain provisions allowing states to incorporate large non-EGUs into that trading program to meet the requirements of the NO_X SIP Call for non-EGUs. EPA also stopped

[1] *See* 63 FR 57356 (October 27, 1998).

[2] As originally promulgated, the NO_X SIP Call also addressed good neighbor obligations under the 1997 8-hour ozone NAAQS, but EPA subsequently stayed and later rescinded the rule's provisions with respect to that standard. *See* 65 FR 56245 (September 18, 2000); 84 FR 8422 (March 8, 2019).

[3] CAIR had separate trading programs for annual sulfur dioxide (SO_2) emissions, seasonal NO_X emissions, and annual NO_X emissions.

[4] *See* 79 FR 71663 (December 3, 2014).

administering CAIR trading programs with respect to emissions occurring after December 31, 2014.[5]

To comply with CSAPR, Alabama adopted SO_2 and NO_X CSAPR trading program rules, including budgets, in ADEM Administrative Code Chapters 335–3–5 and 335–3–8. On August 31, 2016, EPA approved Alabama's CSAPR annual SO_2 and annual NO_X trading program rules into the SIP.[6] *See* 81 FR 59869. Because EPA stopped administering the CAIR trading programs after 2014, the approved CAIR rules in the State's SIP have not been implemented for several years. Furthermore, ADEM repealed all CAIR and CAIR-related regulations from Alabama Administrative Code Chapters 335–3–1, 335–3–5, and 335–3–8 on December 9, 2011.[7] Even though the CAIR programs were not being implemented in Alabama, ozone season NOx emissions have remained well below the NO_X SIP Call budget levels.

After litigation that reached the Supreme Court, the D.C. Circuit generally upheld CSAPR but remanded several state budgets to EPA for reconsideration. *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118, 129–30 (D.C. Cir. 2015). EPA addressed the remanded ozone season NO_X budgets in the Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS (CSAPR Update), which also partially addressed eastern states' good neighbor obligations for the 2008 ozone NAAQS. *See* 81 FR 74504 (October 26, 2016). The air quality modeling for the CSAPR Update demonstrated that Alabama contributes significantly to nonattainment and/or interferes with maintenance of the 2008 ozone NAAQS in other states. The CSAPR Update reestablished an option for most states to meet their ongoing obligations for non-EGUs under the NO_X SIP Call by including the units in the CSAPR Update trading program.

The CSAPR Update trading program replaced the original CSAPR trading program for ozone season NO_X for most covered states. On October 6, 2017, EPA approved Alabama's CSAPR Update ozone season NO_X trading program rules for EGUs into the State's SIP.[8] *See* 82 FR 46674. Alabama's EGUs participate in the CSAPR Update trading program, generally also addressing the state's obligations under the NO_X SIP Call for EGUs. However, Alabama elected not to include its large non-EGUs in the CSAPR Update ozone season trading program. Because Alabama's large non-EGUs no longer participate in any CSAPR or CSAPR Update trading program for ozone season NOx emissions, the NO_X SIP Call regulations at 40 CFR 51.121(r)(2) as well as anti-backsliding provisions at 40 CFR 51.905(f) and 40 CFR 51.1105(e) require these non-EGUs to maintain compliance with NO_X SIP Call requirements in some other way.

Under 40 CFR 51.121(f)(2) of the NOx SIP Call regulations, where a State's SIP contains control measures for EGUs and large non-EGU boilers and combustion turbines, the SIP must contain enforceable limits on the ozone season NOx mass emissions from these sources. In addition, under 40 CFR 51.121(i)(4) of the NOx SIP Call regulations as originally promulgated, the SIP also had to require these sources to monitor emissions according to the provisions of 40 CFR part 75, which generally entails the use of continuous emission monitoring systems (CEMS). Alabama triggered these requirements by including control measures in its SIP for these types of sources, and the requirements have remained in effect despite the discontinuation of the NO_X Budget Trading Program after the 2008 ozone season. On March 8, 2019, EPA revised some of the regulations that were originally promulgated in 1998 to implement the NO_X SIP Call.[9] The revision gave states covered by the NO_X SIP Call greater flexibility concerning the form of the NOx emissions monitoring requirements that the states must include in their SIPs for certain emissions sources. The revision amended 40 CFR 51.121(i)(4) to make Part 75 monitoring, recordkeeping, and reporting optional, such that SIPs may establish alternative monitoring requirements for SIP Call budget units that meet the general requirements of 40 CFR 51.121(f)(1) and (i)(1). Under the updated provision, a state's implementation plan still needs to include some form of emissions monitoring requirements for these types of sources, consistent with the NO_X SIP Call's general enforceability and monitoring requirements at §§ 51.121(f)(1) and (i)(1), respectively, but states are no longer be required to satisfy these general NO_X SIP Call requirements specifically through the adoption of 40 CFR part 75 monitoring requirements.

After evaluating the various options available following EPA's March 8, 2019, revision to the NO_X SIP Call requirements, ADEM revised its regulations to address NO_X SIP Call requirements and adopt alternative monitoring options for certain large non-EGUs. The changes require large non-EGUs in the State to address the NO_X SIP Call's requirements for enforceable limits on ozone season NO_X mass emissions in a manner that does not rely on the administration of an interstate trading program. In addition, Alabama had previously revised its regulations to remove NO_X Budget Trading Program and CAIR trading program provisions after EPA stopped administering those programs. Alabama also revised its regulations non-substantively to renumber the regulation titled, ''New Combustion Sources'' from Rule 335–3–8–.14 to Rule 335–3–8–.05. The February 27, 2020, SIP revision submitted by ADEM requests approval into the SIP of all of these rule changes.

For a comprehensive discussion of EPA's analysis and rationale for approval of the State's submittal, please refer to EPA's March 3, 2021, notice of proposed rulemaking. *See* 86 FR 12305 (March 3, 2021). EPA received no comments on the proposed approval of Alabama's SIP.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Alabama Administrative Code Rule 335–3–8–.71, ''NO_X Budget Program,'' which reestablishes enforceable limits on ozone season NO_X mass emission for certain units as required by EPA's NO_X SIP Call regulations, and conditionally approving Rule 335–3–8–.72, ''NO_X Budget Program Monitoring and Reporting,'' which establishes alternative emission monitoring requirements for the units, both state effective on April 13, 2020. Further, EPA is approving the renumbering of Rule 335–3–8–.14, ''New Combustion Sources'' to 335–3–8–.05, ''New Combustion Sources,'' state effective January 16, 2012. Also in this document, EPA is finalizing the removal of provisions from the Alabama State

[5] *See* 79 FR 71663 (December 3, 2014) and 81 FR 13275 (March 14, 2016).

[6] In the 2016 action, EPA did not act on the portion of Alabama's SIP submittal intended to replace Alabama units' obligations to participate in CSAPR's federal trading program for ozone-season NOx emissions.

[7] Although CAIR-related regulations were repealed from ADEM Administrative Code on December 11, 2011, the repeal of the regulations was not effective until February 20, 2015. EPA is now proposing to remove the repealed regulations from the SIP.

[8] This action approved CSAPR and CSAPR Update-related provisions of Alabama SIP submissions dated October 26, 2015, and May 19, 2017.

[9] *See* ''Emissions Monitoring Provisions in State Implementation Plans Required Under the NO_X SIP Call,'' 84 FR 8422 (March 8, 2019).

Implementation Plan regarding the State's NO_X Budget Trading Program and CAIR trading program regulations at Rules 335–3–1–.14, 335–3–1–.16,[10] 335–3–5–.06 through 335–3–5–.08, 335–3–5–.11 through 335–3–5–.14, 335–3–8–.05 through 335–3–8–.13, 335–3–8–.16 through 335–3–8–.18, 335–3–8–.20, 335–3–8–.21, 335–3–8–.23 through 335–3–8–.27, 335–3–8–.29, 335–3–8–.30, 335–3–8–.32, and 335–3–8–.33, which were incorporated by reference in accordance with the requirements of 1 CFR part 51. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, the revised materials as stated above, have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[11]

III. Final Action

EPA is taking final action to approve revisions to Alabama's SIP, which the State submitted to EPA on February 27, 2020, regarding the NO_X Budget Program. EPA has determined that these portions of Alabama's SIP meet the applicable requirements of sections 110 and 172 of the CAA and applicable regulatory requirements at 40 CFR part 51. In addition, EPA is conditionally approving certain revisions, as described above, regarding the NO_X Budget Program's monitoring and reporting requirements, per Alabama's commitment through a letter dated September 15, 2020.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 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. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 7, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 28, 2021.

John Blevins,

Acting Regional Administrator, Region 4.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart B—Alabama

■ 2. Section 52.49 is added to read as follows:

§ 52.49 Conditional approval.

EPA conditionally approved Rule 335–3–8–.72, NO_X Budget Program Monitoring and Reporting, submitted by Alabama on February 27, 2020, into the Alabama SIP on July 7, 2021. This conditional approval is based on Alabama's September 15, 2020, commitment to the EPA to correct, within one year of the conditional

[10] Rule 335–3–1–.16 was originally approved into the Alabama SIP on March 26, 2009 (74 FR 13118). However, inadvertently, Rule 335–3–1–.16 was never added to the table of EPA-Approved Alabama Regulations found at 40 CFR 52.50(c). In effect, there is no need to remove an entry for this Section from the table of EPA-Approved Alabama Regulations because EPA is now approving the removal of this Rule from the Alabama SIP and an approval entry was never included.

[11] *See* 62 FR 27968 (May 22, 1997).

approval, the stack testing requirement, which was added to Rule 335–3–8–.72(1)(c) in error. If Alabama fails to meet its commitment by July 7, 2022, the conditional approval will become a disapproval on July 7, 2022 and EPA will issue a notification to that effect.

■ 3. Section 52.50 is amended in the table in paragraph (c) by:

■ a. Removing the entries for Sections—

■ i. 335–3–1–.14, titled ''Emissions Reporting Requirements Relating to Budgets for NO_X Emissions'';

■ ii. 335–3–5–.06, titled ''State Clean Air Interstate Rule (CAIR) SO_2 Trading Program General Provisions'';

■ iii. 335–3–5–.07, titled ''CAIR Designated Representative for CAIR SO_2 Sources'';

■ iv. 335–3–5–.08, titled ''Permits'';

■ v. 335–3–5–.11, titled ''CAIR SO_2 Allowance Tracking System'';

■ vi. 335–3–5–.12, titled ''CAIR SO_2 Allowance Transfers'';

■ vii. 335–3–5–.13, titled ''Monitoring and Reporting'';

■ viii. 335–3–5–.14, titled ''CAIR SO_2 Opt-In Units'';

■ ix. 335–3–8–.05, titled ''NO_X Budget Trading Program'';

■ x. 335–3–8–.06, titled ''Authorized Account Representative for NO_X Budget Sources'';

■ xi. 335–3–8–.07, titled ''Permits'';

■ xii. 335–3–8–.08, titled ''Compliance Certification'';

■ xiii. 335–3–8–.09, titled ''NO_X Allowance Allocations'';

■ xiv. 335–3–8–.10, titled ''NO_X Allowance Tracking System'';

■ xv. 335–3–8–.11, titled ''NO_X Allowance Transfers'';

■ xvi. 335–3–8–.12, titled ''Monitoring and Reporting'';

■ xvii. 335–3–8–.13, titled ''Individual Unit Opt-ins'';

■ xviii. 335–3–8–.14, titled ''New Combustion Sources'';

■ xix. 335–3–8–.16, titled ''CAIR NO_X Annual Budget Trading Program'';

■ xx. 335–3–8–.17, titled ''CAIR Designated Representative for CAIR NO_X Sources'';

■ xxi. 335–3–8–.18, titled ''CAIR Permits'';

■ xxii. 335–3–8–.20, titled ''CAIR NO_X Allowance Allocations'';

■ xxiii. 335–3–8–.21, titled ''CAIR NO_X Allowance Tracking System'';

■ xxiv. 335–3–8–.23, titled ''CAIR Monitoring and Reporting'';

■ xxv. 335–3–8–.24, titled ''CAIR NO_X Opt-in Units'';

■ xxvi. 335–3–8–.25, titled ''CAIR NO_X Ozone Season Trading Program'';

■ xxvii. 335–3–8–.26, titled ''CAIR Designated Representative for CAIR NO_X Ozone Season Sources'';

■ xxviii. 335–3–8–.27, titled ''CAIR NO_X Ozone Season Permits'';

■ xxix. 335–3–8–.29, titled ''CAIR NO_X Ozone Season Allowance Allocations'';

■ xxx. 335–3–8–.30, titled ''CAIR NO_X Ozone Season Allowance Tracking System'';

■ xxxi. 335–3–8–.32, titled ''CAIR NO_X Ozone Season Monitoring and Reporting''; and

■ xxxii. 335–3–8–.33, titled ''CAIR NO_X Ozone Season Opt-in Units'';

■ b. Adding entries for Sections—

■ i. 335–3–8–.05, titled ''New Combustion Sources'';

■ ii. 335–3–8–.71, titled ''NOx Budget Program''; and

■ iii. 335–3–8–.72, titled ''NO_X Budget Program Monitoring and Reporting'';

■ c. Revising the entries for Sections—

■ i. 335–3–5–.06 through 335–3–5.08;

■ ii. 335–3–5–.11 through 335–3–5.14;

■ iii. 335–3–8–.07 through 335–3–8.14;

■ iv. 335–3–8–.16 through 335–3–8.18;

■ v. 335–3–8–.20 and 335–3–8–.21;

■ vi. 335–3–8–.23 through 335–3–8.27;

■ vii. 335–3–8–.29 and 335–3–8–.30; and

■ d. Removing ''Both sections of 335–3–8–.33 are included in the approved SIP.'' in the ''Explanation'' column in the entry for Section 335–3–8–.33.

The revisions and additions read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

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EPA-APPROVED ALABAMA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	* * *	*	*	*
Chapter No. 335–3–5 Control of Sulfur Compound Emissions				
*	* * *	*	*	*
Section 335–3–5–.06	TR SO_2 Trading Program—Purpose and Definitions	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.07	TR SO_2 Trading Program—Applicability	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.08	TR SO_2 Trading Program—Retired Unit Exemption	11/24/2015	8/31/2016, 81 FR 59869.	
*	* * *	*	*	*
Section 335–3–5–.11	Administrative Appeal Procedures	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.12	SO_2 Trading Budgets and Variability Limits	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.13	TR SO_2 Allowance Allocations	12/7/2018	3/12/2020, 85 FR 14418.	
Section 335–3–5–.14	Authorization of Designated Representative and Alternate Designated Representative.	11/24/2015	8/31/2016, 81 FR 59869.	
*	* * *	*	*	*
Chapter No. 335–3–8 Control of Nitrogen Oxides Emissions				
*	* * *	*	*	*
Section 335–3–8–.05	New Combustion Sources	1/16/2012	7/7/2021, [Insert citation of publication].	
*	* * *	*	*	*
Section 335–3–8–.07	TR NO_X Annual Trading Program—Purpose and Definitions.	11/24/2015	8/31/2016, 81 FR 59869.	

EPA-APPROVED ALABAMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 335–3–8–.08	TR NO_X Annual Trading Program—Applicability	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–.09	TR NO_X Annual Trading Program—Retired Unit Exemption.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–.10	TR NO_X Annual Trading Program—Standard Requirements.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–.11	TR NO_X Annual Trading Program—Computation of Time.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–.12	Administrative Appeal Procedures	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–.13	NO_X Annual Trading Budgets and Variability Limits	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–.14	TR NO_X Annual Allowance Allocations	12/7/2018	3/12/2020, 85 FR 14418.	
Section 335–3–8–.16	Authorization of Designated Representative and Alternate Designated Representative.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–.17	Responsibilities of Designated Representative and Alternate Designated Representative.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–.18	Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source.	11/24/2015	8/31/2016, 81 FR 59869.	
*	* * * *	*	*	*
Section 335–3–8–.20	Objections Concerning Designated Representative and Alternate Designated Representative.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–.21	Delegation by Designated Representative and Alternate Designated Representative.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–.23	Establishment of Compliance Accounts, Assurance Accounts, and General Accounts.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–.24	Recordation of TR NO_X Annual Allowance Allocations and Auction Results.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–.25	Submission of TR NO_X Annual Allowance Transfers	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–.26	Recordation of TR NO_X Annual Allowance Transfers.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–.27	Compliance with TR NO_X Annual Emissions Limitation.	11/24/2015	8/31/2016, 81 FR 59869.	
*	* * * *	*	*	*
Section 335–3–8–.29	Banking	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–.30	Account Error	11/24/2015	8/31/2016, 81 FR 59869.	
*	* * * *	*	*	*
Section 335–3–8–.33	General Monitoring, Recordkeeping, and Reporting Requirements.	11/24/2015	8/31/2016, 81 FR 59869.	
*	* * * *	*	*	*
Section 335–3–8–.71	NO_X Budget Program	4/13/2020	7/7/2021, [Insert citation of publication].	
Section 335–3–8–.72	NO_X Budget Program Monitoring and Reporting	4/13/2020	7/7/2021, [Insert citation of publication].	Conditionally approved.

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[FR Doc. 2021–14180 Filed 7–6–21; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 600

[CMS–2438–FN]

RIN 0938–ZB64

Basic Health Program; Federal Funding Methodology for Program Year 2022

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final methodology.

SUMMARY: This document finalizes the methodology and data sources necessary to determine federal payment amounts to be made for program year 2022 to states that elect to establish a Basic Health Program under the Patient Protection and Affordable Care Act to offer health benefits coverage to low-income individuals otherwise eligible to purchase coverage through Health Insurance Exchanges, and incorporates the effects on such payment amounts the American Rescue Plan Act of 2021 (ARP).

DATES: The methodology and data sources announced in this document are effective on January 1, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher Truffer, (410) 786–1264; or Cassandra Lagorio, (410) 786–4554.

SUPPLEMENTARY INFORMATION:

I. Background

A. Overview of the Basic Health Program

Section 1331 of the Patient Protection and Affordable Care Act (Pub. L. 111–148, enacted on March 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152, enacted on March 30, 2010) (collectively referred to as the Patient Protection and Affordable Care Act) provides states with an option to establish a Basic Health Program (BHP). In the states that elect to operate a BHP, the BHP will make affordable health benefits coverage available for individuals under age 65 with household incomes between 133 percent and 200 percent of the federal poverty level (FPL) who are not otherwise eligible for Medicaid, the Children's Health Insurance Program (CHIP), or affordable employer-sponsored coverage, or for individuals whose income is below these levels but are lawfully present non-citizens ineligible for Medicaid. For those states that have expanded Medicaid coverage under section 1902(a)(10)(A)(i)(VIII) of the Social Security Act (the Act), the lower income threshold for BHP eligibility is effectively 138 percent due to the application of a required 5 percent income disregard in determining the upper limits of Medicaid income eligibility (section 1902(e)(14)(I) of the Act).

A BHP is another option for states to provide affordable health benefits to individuals with incomes in the ranges described above. States may find a BHP a useful option for several reasons, including the ability to potentially coordinate standard health plans in the BHP with their Medicaid managed care plans, or to potentially reduce the costs to individuals by lowering premiums or cost-sharing requirements.

Federal funding for a BHP under section 1331(d)(3)(A) of the Patient Protection and Affordable Care Act is based on the amount of premium tax credit (PTC) and cost-sharing reductions (CSRs) that would have been provided for the fiscal year to eligible individuals enrolled in BHP standard health plans in the state if such eligible individuals were allowed to enroll in a qualified health plan (QHP) through Health Insurance Exchanges (''Exchanges''). These funds are paid to trusts established by the states and dedicated to the BHP, and the states then administer the payments to standard health plans within the BHP.

In the March 12, 2014 **Federal Register** (79 FR 14112), we published a final rule entitled the ''Basic Health Program: State Administration of Basic Health Programs; Eligibility and Enrollment in Standard Health Plans; Essential Health Benefits in Standard Health Plans; Performance Standards for Basic Health Programs; Premium and Cost Sharing for Basic Health Programs; Federal Funding Process; Trust Fund and Financial Integrity'' (hereinafter referred to as the BHP final rule) implementing section 1331 of the Patient Protection and Affordable Care Act), which governs the establishment of BHPs. The BHP final rule established the standards for state and federal administration of BHPs, including provisions regarding eligibility and enrollment, benefits, cost-sharing requirements and oversight activities. While the BHP final rule codified the overall statutory requirements and basic procedural framework for the funding methodology, it does not contain the specific information necessary to determine federal payments. We anticipated that the methodology would be based on data and assumptions that would reflect ongoing operations and experience of BHPs, as well as the operation of the Exchanges. For this reason, the BHP final rule indicated that the development and publication of the funding methodology, including any data sources, would be addressed in a separate annual BHP Payment Notice.

In the BHP final rule, we specified that the BHP Payment Notice process would include the annual publication of both a proposed and final BHP payment methodology. The proposed BHP Payment Notice would be published in the **Federal Register** each October, 2 years prior to the applicable program year, and would describe the proposed funding methodology for the relevant BHP year,[1] including how the Secretary of the Department of Health and Human Services (the Secretary) considered the factors specified in section 1331(d)(3) of the Patient Protection and Affordable Care Act, along with the proposed data sources used to determine the federal BHP payment rates for the applicable program year. The final BHP Payment Notice would be published in the **Federal Register** in February, and would include the final BHP payment methodology, as well as the federal BHP payment rates for the applicable BHP program year. For example, payment rates in the final BHP Payment Notice published in February 2015 applied to BHP program year 2016, beginning in January 2016. As discussed in section II.D. of this final methodology, and as referenced in 42 CFR 600.610(b)(2), state data needed to calculate the federal BHP payment rates for the final BHP Payment Notice must be submitted to CMS.

As described in the BHP final rule, once the final methodology for the applicable program year has been published, we will generally make modifications to the BHP funding methodology on a prospective basis, with limited exceptions. The BHP final rule provided that retrospective adjustments to the state's BHP payment amount may occur to the extent that the prevailing BHP funding methodology for a given program year permits adjustments to a state's federal BHP payment amount due to insufficient data for prospective determination of the relevant factors specified in the applicable final BHP Payment Notice. For example, the population health factor adjustment described in section III.D.3. of this final methodology allows for a retrospective adjustment (at the state's option) to account for the impact that BHP may have had on the risk pool and QHP premiums in the Exchange. Additional adjustments could be made to the payment rates to correct errors in applying the methodology (such as mathematical errors).

Under section 1331(d)(3)(ii) of the Patient Protection and Affordable Care Act, the funding methodology and payment rates are expressed as an amount per eligible individual enrolled in a BHP standard health plan (BHP enrollee) for each month of enrollment. These payment rates may vary based on categories or classes of enrollees. Actual payment to a state would depend on the actual enrollment of individuals found eligible in accordance with a state's certified BHP Blueprint eligibility and verification methodologies in coverage through the state BHP. A state that is approved to implement a BHP must provide data showing quarterly enrollment of eligible individuals in the various federal BHP payment rate cells. Such data must include the following:

- Personal identifier;
- Date of birth;
- County of residence;
- Indian status;
- Family size;
- Household income;
- Number of persons in household enrolled in BHP;
- Family identifier;
- Months of coverage;
- Plan information; and

[1] BHP program years span from January 1 through December 31.

• Any other data required by CMS to properly calculate the payment.

B. The 2018 Final Administrative Order, 2019 Payment Methodology, 2020 Payment Methodology, and 2021 Payment Methodology

On October 11, 2017, the Attorney General of the United States provided the Department of Health and Human Services and the Department of the Treasury with a legal opinion indicating that the permanent appropriation at 31 U.S.C. 1324, from which the Departments had historically drawn funds to make CSR payments, cannot be used to fund CSR payments to insurers. In light of this opinion—and in the absence of any other appropriation that could be used to fund CSR payments—the Department of Health and Human Services directed us to discontinue CSR payments to issuers until Congress provides for an appropriation. In the absence of a Congressional appropriation for federal funding for CSRs, we cannot provide states with a federal payment attributable to CSRs that BHP enrollees would have received had they been enrolled in a QHP through an Exchange.

Starting with the payment for the first quarter (Q1) of 2018 (which began on January 1, 2018), we stopped paying the CSR component of the quarterly BHP payments to New York and Minnesota (the states), the only states operating a BHP in 2018. The states then sued the Secretary for declaratory and injunctive relief in the United States District Court for the Southern District of New York. *See New York* v. *U.S. Dep't of Health & Human Servs.,* No. 18–cv–00683 (RJS) (S.D.N.Y. filed Jan. 26, 2018). On May 2, 2018, the parties filed a stipulation requesting a stay of the litigation so that HHS could issue an administrative order revising the 2018 BHP payment methodology. As a result of the stipulation, the court dismissed the BHP litigation. On July 6, 2018, we issued a Draft Administrative Order on which New York and Minnesota had an opportunity to comment. Each state submitted comments. We considered the states' comments and issued a Final Administrative Order on August 24, 2018 (Final Administrative Order) setting forth the payment methodology that would apply to the 2018 BHP program year.

In the November 5, 2019 **Federal Register** (84 FR 59529) (hereinafter referred to as the November 2019 final BHP Payment Notice), we finalized the payment methodologies for BHP program years 2019 and 2020. The 2019 payment methodology is the same payment methodology described in the Final Administrative Order. The 2020 payment methodology is the same methodology as the 2019 payment methodology with one additional adjustment to account for the impact of individuals selecting different metal tier level plans in the Exchange, referred to as the Metal Tier Selection Factor (MTSF).[2] In the August 13, 2020 **Federal Register** (85 FR 49264 through 49280) (hereinafter referred to as the August 2020 final BHP Payment Notice), we finalized the payment methodology for BHP program year 2021. The 2021 payment methodology is the same methodology as the 2020 payment methodology, with one adjustment to the income reconciliation factor (IRF). The 2022 final payment methodology is the same as the 2021 payment methodology, except for the removal of the MTSF.

C. The American Rescue Plan Act and Impact on the Basic Health Program Final 2022 Payment Amounts

On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 (ARP) (Pub. L. 117–2). This action has a significant impact on state Medicaid, CHIP, and BHP programs and beneficiaries.[3] ARP also impacts federal payments to states' BHPs.

Section 9661 of the ARP temporarily modifies for 2021 and 2022 the applicable percentages of household income used to calculate the amount of advance payments of the premium tax credit (APTC) that taxpayers are eligible to have paid on their behalf for coverage purchased through an Exchange under the Patient Protection and Affordable Care Act. The applicable percentages determine the maximum amount of an individual's household income that can be charged in premiums for purchasing the second lowest cost silver plan on the Exchange. The difference between the maximum amount of an individual's household income that can be charged in premiums and the cost of the second lowest cost silver plan is paid to the individual as a PTC. As discussed in section III.D.5. of this final notice, the applicable percentages are factored into the equation for calculating the amount of PTC provided for individuals enrolled in QHPs through the Exchange and, accordingly, the amount of the federal BHP payment owed to states. Lower applicable percentages result in higher PTCs provided for QHP enrollees and higher federal BHP payments for states. Therefore, this ARP provision has the effect under the BHP payment methodology of increasing the amount of the federal payments owed to states for their BHPs in 2022.

We published the BHP proposed funding methodology for program year 2022 in ''Basic Health Program; Federal Funding Methodology for Program Year 2022'' in the November 3, 2020 **Federal Register** (85 FR 69525) (hereinafter referred to as the 2022 proposed BHP Payment Notice). In the 2022 proposed BHP Payment Notice, we proposed that the applicable percentages, as then defined in 26 U.S.C. 36B(b)(3)(A) and 26 CFR 1.36B–3(g), for calendar year 2021 would be effective for BHP program year 2022. Because the applicable percentages have since been amended for 2022 by the ARP, we are revising the applicable percentages in the final BHP payment notice to comply with the ARP; we discuss this further in section III.D.5. of this final notice. We note that updating the applicable percentage amounts themselves does not alter the BHP payment methodology, but are inputs under that methodology that, when changed will impact the payment amounts paid by the federal government to the states that operate a BHP under the methodology. In previous payment methodologies, we have used the prior year's applicable percentages to calculate BHP payments because those were the most recently published percentages at the time the methodologies were finalized. However, the 2022 applicable percentages are available now as a result of section 9661 of ARP, so we are updating the applicable percentages in this final notice.

In addition, in the 2022 proposed BHP Payment Notice, we proposed to include the IRF to account for potential differences between BHP enrollees' household income reported at the beginning of the year and the actual income over the year. This factor is needed because, unlike PTC recipients enrolled through Exchanges, BHP enrollees will not experience a reconciliation at the end of the tax year. This adjustment has been included in the methodology since 2015. In the 2022 proposed BHP Payment Notice, we proposed to set the value of the IRF equality to 99.01. However, due to changes made by the ARP, the Office of Tax Analysis (OTA) of the Department of the Treasury has revised its estimate for the IRF to be 100.63 percent. Therefore, we are updating the value of the IRF to be 100.63, as further

[2] ''Metal tiers'' refer to the different actuarial value plan levels offered on the Exchanges. Bronze-level plans generally must provide 60 percent actuarial value; silver-level 70 percent actuarial value; gold-level 80 percent actuarial value; and platinum-level 90 percent actuarial value. See 45 CFR 156.140.

[3] *https://www.medicaid.gov/federal-policy-guidance/downloads/cib060321.pdf.*

discussed in section III.D.7 of this final notice.

In the final payment methodologies for program years 2020 and 2021 and proposed payment methodology for 2022, we included a factor to account for the impact of the discontinuation of CSR payments on individuals' selection of metal tier level plans in the Exchange, referred to as the Metal Tier Selection Factor. Specifically, the MTSF was included to account for the impact of QHP enrollees eligible for PTC choosing bronze-level plans (which have lower premiums than silver-level plans) and receiving less than the full value of the PTC, which was amplified after the discontinuation of the CSR payments. However, because section 9661 of the ARP reduces the maximum percentage of an individual's household income that can be charged in premiums for purchasing the second lowest cost silver plan on the Exchange, we believe consumer behavior around selecting different metal tier level plans likely will change significantly. In other words, we anticipate that, as a result of the ARP, more individuals with household income below 200 percent FPL will enroll in silver-level plans because these plans can now be purchased for a lower premium amount, and for many individuals, there will be silver-level plans with $0 premium. Therefore, we are removing the MTSF from the final payment methodology for program year 2022.

II. Summary of the Proposed Provisions and Analysis of and Responses to the Public Comments

The following sections, arranged by subject area, include a summary of the public comments that we received and our responses. We received 11 public comments from individuals and organizations, including, but not limited to, state government agencies, other government agencies, and private citizens. In this section, we outline the proposed provisions and provide a summary of the public comments received and our responses. For a complete and full description of the BHP proposed funding methodology for program year 2022, see the 2022 proposed BHP Payment Notice.

A. Background

In the 2022 proposed BHP Payment Notice, we proposed the methodology for how the federal BHP payments would be calculated for program year 2022.

We received the following comments on the background information included in the 2022 proposed BHP Payment Notice:

Comment: Several commenters were supportive of the 2022 BHP payment methodology described in the 2022 proposed BHP Payment Notice.

Response: We appreciate the support from these commenters. As described further in this final notice, we are finalizing the 2022 methodology as proposed in the 2022 proposed BHP Payment Notice, with the exception of the removal of the MTSF and updating the applicable percentages of household income used to calculate APTC amounts and the value of the IRF, as described in section I.C in this final notice.

B. Overview of the Funding Methodology and Calculation of the Payment Amount

We proposed in the overview of the funding methodology to calculate the PTC and CSR as consistently as possible and in general alignment with the methodology used by Exchanges to calculate APTC and CSR, and by the Internal Revenue Service (IRS) to calculate the allowable PTC. We proposed four equations (1, 2a, 2b, and 3) that would, if finalized, compose the overall BHP payment methodology.

We received the following comments on the overview of the funding methodology included in the 2022 proposed BHP Payment Notice:

Comment: One commenter recommended CMS apply the proposed methodology only when a state initially establishes a BHP. This commenter recommended that after a BHP is established, states should be allowed to use prior program year premiums for payments. The commenter reasoned that simplifying the BHP payment methodology would provide administrative relief as well as greater certainty of expected funds for states.

Response: We did not propose and are not adopting the recommendation related to the proposed methodology applying only to a state's initial program year. We also note that current Federal BHP regulations in § 600.605 specify the BHP payment methodology. Specifically, § 600.605(c) provides that the Secretary will annually adjust the payment methodology on a prospective basis to adjust for any changes in the calculation of the PTC and CSR components to the extent that necessary data is available. Further, regulations at § 600.610 require that a proposed BHP payment methodology be published in the **Federal Register** each October, 2 years prior to the applicable program year, and describe the proposed funding methodology for the relevant BHP year. The final BHP payment methodology must be published in the **Federal Register** in February, and include the final BHP payment methodology, as well as the federal BHP payment rates for the applicable BHP program year. Changes to this process, like the one suggested by the commenter, would require amendments to existing BHP regulations.

Comment: One commenter recommended that for the purpose of calculating BHP payments, CMS assume that American Indian and Alaska Native (AI/AN) enrollees in BHPs would have enrolled in the second-lowest cost bronze-level plan instead of the second-lowest cost silver-level plan on the Exchanges.

Response: While AI/AN enrollees may enroll in the second-lowest cost bronze-level plan and continue to receive CSRs, PTCs continue to be based on the second-lowest cost silver-level QHP. Therefore, BHP payments to states for AI/AN and all other enrollees need to continue to be based on the second-lowest cost silver QHP.

We did not propose and are not adopting this recommendation. The only portion of the rate affected by the use of the lowest-cost bronze-level plan is the CSR portion of the BHP payment; due to the discontinuance of CSR payments and the accompanying modification to the BHP payment methodology, the CSR portion of the payment is assigned a value of 0, and therefore, any change to the assumption about which bronze-level QHP is used would have no effect on the BHP payments.

Comment: One commenter recommended that AI/AN premiums in a BHP should not exceed the cost of the second-lowest cost bronze-level plan and suggested that CMS provide additional BHP funding to states in order to ensure that AI/AN populations do not experience a premium increase when enrolling in BHP from a bronze-level plan on the Exchange.

Response: We appreciate and understand the commenter's concern regarding the premium levels for the AI/AN population. However, section 1331(a)(2)(A)(i) of the Patient Protection and Affordable Care Act requires that states operating BHPs must ensure that individuals do not pay a higher monthly premium than they would have if they had been enrolled in the second lowest cost silver-level QHP in an Exchange, after reduction for any PTCs and CSRs allowable with respect to either plan. In addition, as specified in § 600.705(c)(1), BHP states are permitted to use BHP trust funds to reduce premiums and cost sharing for eligible individuals enrolled in standard health plans under BHP. For example, Minnesota does not charge premiums for the AI/AN population.

This premium policy is required by state law and included in Minnesota's BHP Blueprint.[4]

C. Federal BHP Payment Rate Cells

In this section of the 2022 proposed BHP Payment Notice, we proposed to continue to require that a state implementing BHP provide us with an estimate of the number of BHP enrollees it will enroll in the upcoming BHP program quarter, by applicable rate cell, to determine the federal BHP payment amounts. For each state, we proposed using rate cells that separate the BHP population into separate cells based on the following factors: Age, geographic rating area, coverage status, household size, and income. For specific discussions of these proposals, please refer to the 2022 proposed BHP Payment Notice.

We received no comments on this aspect of the proposed methodology. Therefore, we are finalizing these policies as proposed.

D. Sources and State Data Considerations

We proposed in this section of the 2022 proposed BHP Payment Notice to continue to use, to the extent possible, data submitted to the federal government by QHP issuers seeking to offer coverage through an Exchange that uses *HealthCare.gov* to determine the federal BHP payment cell rates. However, for states operating a State-based Exchange (SBE), which do not use *HealthCare.gov*, we proposed to continue to require such states to submit required data for CMS to calculate the federal BHP payment rates in those states. For specific discussions, please refer to the 2022 proposed BHP Payment Notice.

We received no comments on this aspect of the proposed methodology. Therefore, we are finalizing these policies as proposed.

E. Discussion of Specific Variables Used in Payment Equations

In this section of the 2022 proposed BHP Payment Notice, we proposed to continue to use eight specific variables in the payment equations that compose the overall BHP funding methodology (seven variables are described in section III.D. of this final notice, and the premium trend factor is described in section III.E. of this final notice). For each proposed variable, we included a discussion on the assumptions and data sources used in developing the variables. For specific discussions, please refer to 2022 proposed BHP Payment Notice.

Below is a summary of the public comments we received regarding specific factors and our responses.

Comment: One commenter supported maintaining the value of the premium adjustment factor (PAF) at 1.188 for program year 2022.

Response: We appreciate the support from this commenter. As described further in this final notice, we are finalizing the methodology as proposed in the 2022 proposed BHP Payment Notice, and will be maintaining the value of the PAF at 1.188 for program year 2022.

Comment: One commenter expressed their support of using 2019 data to calculate the MTSF as proposed in the 2022 proposed BHP Payment Notice. This commenter stated that using partial 2020 data to calculate the MTSF would likely not be a reasonable predictor of consumer behavior in 2022 due to the impact of the COVID–19 public health emergency (PHE).

Response: We appreciate the support from this commenter. However, since publication of the 2022 proposed Payment Notice, Congress passed the ARP, which, as discussed in section I.C. of this final notice, modifies the applicable percentages of household income used to calculate the amount of APTC taxpayers are eligible to have paid on their behalf for coverage purchased through an Exchange during taxable years 2021 and 2022. We believe that these changes are likely to significantly affect enrollees' plan choices starting in 2022. For this reason and the reasons discussed in sections I.C. and III.D.6. of this final notice, we are not finalizing inclusion of the MTSF in the 2022 final BHP Payment Notice.

F. State Option To Use Prior Program Year QHP Premiums for BHP Payments

In this section of the 2022 BHP proposed Payment Notice, we proposed to continue to provide states operating a BHP with the option to use the 2021 QHP premiums multiplied by a premium trend factor to calculate the federal BHP payment rates instead of using the 2022 QHP premiums. We proposed to require states to make their election for the 2022 program year by May 15, 2021, or within 60 days of publication of the final payment methodology, whichever is later. For specific discussions, please refer to the 2022 BHP proposed Payment Notice.

Below is a summary of the public comments we received regarding this section and our responses.

Comment: One commenter expressed support for the proposed approach of using state-specific premiums and giving states the choice of applying actual current year premiums or the prior year's premiums multiplied by the premium trend factor (PTF). Due to the annual timing of this decision, this choice allows the state flexibility in making a determination that it believes is consistent with program goals for the upcoming year.

Response: We appreciate the support from this commenter. As described further in this final notice, we are finalizing the methodology as proposed in the 2022 proposed BHP Payment Notice.

G. State Option To Include Retrospective State-Specific Health Risk Adjustment in Certified Methodology

In this section of the 2022 BHP proposed Payment Methodology, we proposed to provide states implementing BHP the option to develop a methodology to account for the impact that including the BHP population in the Exchange would have had on QHP premiums based on any differences in health status between the BHP population and persons enrolled through the Exchange. We proposed that states would submit their optional protocol to CMS by the later of August 1, 2021 or 60 days after the publication of the final methodology. For specific discussions, please refer to the 2022 BHP proposed Payment Notice.

We received no comments on this aspect of the methodology. Therefore, we are finalizing this policy as proposed. Because we are finalizing the 2022 payment methodology within 60 days of August 1, 2021, a state electing this option must submit their protocol to CMS within 60 days of publication of this final notice.

III. Provisions of the 2022 BHP Final Methodology

A. Overview of the Funding Methodology and Calculation of the Payment Amount

Section 1331(d)(3) of the Patient Protection and Affordable Care Act directs the Secretary to consider several factors when determining the federal BHP payment amount, which, as specified in the statute, must equal 95 percent of the value of the PTC and CSRs that BHP enrollees would have been provided had they enrolled in a QHP through an Exchange. Thus, the BHP funding methodology is designed to calculate the PTC and CSRs as consistently as possible and in general alignment with the methodology used by Exchanges to calculate APTC and CSRs, and by the IRS to calculate PTC

[4] Minnesota Statutes, Chapter 256L.15(c).

for the tax year. In general, we have relied on values for factors in the payment methodology specified in statute or other regulations as available, and have developed values for other factors not otherwise specified in statute, or previously calculated in other regulations, to simulate the values of the PTCs and CSRs that BHP enrollees would have received if they had enrolled in QHPs offered through an Exchange. In accordance with section 1331(d)(3)(A)(iii) of the Patient Protection and Affordable Care Act, the final funding methodology must be certified by the Chief Actuary of CMS, in consultation with the Office of Tax Analysis (OTA) of the Department of the Treasury, as having met the requirements of section 1331(d)(3)(A)(ii) of the Patient Protection and Affordable Care Act.

Section 1331(d)(3)(A)(ii) of the Patient Protection and Affordable Care Act specifies that the payment determination shall take into account all relevant factors necessary to determine the value of the PTCs and CSRs that would have been provided to eligible individuals, including but not limited to, the age and income of the enrollee, whether the enrollment is for self-only or family coverage, geographic differences in average spending for health care across rating areas, the health status of the enrollee for purposes of determining risk adjustment payments and reinsurance payments that would have been made if the enrollee had enrolled in a QHP through an Exchange, and whether any reconciliation of APTC and CSR would have occurred if the enrollee had been so enrolled. Under the payment methodologies for 2015 (79 FR 13887 through 14151) (published on March 12, 2014), for 2016 (80 FR 9636 through 9648) (published on February 24, 2015), for 2017 and 2018 (81 FR 10091 through 10105) (published on February 29, 2016), for 2019 and 2020 (84 FR 59529 through) (published on November 5, 2019), and for 2021 (85 FR 49264 through 49280) (published on August 13, 2020) (hereinafter referred to as the 2021 final BHP Payment Notice), the total federal BHP payment amount has been calculated using multiple rate cells in each state. Each rate cell represents a unique combination of age range (if applicable), geographic area, coverage category (for example, self-only or two-adult coverage through the BHP), household size, and income range as a percentage of FPL, and there is a distinct rate cell for individuals in each coverage category within a particular age range who reside in a specific geographic area and are in households of the same size and income range. The BHP payment rates developed also are consistent with the state's rules on age rating. Thus, in the case of a state that does not use age as a rating factor on an Exchange, the BHP payment rates would not vary by age.

Under the methodology finalized in the August 2020 final BHP Payment Notice, the rate for each rate cell is calculated in two parts. The first part is equal to 95 percent of the estimated PTC that would have been paid if a BHP enrollee in that rate cell had instead enrolled in a QHP in an Exchange. The second part is equal to 95 percent of the estimated CSR payment that would have been made if a BHP enrollee in that rate cell had instead enrolled in a QHP in an Exchange. These two parts are added together and the total rate for that rate cell would be equal to the sum of the PTC and CSR rates. As noted in the August 2020 final BHP Payment Notice, we currently assign a value of zero to the CSR portion of the BHP payment rate calculation, because there is presently no available appropriation from which we can make the CSR portion of any BHP Payment.

We finalize that Equation (1) will be used to calculate the estimated PTC for eligible individuals enrolled in the BHP in each rate cell. We note that throughout this final methodology, when we refer to enrollees and enrollment data, we mean data regarding individuals who are enrolled in the BHP who have been found eligible for the BHP using the eligibility and verification requirements that are applicable in the state's most recent certified Blueprint. By applying the equations separately to rate cells based on age (if applicable), income and other factors, we effectively take those factors into account in the calculation. In addition, the equations reflect the estimated experience of individuals in each rate cell if enrolled in coverage through an Exchange, taking into account additional relevant variables. Each of the variables in the equations is defined in this section, and further detail is provided later in this section of this final methodology. In addition, we describe in Equation (2a) and Equation (2b) (below) how we will calculate the adjusted reference premium that is used in Equation (1).

Equation 1: Estimated PTC by Rate Cell

The estimated PTC, on a per enrollee basis, will be calculated for each rate cell for each state based on age range (if applicable), geographic area, coverage category, household size, and income range. The PTC portion of the rate will be calculated in a manner consistent with the methodology used to calculate the PTC for persons enrolled in a QHP, with 5 adjustments. First, the PTC portion of the rate for each rate cell will represent the mean, or average, expected PTC that all persons in the rate cell would receive, rather than being calculated for each individual enrollee. Second, the reference premium (RP) (described in section III.D.1. of this final methodology) used to calculate the PTC would be adjusted for the BHP population health status, and in the case of a state that elects to use 2021 premiums for the basis of the BHP federal payment, for the projected change in the premium from 2021 to 2022, to which the rates announced in the final payment methodology would apply. These adjustments are described in Equation (2a) and Equation (2b). Third, the PTC will be adjusted prospectively to reflect the mean, or average, net expected impact of income reconciliation on the combination of all persons enrolled in the BHP; this adjustment, the IRF, as described in section III.D.7. of this final methodology, will account for the impact on the PTC that would have occurred had such reconciliation been performed. Finally, the rate is multiplied by 95 percent, consistent with section 1331(d)(3)(A)(i) of the Patient Protection and Affordable Care Act. We note that in the situation where the average income contribution of an enrollee would exceed the adjusted reference premium, we will calculate the PTC to be equal to 0 and would not allow the value of the PTC to be negative.

We will use Equation (1) to calculate the PTC rate, consistent with the methodology described above:

$$\textbf{Equation (1):}\ PTC_{a,g,c,h,i} = \left[ARP_{a,g,c} - \frac{\sum_j I_{h,i,j} \times PTCF_{h,i,j}}{n} \right] \times IRF \times 95\%$$

$PTC_{a,g,c,h,i}$ = Premium tax credit portion of BHP payment rate
a = Age range
g = Geographic area
c = Coverage status (self-only or applicable category of family coverage) obtained through BHP
h = Household size
i = Income range (as percentage of FPL)
$ARP_{a,g,c}$ = Adjusted reference premium
$I_{h,i,j}$ = Income (in dollars per month) at each 1 percentage-point increment of FPL
$j = j_{th}$ percentage-point increment FPL
n = Number of income increments used to calculate the mean PTC
$PTCF_{h,i,j}$ = Premium tax credit formula percentage
IRF = Income reconciliation factor

Equation (2a) and Equation (2b): Adjusted Reference Premium Variable (Used in Equation 1)

As part of the calculations for the PTC component, we will calculate the value of the adjusted reference premium as described below. Consistent with the existing approach, we will allow states to choose between using the actual current year premiums or the prior year's premiums multiplied by the PTF (as described in section III.E. of this final methodology). Below we describe how we will calculate the adjusted reference premium under each option.

In the case of a state that elected to use the reference premium (RP) based on the current program year (for example, 2022 premiums for the 2022 program year), we will calculate the value of the adjusted reference premium as specified in Equation (2a). The adjusted reference premium will be equal to the RP, which will be based on the second lowest cost silver plan premium in the applicable program year, multiplied by the BHP population health factor (PHF) (described in section III.D.3. of this final methodology), which will reflect the projected impact that enrolling BHP-eligible individuals in QHPs through an Exchange would have had on the average QHP premium, and multiplied by the PAF (described in section III.D.2. of this final methodology), which will account for the change in silver-level premiums due to the discontinuance of CSR payments.

$$\textbf{Equation (2a): } ARP_{a,g,c} = RP_{a,g,c} \times PHF \times PAF$$

$ARP_{a,g,c}$ = Adjusted reference premium
a = Age range
g = Geographic area
c = Coverage status (self-only or applicable category of family coverage) obtained through BHP
$RP_{a,g,c}$ = Reference premium
PHF = Population health factor
PAF = Premium adjustment factor

In the case of a state that elected to use the RP based on the prior program year (for example, 2021 premiums for the 2022 program year, as described in more detail in section II.E. of this final methodology), we will calculate the value of the adjusted reference premium as specified in Equation (2b). The adjusted reference premium will be equal to the RP, which will be based on the second lowest cost silver plan premium in 2021, multiplied by the BHP PHF (described in section III.D.3. of this final methodology), which will reflect the projected impact that enrolling BHP-eligible individuals in QHPs on an Exchange would have had on the average QHP premium, multiplied by the PAF (described in section III.D.2. of this final methodology), which will account for the change in silver-level premiums due to the discontinuance of CSR payments, and multiplied by the PTF (described in section III.E. of this final methodology), which would reflect the projected change in the premium level between 2021 and 2022.

$$\textbf{Equation (2b): } ARP_{a,g,c} = RP_{a,g,c} \times PHF \times PAF \times PTF$$

$ARP_{a,g,c}$ = Adjusted reference premium
a = Age range
g = Geographic area
c = Coverage status (self-only or applicable category of family coverage) obtained through BHP
$RP_{a,g,c}$ = Reference premium
PHF = Population health factor
PAF = Premium adjustment factor
PTF = Premium trend factor

Equation 3: Determination of Total Monthly Payment for BHP Enrollees in Each Rate Cell

In general, the rate for each rate cell will be multiplied by the number of BHP enrollees in that cell (that is, the number of enrollees that meet the criteria for each rate cell) to calculate the total monthly BHP payment. This calculation is shown in Equation (3).

$$\textbf{Equation (3): } PMT = \sum \left[(PTC_{a,g,c,h,i} + CSR_{a,g,c,h,i}) \times E_{a,g,c,h,i} \right]$$

PMT = Total monthly BHP payment
$PTC_{a,g,c,h,i}$ = Premium tax credit portion of BHP payment rate
$CSR_{a,g,c,h,i}$ = Cost sharing reduction portion of BHP payment rate
$E_{a,g,c,h,i}$ = Number of BHP enrollees
a = Age range
g = Geographic area
c = Coverage status (self-only or applicable category of family coverage) obtained through BHP
h = Household size
i = Income range (as percentage of FPL)

In this equation, we will assign a value of zero to the CSR part of the BHP payment rate calculation ($CSR_{a,g,c,h,i}$) because there is presently no available appropriation from which we can make the CSR portion of any BHP payment. In the event that an appropriation for CSRs for 2022 is made, we will determine whether and how to modify the CSR part of the BHP payment rate calculation ($CSR_{a,g,c,h,i}$) or the PAF in the payment methodology.

B. Federal BHP Payment Rate Cells

Consistent with the previous payment methodologies, a state implementing a BHP will provide us an estimate of the number of BHP enrollees it projects will enroll in the upcoming BHP program quarter, by applicable rate cell, prior to the first quarter and each subsequent quarter of program operations until actual enrollment data is available. Upon our approval of such estimates as reasonable, we will use those estimates

to calculate the prospective payment for the first and subsequent quarters of program operation until the state provides us with actual enrollment data for those periods. The actual enrollment data is required to calculate the final BHP payment amount and make any necessary reconciliation adjustments to the prior quarters' prospective payment amounts due to differences between projected and actual enrollment. Subsequent quarterly deposits to the state's trust fund will be based on the most recent actual enrollment data submitted to us. Actual enrollment data must be based on individuals enrolled for the quarter who the state found eligible and whose eligibility was verified using eligibility and verification requirements as agreed to by the state in its applicable BHP Blueprint for the quarter that enrollment data is submitted. Procedures will ensure that federal payments to a state reflect actual BHP enrollment during a year, within each applicable category, and prospectively determined federal payment rates for each category of BHP enrollment, with such categories defined in terms of age range (if applicable), geographic area, coverage status, household size, and income range, as explained above.

We are finalizing our proposal to require the use of certain rate cells as part of this final methodology. For each state, we will use rate cells that separate the BHP population into separate cells based on the five factors described as follows:

Factor 1—Age: We will separate enrollees into rate cells by age (if applicable), using the following age ranges that capture the widest variations in premiums under HHS's Default Age Curve: [5]

- Ages 0–20.
- Ages 21–34.
- Ages 35–44.
- Ages 45–54.
- Ages 55–64.

This provision is unchanged from the current methodology.[6]

Factor 2—Geographic area: For each state, we will separate enrollees into rate cells by geographic areas within which a single RP is charged by QHPs offered through the state's Exchange. Multiple, non-contiguous geographic areas will be incorporated within a single cell, so long as those areas share a common RP.[7] This provision is also unchanged from the current methodology.

Factor 3—Coverage status: We will separate enrollees into rate cells by coverage status, reflecting whether an individual is enrolled in self-only coverage or persons are enrolled in family coverage through the BHP, as provided in section 1331(d)(3)(A)(ii) of the Patient Protection and Affordable Care Act. Among recipients of family coverage through the BHP, separate rate cells, as explained below, will apply based on whether such coverage involves two adults alone or whether it involves children. This provision is unchanged from the current methodology.

Factor 4—Household size: We will continue the current methods for separating enrollees into rate cells by household size that states use to determine BHP enrollees' household income as a percentage of the FPL under § 600.320 (Determination of eligibility for and enrollment in a standard health plan). We will require separate rate cells for several specific household sizes. For each additional member above the largest specified size, we will publish instructions for how we would develop additional rate cells and calculate an appropriate payment rate based on data for the rate cell with the closest specified household size. We will publish separate rate cells for household sizes of 1 through 10. This finalized provision is unchanged from the current methodology.

Factor 5—Household Income: For households of each applicable size, we will continue the current methods for creating separate rate cells by income range, as a percentage of FPL. The PTC that a person would receive if enrolled in a QHP through an Exchange varies by household income, both in level and as a ratio to the FPL. Thus, separate rate cells will be used to calculate federal BHP payment rates to reflect different bands of income measured as a percentage of FPL. We will use the following income ranges, measured as a percentage of the FPL:

- 0 to 50 percent of the FPL.
- 51 to 100 percent of the FPL.
- 101 to 138 percent of the FPL.[8]
- 139 to 150 percent of the FPL.
- 151 to 175 percent of the FPL.
- 176 to 200 percent of the FPL.

This provision is unchanged from the current methodology.

These rate cells will only be used to calculate the federal BHP payment amount. A state implementing a BHP will not be required to use these rate cells or any of the factors in these rate cells as part of the state payment to the standard health plans participating in the BHP or to help define BHP enrollees' covered benefits, premium costs, or out-of-pocket cost-sharing levels.

Consistent with the current methodology, we are finalizing our proposal to use averages to define federal payment rates, both for income ranges and age ranges (if applicable), rather than varying such rates to correspond to each individual BHP enrollee's age (if applicable) and income level. This approach will increase the administrative feasibility of making federal BHP payments and reduce the likelihood of inadvertently erroneous payments resulting from highly complex methodologies. This approach should not significantly change federal payment amounts, since within applicable ranges; the BHP-eligible population is distributed relatively evenly.

The number of factors contributing to rate cells, when combined, can result in over 350,000 rate cells, which can increase the complexity when generating quarterly payment amounts. In future years, and in the interest of administrative simplification, we will consider whether to combine or eliminate certain rate cells, once we are certain that the effect on payment would be insignificant.

[5] This curve is used to implement the Patient Protection and Affordable Care Act's 3:1 limit on age-rating in states that do not create an alternative rate structure to comply with that limit. The curve applies to all individual market plans, both within and outside the Exchange. The age bands capture the principal allowed age-based variations in premiums as permitted by this curve. The default age curve was updated for plan or policy years beginning on or after January 1, 2018 to include different age rating factors between children 0–14 and for persons at each age between 15 and 20. More information is available at *https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/Downloads/StateSpecAgeCrv053117.pdf.* Both children and adults under age 21 are charged the same premium. For adults age 21–64, the age bands in this notice divide the total age-based premium variation into the three most equally-sized ranges (defining size by the ratio between the highest and lowest premiums within the band) that are consistent with the age-bands used for risk-adjustment purposes in the HHS-Developed Risk Adjustment Model. For such age bands, see HHS-Developed Risk Adjustment Model Algorithm ''Do It Yourself (DIY)'' Software Instructions for the 2018 Benefit Year, April 4, 2019 Update, *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Updated-CY2018-DIY-instructions.pdf.*

[6] In this document, references to the ''current methodology'' refer to the 2021 program year methodology as outlined in the 2021 final BHP Payment Notice.

[7] For example, a cell within a particular state might refer to ''County Group 1,'' ''County Group 2,'' etc., and a table for the state would list all the counties included in each such group. These geographic areas are consistent with the geographic areas established under the 2014 Market Reform Rules. They also reflect the service area requirements applicable to QHPs, as described in 45 CFR 155.1055, except that service areas smaller than counties are addressed as explained in this notice.

[8] The three lowest income ranges will be limited to lawfully present immigrants who are ineligible for Medicaid because of immigration status.

C. Sources and State Data Considerations

To the extent possible, unless otherwise provided, we will continue to use data submitted to the federal government by QHP issuers seeking to offer coverage through the Exchange in the relevant BHP state to perform the calculations that determine federal BHP payment cell rates.

States operating an SBE in the individual market, however, must provide certain data, including premiums for second lowest cost silver plans, by geographic area, for CMS to calculate the federal BHP payment rates in those states. States operating BHPs interested in obtaining the applicable 2022 program year federal BHP payment rates for its state must submit such data accurately, completely, and as specified by CMS, by no later than October 15, 2021. If additional state data (that is, in addition to the second lowest cost silver plan premium data) are needed to determine the federal BHP payment rate, such data must be submitted in a timely manner, and in a format specified by us to support the development and timely release of annual BHP Payment Methodologies. The specifications for data collection to support the development of BHP payment rates are published in CMS guidance and are available in the Federal Policy Guidance section at *https://www.medicaid.gov/federal-policy-Guidance/index.html under* ''*State Report for Health Insurance Exchange Premiums.*

States operating a BHP must submit enrollment data to us on a quarterly basis and should be technologically prepared to begin submitting data at the start of their BHP, starting with the beginning of the first program year. This differs from the enrollment estimates used to calculate the initial BHP payment, which states would generally submit to CMS 60 days before the start of the first quarter of the program start date. This requirement is necessary for us to implement the payment methodology that is tied to a quarterly reconciliation based on actual enrollment data.

We will continue the policy first adopted in the 2016 final BHP Payment Methodology that in states that have BHP enrollees who do not file federal tax returns (non-filers), the state must develop a methodology to determine the enrollees' household income and household size consistently with Marketplace requirements.[9] The state must submit this methodology to us at the time of their Blueprint submission. We reserve the right to approve or disapprove the state's methodology to determine household income and household size for non-filers if the household composition and/or household income resulting from application of the methodology are different from what typically would be expected to result if the individual or head of household in the family were to file a tax return. States currently operating a BHP that wish to change the methodology for non-filers must submit a revised Blueprint outlining the revisions to its methodology, consistent with § 600.125.

In addition, as the federal payments are determined quarterly and the enrollment data is required to be submitted by the states to us quarterly, the quarterly payment will be based on the characteristics of the enrollee at the beginning of the quarter (or their first month of enrollment in the BHP in each quarter). Thus, if an enrollee were to experience a change in county of residence, household income, household size, or other factors related to the BHP payment determination during the quarter, the payment for the quarter will be based on the data as of the beginning of the quarter (or their first month of enrollment in the BHP in the applicable quarter). Payments will still be made only for months that the person is enrolled in and eligible for the BHP. We do not anticipate that this will have a significant effect on the federal BHP payment. The states must maintain data that is consistent with CMS' verification requirements, including auditable records for each individual enrolled, indicating an eligibility determination and a determination of income and other criteria relevant to the payment methodology as of the beginning of each quarter.

Consistent with § 600.610 (Secretarial determination of BHP payment amount), the state is required to submit certain data in accordance with this notice. We require that this data be collected and validated by states operating a BHP, and that this data be submitted to CMS.

D. Discussion of Specific Variables Used in Payment Equations

1. Reference Premium (RP)

To calculate the estimated PTC that would be paid if BHP-eligible individuals enrolled in QHPs through an Exchange, we must calculate a RP because the PTC is based, in part, on the premiums for the applicable second lowest cost silver plan as explained in section III.D.5. of this final methodology, regarding the premium tax credit formula (PTCF). This method is unchanged from the current methodology except to update the reference years, and to provide additional methodological details to simplify calculations and to deal with potential ambiguities. Accordingly, for the purposes of calculating the BHP payment rates, the RP, in accordance with 26 U.S.C. 36B(b)(3)(C), is defined as the adjusted monthly premium for an applicable second lowest cost silver plan. The applicable second lowest cost silver plan is defined in 26 U.S.C. 36B(b)(3)(B) as the second lowest cost silver plan of the individual market in the rating area in which the taxpayer resides that is offered through the same Exchange. We will use the adjusted monthly premium for an applicable second lowest cost silver plan in the applicable program year (2022) as the RP (except in the case of a state that elects to use the prior plan year's premium as the basis for the federal BHP payment for 2022, as described in section III.E. of this final methodology).

The RP will be the premium applicable to non-tobacco users. This is consistent with the provision in 26 U.S.C. 36B(b)(3)(C) that bases the PTC on premiums that are adjusted for age alone, without regard to tobacco use, even for states that allow insurers to vary premiums based on tobacco use in accordance with 42 U.S.C. 300gg(a)(1)(A)(iv).

Consistent with the policy set forth in 26 CFR 1.36B–3(f)(6), to calculate the PTC for those enrolled in a QHP through an Exchange, we will not update the payment methodology, and subsequently the federal BHP payment rates, in the event that the second lowest cost silver plan used as the RP, or the lowest cost silver plan, changes (that is, terminates or closes enrollment during the year).

The applicable second lowest cost silver plan premium will be included in the BHP payment methodology by age range (if applicable), geographic area, and self-only or applicable category of family coverage obtained through the BHP.

We note that the choice of the second lowest cost silver plan for calculating BHP payments relies on several simplifying assumptions in its selection. For the purposes of determining the second lowest cost silver plan for calculating PTC for a person enrolled in a QHP through an Exchange, the applicable plan may differ for various reasons. For example, a different second lowest cost silver plan may apply to a family consisting of two adults, their child, and their niece than to a family with two adults and their children,

[9] See 81 FR at 10097.

because one or more QHPs in the family's geographic area might not offer family coverage that includes the niece. We believe that it would not be possible to replicate such variations for calculating the BHP payment and believe that in the aggregate, they will not result in a significant difference in the payment. Thus, we will use the second lowest cost silver plan available to any enrollee for a given age, geographic area, and coverage category.

This choice of RP relies on an assumption about enrollment in the Exchanges. In the payment methodologies for program years 2015 through 2019, we had assumed that all persons enrolled in the BHP would have elected to enroll in a silver level plan if they had instead enrolled in a QHP through an Exchange (and that the QHP premium would not be lower than the value of the PTC). In the November 2019 final BHP Payment Notice, we continued to use the second-lowest cost silver plan premium as the RP, but for the 2020 payments we changed the assumption about which metal tier plans enrollees would choose (see section III.D.6. on the MTSF in this final methodology). In the 2021 payment methodology, we continued to account for how enrollees may choose other metal tier plans by applying the MTSF. For the 2022 payment methodology, we will not continue to account for how enrollees may choose other metal tier plans by removing the MTSF as described in section III.D.6. of this final methodology.

We do not believe it is appropriate to adjust the payment for an assumption that some BHP enrollees would not have enrolled in QHPs for purposes of calculating the BHP payment rates, since section 1331(d)(3)(A)(ii) of the Patient Protection and Affordable Care Act requires the calculation of such rates as if the enrollee had enrolled in a QHP through an Exchange.

The applicable age bracket (if any) will be one dimension of each rate cell. We propose to assume a uniform distribution of ages and estimate the average premium amount within each rate cell. We believe that assuming a uniform distribution of ages within these ranges is a reasonable approach and would produce a reliable determination of the total monthly payment for BHP enrollees. We also believe this approach will avoid potential inaccuracies that could otherwise occur in relatively small payment cells if age distribution were measured by the number of persons eligible or enrolled.

We will use geographic areas based on the rating areas used in the Exchanges. We will define each geographic area so that the RP is the same throughout the geographic area. When the RP varies within a rating area, we will define geographic areas as aggregations of counties with the same RP. Although plans are allowed to serve geographic areas smaller than counties after obtaining our approval, no geographic area, for purposes of defining BHP payment rate cells, will be smaller than a county. We do not believe that this assumption will have a significant impact on federal payment levels and it would simplify both the calculation of BHP payment rates and the operation of the BHP.

Finally, in terms of the coverage category, federal payment rates only recognize self-only and two-adult coverage, with exceptions that account for children who are potentially eligible for the BHP. First, in states that set the upper income threshold for children's Medicaid and CHIP eligibility below 200 percent of FPL (based on modified adjusted gross income (MAGI)), children in households with incomes between that threshold and 200 percent of FPL would be potentially eligible for the BHP. Currently, the only states in this category are Idaho and North Dakota.[10] Second, the BHP will include lawfully present immigrant children with household incomes at or below 200 percent of FPL in states that have not exercised the option under sections 1903(v)(4)(A)(ii) and 2107(e)(1)(E) of the Act to qualify all otherwise eligible, lawfully present immigrant children for Medicaid and CHIP. States that fall within these exceptions will be identified based on their Medicaid and CHIP State Plans, and the rate cells will include appropriate categories of BHP family coverage for children. For example, Idaho's Medicaid and CHIP eligibility is limited to families with MAGI at or below 185 percent FPL. If Idaho implemented a BHP, Idaho children with household incomes between 185 and 200 percent could qualify. In other states, BHP eligibility will generally be restricted to adults, since children who are citizens or lawfully present immigrants and live in households with incomes at or below 200 percent of FPL will qualify for Medicaid or CHIP, and thus be ineligible for a BHP under section 1331(e)(1)(C) of the Patient Protection and Affordable Care Act, which limits a BHP to individuals who are ineligible for minimum essential coverage (as defined in 26 U.S.C. 5000A(f)).

[10] CMCS. ''State Medicaid, CHIP and BHP Income Eligibility Standards Effective October 1, 2020.''

2. Premium Adjustment Factor (PAF)

The PAF considers the premium increases in other states that took effect after we discontinued payments to issuers for CSRs provided to enrollees in QHPs offered through Exchanges. Despite the discontinuance of federal payments for CSRs, QHP issuers are required to provide CSRs to eligible enrollees. As a result, many QHP issuers increased the silver-level plan premiums to account for those additional costs; adjustments and how those were applied (for example, to only silver-level plans or to all metal tier plans) varied across states. For the states operating BHPs in 2018, the increases in premiums were relatively minor, because the majority of enrollees eligible for CSRs (and all who were eligible for the largest CSRs) were enrolled in the BHP and not in QHPs on the Exchanges, and therefore issuers in BHP states did not significantly raise premiums to cover unpaid CSR costs.

In the Final Administrative Order, the 2019 final BHP Payment Notice, the 2020 final BHP Payment Notice, and the 2021 final BHP Payment Notice we incorporated the PAF into the BHP payment methodologies for 2018, 2019, 2020, and 2021 to capture the impact of how other states responded to us ceasing to pay CSRs. We will include the PAF in the 2022 payment methodology and to calculate it in the same manner as in the Final Administrative Order. In the event that an appropriation for CSRs for 2022 is made, we would determine whether and how to modify the PAF in the payment methodology.

Under the Final Administrative Order, we calculated the PAF by using information sought from QHP issuers in each state and the District of Columbia, and determined the premium adjustment that the responding QHP issuers made to each silver level plan in 2018 to account for the discontinuation of CSR payments to QHP issuers. Based on the data collected, we estimated the median adjustment for silver level QHPs nationwide (excluding those in the two BHP states). To the extent that QHP issuers made no adjustment (or the adjustment was zero), this would be counted as zero in determining the median adjustment made to all silver level QHPs nationwide. If the amount of the adjustment was unknown—or we determined that it should be excluded for methodological reasons (for example, the adjustment was negative, an outlier, or unreasonable)—then we did not count the adjustment towards

determining the median adjustment.[11] The median adjustment for silver level QHPs is the nationwide median adjustment.

For each of the two BHP states, we determined the median premium adjustment for all silver level QHPs in that state, which we refer to as the state median adjustment. The PAF for each BHP state equaled one plus the nationwide median adjustment divided by one plus the state median adjustment for the BHP state. In other words,

*PAF = (1 + Nationwide Median Adjustment) ÷ (1 + State Median Adjustment)*Q P='02'≤

To determine the PAF described above, we sought to collect QHP information from QHP issuers in each state and the District of Columbia to determine the premium adjustment those issuers made to each silver level plan offered through the Exchange in 2018 to account for the end of CSR payments. Specifically, we sought information showing the percentage change that QHP issuers made to the premium for each of their silver level plans to cover benefit expenditures associated with the CSRs, given the lack of CSR payments in 2018. This percentage change was a portion of the overall premium increase from 2017 to 2018.

According to our records, there were 1,233 silver-level QHPs operating on Exchanges in 2018. Of these 1,233 QHPs, 318 QHPs (25.8 percent) responded to our request for the percentage adjustment applied to silver-level QHP premiums in 2018 to account for the discontinuance of the CSRs. These 318 QHPs operated in 26 different states, with 10 of those states running SBEs (while we requested information only from QHP issuers in states serviced by an FFE, many of those issuers also had QHPs in states operating SBEs and submitted information for those states as well). Thirteen of these 318 QHPs were in New York (and none were in Minnesota). Excluding these 13 QHPs from the analysis, the nationwide median adjustment was 20.0 percent. Of the 13 QHPs in New York that responded, the state median adjustment was 1.0 percent. We believe that this is an appropriate adjustment for QHPs in Minnesota, as well, based on the observed changes in New York's QHP premiums in response to the discontinuance of CSR payments (and the operation of the BHP in that state) and our analysis of expected QHP premium adjustments for states with BHPs. We calculated the final PAF as (1 + 20%) ÷ (1 + 1%) (or 1.20/1.01), which results in a value of 1.188.

We are finalizing our proposal to continue to set the PAF to 1.188 for program year 2022. We believe that this value for the PAF continues to reasonably account for the increase in silver-level premiums experienced in non-BHP states that took effect after the discontinuance of the CSR payments. We believe that the impact of the increase in silver-level premiums in 2022 can reasonably be expected to be similar to that in 2018, because the discontinuation of CSR payments has not changed. Moreover, we believe that states and QHP issuers have not significantly changed the manner and degree to which they are increasing QHP silver-level premiums to account for the discontinuation of CSR payments since 2018, and we expect the same for 2022.

In addition, the percentage difference between the average second lowest-cost silver level QHP and the bronze-level QHP premiums has not changed significantly since 2018, and we do not expect a significant change for 2022. In 2018, the average second lowest-cost silver level QHP premium was 41.1 percent higher than the average lowest-cost bronze-level QHP premium ($481 and $341, respectively). In 2021, (the latest year for which premiums have been published), the difference is similar; the average second lowest-cost silver-level QHP premium is 37.8 percent higher than the average lowest-cost bronze-level QHP premium ($452 and $328, respectively).[12] In contrast, the average second lowest-cost silver-level QHP premium was only 23.8 percent higher than the average lowest-cost bronze-level QHP premium in 2017 ($359 and $290, respectively).[13] If there were a significant difference in the amounts that QHP issuers were increasing premiums for silver-level QHPs to account for the discontinuation of CSR payments over time, then we would expect the difference between the bronze-level and silver-level QHP premiums to change significantly over time, and that this would be apparent in comparing the lowest-cost bronze-level QHP premium to the second lowest-cost silver-level QHP premium.

3. Population Health Factor (PHF)

We are finalizing our proposal to include the PHF in the methodology to account for the potential differences in the average health status between BHP enrollees and persons enrolled through the Exchanges. To the extent that BHP enrollees would have been enrolled through an Exchange in the absence of a BHP in a state, the exclusion of those BHP enrollees in the Exchange may affect the average health status of the overall population and the expected QHP premiums.

We currently do not believe that there is evidence that the BHP population would have better or poorer health status than the Exchange population. At this time, there continues to be a lack of data on the experience in the Exchanges that limits the ability to analyze the potential health differences between these groups of enrollees. More specifically, Exchanges have been in operation since 2014, and 2 states have operated BHPs since 2015, but data is not available to do the analysis necessary to determine if there are differences in the average health status between BHP and Exchange enrollees. In addition, differences in population health may vary across states. We also do not believe that sufficient data would be available to permit us to make a prospective adjustment to the PHF under § 600.610(c)(2) for the 2022 program year.

Given these analytic challenges and the limited data about Exchange coverage and the characteristics of BHP-eligible consumers, the PHF will be 1.00 for program year 2022.

In previous years BHP payment methodologies, we included an option for states to include a retrospective population health status adjustment. States will have same option for 2022 to include a retrospective population health status adjustment in the certified methodology, which is subject to our review and approval. This option is described further in section III.F. of this final methodology. Regardless of whether a state elects to include a retrospective population health status adjustment, we anticipate that, in future years, when additional data becomes available about Exchange coverage and the characteristics of BHP enrollees, we may propose a different PHF.

While the statute requires consideration of risk adjustment payments and reinsurance payments insofar as they would have affected the PTC that would have been provided to BHP-eligible individuals had they

[11] Some examples of outliers or unreasonable adjustments include (but are not limited to) values over 100 percent (implying the premiums doubled or more because of the adjustment), values more than double the otherwise highest adjustment, or non-numerical entries.

[12] *See* Kaiser Family Foundation, ''Average Marketplace Premiums by Metal Tier, 2018–2021,'' *https://www.kff.org/health-reform/state-indicator/average-marketplace-premiums-by-metal-tier/.*

[13] See Basic Health Program: Federal Funding Methodology for Program Years 2019 and 2020; Final Methodology, 84 FR 59529 at 59532 (November 5, 2019).

enrolled in QHPs, we are not requiring that a BHP's standard health plans receive such payments. As explained in the BHP final rule, BHP standard health plans are not included in the federally-operated risk adjustment program.[14] Further, standard health plans did not qualify for payments under the transitional reinsurance program established under section 1341 of the Patient Protection and Affordable Care Act for the years the program was operational (2014 through 2016).[15] To the extent that a state operating a BHP determines that, because of the distinctive risk profile of BHP-eligible consumers, BHP standard health plans should be included in mechanisms that share risk with other plans in the state's individual market, the state would need to use other methods for achieving this goal.

4. Household Income (I)

Household income is a significant determinant of the amount of the PTC that is provided for persons enrolled in a QHP through an Exchange. Accordingly, all BHP Payment Methodologies incorporate household income into the calculations of the payment rates through the use of income-based rate cells. We are finalizing our proposal to define household income in accordance with the definition of modified adjusted gross income in 26 U.S.C. 36B(d)(2)(B) and consistent with the definition in 45 CFR 155.300. Income will be measured relative to the FPL, which is updated periodically in the **Federal Register** by the Secretary under the authority of 42 U.S.C. 9902(2). Household size and income as a percentage of FPL will be used as factors in developing the rate cells. We are finalizing our proposal to use the following income ranges measured as a percentage of FPL: [16]

- 0–50 percent.
- 51–100 percent.
- 101–138 percent.
- 139–150 percent.
- 151–175 percent.
- 176–200 percent.

We will assume a uniform income distribution for each federal BHP payment cell. We believe that assuming a uniform income distribution for the income ranges finalized will be reasonably accurate for the purposes of calculating the BHP payment and would avoid potential errors that could result if other sources of data were used to estimate the specific income distribution of persons who are eligible for or enrolled in the BHP within rate cells that may be relatively small.

Thus, when calculating the mean, or average, PTC for a rate cell, we will calculate the value of the PTC at each one percentage point interval of the income range for each federal BHP payment cell and then calculate the average of the PTC across all intervals. This calculation would rely on the PTC formula described in section III.D.5. of this final methodology.

As the APTC for persons enrolled in QHPs would be calculated based on their household income during the open enrollment period, and that income would be measured against the FPL at that time, we will adjust the FPL by multiplying the FPL by a projected increase in the CPI–U between the time that the BHP payment rates are calculated and the QHP open enrollment period, if the FPL is expected to be updated during that time. The projected increase in the CPI–U will be based on the intermediate inflation forecasts from the most recent Old-Age, Survivors, and Disability Insurance (OASDI) and Medicare Trustees Reports.[17]

5. Premium Tax Credit Formula (PTCF)

In Equation 1 described in section III.A.1. of this final methodology, we will use the formula described in 26 U.S.C. 36B(b) to calculate the estimated PTC that would be paid on behalf of a person enrolled in a QHP on an Exchange as part of the BHP payment methodology. This formula is used to determine the contribution amount (the amount of premium that an individual or household theoretically would be required to pay for coverage in a QHP on an Exchange), which is based on (A) the household income; (B) the household income as a percentage of FPL for the family size; and (C) the schedule specified in 26 U.S.C. 36B(b)(3)(A) and shown below.

The difference between the contribution amount and the adjusted monthly premium (that is, the monthly premium adjusted for the age of the enrollee) for the applicable second lowest cost silver plan is the estimated amount of the PTC that would be provided for the enrollee.

The PTC amount provided for a person enrolled in a QHP through an Exchange is calculated in accordance with the methodology described in 26 U.S.C. 36B(b)(2). The amount is equal to the lesser of the premium for the plan in which the person or household enrolls, or the adjusted premium for the applicable second lowest cost silver plan minus the contribution amount.

The applicable percentage is defined in 26 U.S.C. 36B(b)(3)(A) and 26 CFR 1.36B–3(g) as the percentage that applies to a taxpayer's household income that is within an income tier specified in Table 1, increasing on a sliding scale in a linear manner from an initial premium percentage to a final premium percentage specified in Table 1. We are finalizing our proposal to continue to use applicable percentages to calculate the estimated PTC that would be paid on behalf of a person enrolled in a QHP on an Exchange as part of the BHP payment methodology as part of Equation 1.

As discussed in section I.C. of this final notice, we note that the ARP updated the applicable percentages of household income used to calculate the PTC that would be paid to an individual enrolled in a QHP on an Exchange for calendar years (CY) 2021 and 2022. The applicable percentages in Table 1 for CY 2022 will be effective for BHP program year 2022. Absent future legislation addressing applicable percentages, applicable percentages will be updated in future years in accordance with 26 U.S.C. 36B(b)(3)(A)(ii).

TABLE 1—APPLICABLE PERCENTAGE TABLE FOR CY 2022 [a]

In the case of household income (expressed as a percent of poverty line) within the following income tier:	The initial premium percentage is—	The final premium percentage is—
Up to 150%	0.0	0.0
150.0% percent up to 200.0%	0.0	2.0

[14] See 79 FR at 14131.

[15] See 45 CFR 153.400(a)(2)(iv) (BHP standard health plans are not required to submit reinsurance contributions), 153.20 (definition of ''Reinsurance-eligible plan'' as not including ''health insurance coverage not required to submit reinsurance contributions''), 153.230(a) (reinsurance payments under the national reinsurance parameters are available only for ''Reinsurance-eligible plans'').

[16] These income ranges and this analysis of income apply to the calculation of the PTC.

[17] *See* Table IV A1 from the 2020 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds, available at *https://www.cms.gov/files/document/2020-medicare-trustees-report.pdf.*

TABLE 1—APPLICABLE PERCENTAGE TABLE FOR CY 2022 [a]—Continued

In the case of household income (expressed as a percent of poverty line) within the following income tier:	The initial premium percentage is—	The final premium percentage is—
200.0% up to 250.0%	2.0	4.0
250.0% up to 300.0%	4.0	6.0
300.0 percent up to 400.0%	6.0	8.5
400.0% percent and higher	8.5	8.5

[a] section 9661 of the American Rescue Plan Act of 2021.

6. Metal Tier Selection Factor (MTSF)

On the Exchange, if an enrollee chooses a QHP and the value of the APTC to which the enrollee is entitled is greater than the premium of the plan selected, then the APTC is reduced to be equal to the premium. This usually occurs when enrollees eligible for larger APTCs choose bronze-level QHPs, which typically have lower premiums on the Exchange than silver-level QHPs. Prior to 2018, we believed that the impact of these choices and plan selections on the amount of PTCs that the federal government paid was relatively small. During this time, most enrollees in income ranges up to 200 percent FPL chose silver-level QHPs, and in most cases where enrollees chose bronze-level QHPs, the premium was still more than the PTC. Based on our analysis of the percentage of persons with incomes below 200 percent FPL choosing bronze-level QHPs and the average reduction in the PTCs paid for those enrollees, we believe that the total PTCs paid for persons with incomes below 200 percent FPL were reduced by about 1 percent in 2017. Therefore, we did not seek to make an adjustment based on the effect of enrollees choosing non-silver-level QHPs in developing the BHP payment methodology applicable to program years prior to 2018. However, after the discontinuance of the CSR payments in October 2017, several changes occurred that increased the expected impact of enrollees' plan selection choices on the amount of PTC the government paid. These changes led to a larger percentage of individuals choosing bronze-level QHPs, and for those individuals who chose bronze-level QHPs, these changes also generally led to larger reductions in PTCs paid by the federal government per individual. The combination of more individuals with incomes below 200 percent of FPL choosing bronze-level QHPs and the reduction in PTCs had an impact on PTCs paid by the federal government for enrollees with incomes below 200 percent FPL.

Therefore, in the 2020 and 2021 payment methodology, we included an adjustment (the MTSF) in the BHP payment methodology to account for the effects of these choices. Section 1331(d)(3) of the Patient Protection and Affordable Care Act requires that the BHP payments to states be based on what would have been provided if such eligible individuals were allowed to enroll in QHPs, and we believed that it was appropriate to consider how individuals would have chosen different plans—including across different metal tiers—as part of the BHP payment methodology.

In the 2022 proposed Payment Notice, we proposed to include the MTSF in the payment methodology and calculate its value using the same approach as finalized in the 2020 final Payment Notice (84 FR 59543). As discussed above, since publication of the 2022 proposed Payment Notice, Congress passed the ARP, which, as discussed in section I.C. of this final notice, modifies the applicable percentages of household income used to calculate the amount of APTC taxpayers are eligible to have paid on their behalf for coverage purchased through an Exchange during taxable years 2021 and 2022. Also as discussed above, we believe that these changes are likely to significantly affect enrollees' plan choices starting in 2022. Most notably, individuals with incomes up to 150 percent of FPL will be able to purchase a silver-level plan with a $0 premium, and individuals with incomes between 150 percent and 200 percent of FPL will be able to purchase a silver-level plan at a lower premium than previously. Therefore, we believe that significantly more enrollees likely will choose to enroll in silver-level plans (and fewer in bronze-level plans) and the amount of PTC foregone therefore will be less than it was in previous years. Accordingly, the impact of the MTSF likely will be significantly less. Therefore, we are not finalizing our proposal to include the MTSF in the 2022 payment methodology.

7. Income Reconciliation Factor (IRF)

For persons enrolled in a QHP through an Exchange who receive APTC, there will be an annual reconciliation following the end of the year to compare the APTC to the correct amount of PTC based on household circumstances shown on the federal income tax return. Any difference between the latter amounts and the APTC paid during the year would either be paid to the taxpayer (if too little APTC was paid) or charged to the taxpayer as additional tax (if too much APTC was paid, subject to any limitations in statute or regulation), as provided in 26 U.S.C. 36B(f).

Section 1331(e)(2) of the Patient Protection and Affordable Care Act specifies that an individual eligible for the BHP may not be treated as a ''qualified individual'' under section 1312 of the Patient Protection and Affordable Care Act who is eligible for enrollment in a QHP offered through an Exchange. We are defining ''eligible'' to mean anyone for whom the state agency or the Exchange assesses or determines, based on the single streamlined application or renewal form, as eligible for enrollment in the BHP. Because enrollment in a QHP is a requirement for individuals to receive APTC, individuals determined or assessed as eligible for a BHP are not eligible to receive APTC for coverage in the Exchange. Because they do not receive APTC, BHP enrollees, on whom the BHP payment methodology is generally based, are not subject to the same income reconciliation as Exchange consumers.

Nonetheless, there may still be differences between a BHP enrollee's household income reported at the beginning of the year and the actual household income over the year. These may include small changes (reflecting changes in hourly wage rates, hours worked per week, and other fluctuations in income during the year) and large changes (reflecting significant changes in employment status, hourly wage rates, or substantial fluctuations in income). There may also be changes in household composition. Thus, we believe that using unadjusted income as reported prior to the BHP program year may result in calculations of estimated PTC that are inconsistent with the actual household incomes of BHP enrollees during the year. Even if the BHP adjusts household income determinations and corresponding

claims of federal payment amounts based on household reports during the year or data from third-party sources, such adjustments may not fully capture the effects of tax reconciliation that BHP enrollees would have experienced had they been enrolled in a QHP through an Exchange and received APTC.

Therefore, in accordance with current practice, we are finalizing our proposal to include in Equation 1 an adjustment, the IRF, that will account for the difference between calculating estimated PTC using: (a) Household income relative to FPL as determined at initial application and potentially revised mid-year under § 600.320, for purposes of determining BHP eligibility and claiming federal BHP payments; and (b) actual household income relative to FPL received during the plan year, as it would be reflected on individual federal income tax returns. This adjustment will seek prospectively to capture the average effect of income reconciliation aggregated across the BHP population had those BHP enrollees been subject to tax reconciliation after receiving APTC for coverage provided through QHPs. Consistent with the methodology used in past years, we will estimate reconciliation effects based on tax data for 2 years, reflecting income and tax unit composition changes over time among BHP-eligible individuals.

The OTA maintains a model that combines detailed tax and other data, including Exchange enrollment and PTC claimed, to project Exchange premiums, enrollment, and tax credits. For each enrollee, this model compares the APTC based on household income and family size estimated at the point of enrollment with the PTC based on household income and family size reported at the end of the tax year. The former reflects the determination using enrollee information furnished by the applicant and tax data furnished by the IRS. The latter would reflect the PTC eligibility based on information on the tax return, which would have been determined if the individual had not enrolled in the BHP. Consistent with prior years, we will use the ratio of the reconciled PTC to the initial estimation of PTC as the IRF in Equation (1) for estimating the PTC portion of the BHP payment rate.

For 2022, OTA previously estimated that the IRF for states that have implemented the Medicaid eligibility expansion to cover adults up to 133 percent of the FPL would be 99.01 percent. However, due to changes made by the ARP, OTA has revised its estimate for the IRF to be 100.63 percent. Specifically, section 9661 of the ARP specifies new applicable percentages of household income for the purposes of calculating the PTC for 2021 and 2022. This would lead to an increase in PTC, by reducing the household premium contribution. It also is anticipated to have an effect on the income reconciliation for persons enrolled in QHPs in the Exchanges, as evidenced by the revised estimate.

We believe that it is appropriate to distinguish between the IRF for Medicaid expansion states and non-Expansion states to remove data for those with incomes under 138 percent of FPL for Medicaid expansion states. This is the same approach that we finalized in the 2021 final BHP Payment Notice. For other factors used in the BHP payment methodology, it may not always be possible to separate the experiences between different types of states and there may not be meaningful differences between the experiences of such states. Therefore, we will set the value of the IRF for states that have expanded Medicaid equal to the value of the IRF for incomes between 138 and 200 percent of FPL and the value of the IRF for states that have not expanded Medicaid equal to the value of the IRF for incomes between 100 and 200 percent of FPL. This gives an IRF of 100.63 percent for states that have expanded Medicaid and 100.83 percent for states that have not expanded Medicaid for program year 2022.

We will use this value for the IRF in Equations (1) for calculating the PTC portion of the BHP payment rate.

E. State Option To Use Prior Program Year QHP Premiums for BHP Payments

In the interest of allowing states greater certainty in the total BHP federal payments for a given plan year, we have given states the option to have their final federal BHP payment rates calculated using a projected adjusted reference premium (that is, using premium data from the prior program year multiplied by the premium trend factor (PTF), as described in Equation (2b). We will require states to make their election to have their final federal BHP payment rates calculated using a projected adjusted reference premium by the later of (1) May 15 of the year preceding the applicable program year or (2) 60 days after the publication of the final notice. Therefore, because we are finalizing the 2022 payment methodology after May 15, 2021, states must inform CMS in writing of their election for the 2022 program year by 60 days after the publication of the final notice.

For Equation (2b), we will define the PTF, with minor changes in calculation sources and methods, as follows:

PTF: In the case of a state that would elect to use the 2021 premiums as the basis for determining the 2022 BHP payment, it would be appropriate to apply a factor that would account for the change in health care costs between the year of the premium data and the BHP program year. This factor would approximate the change in health care costs per enrollee, which would include, but not be limited to, changes in the price of health care services and changes in the utilization of health care services. This would provide an estimate of the adjusted monthly premium for the applicable second lowest cost silver plan that would be more accurate and reflective of health care costs in the BHP program year.

For the PTF we are finalizing our proposal to use the annual growth rate in private health insurance expenditures per enrollee from the National Health Expenditure (NHE) projections, developed by the Office of the Actuary in CMS (*https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsProjected*). Based on these projections, we are finalizing our proposal that the PTF be 4.7 percent for BHP program year 2022.

We note that the increase in premiums for QHPs from 1 year to the next may differ from the PTF developed for the BHP funding methodology for several reasons. In particular, we note that the second lowest cost silver plan may be different from one year to the next. This may lead to the PTF being greater than or less than the actual change in the premium of the second lowest cost silver plan.

F. State Option To Include Retrospective State-Specific Health Risk Adjustment in Certified Methodology

To determine whether the potential difference in health status between BHP enrollees and consumers in an Exchange would affect the PTC and risk adjustment payments that would have otherwise been made had BHP enrollees been enrolled in coverage through an Exchange, we will provide states implementing the BHP the option to propose and to implement, as part of the certified methodology, a retrospective adjustment to the federal BHP payments to reflect the actual value that would be assigned to the population health factor (or risk adjustment) based on data accumulated during that program year for each rate cell.

We acknowledge that there is uncertainty with respect to this factor due to the lack of available data to analyze potential health differences

between the BHP and QHP populations, which is why, absent a state election, we will use a value for the PHF (see section III.D.3. of this final methodology) to determine a prospective payment rate which assumes no difference in the health status of BHP enrollees and QHP enrollees. There is considerable uncertainty regarding whether the BHP enrollees will pose a greater risk or a lesser risk compared to the QHP enrollees, how to best measure such risk, the potential effect such risk would have had on PTC, and risk adjustment that would have otherwise been made had BHP enrollees been enrolled in coverage through an Exchange. However, to the extent that a state would develop an approved protocol to collect data and effectively measure the relative risk and the effect on federal payments of PTCs and CSRs, we are finalizing our proposal to permit a retrospective adjustment that will measure the actual difference in risk between the two populations to be incorporated into the certified BHP payment methodology and used to adjust payments in the previous year.

For a state electing the option to implement a retrospective population health status adjustment as part of the BHP payment methodology applicable to the state, we are finalizing our proposal to require the state to submit a proposed protocol to CMS, which would be subject to approval by us and would be required to be certified by the Chief Actuary of CMS, in consultation with the OTA. We will apply the same protocol for the population health status adjustment as what is set forth in guidance in *Considerations for Health Risk Adjustment in the Basic Health Program in Program Year 2015* (*http://www.medicaid.gov/Basic-Health-Program/Downloads/Risk-Adjustment-and-BHP-White-Paper.pdf*). We proposed to require a state to submit its proposed protocol for the 2022 program year by the later of August 1, 2021 or 60 days after the publication of this final notice. Because this final notice is being published within 60 days of August 1, 2021, we are finalizing that a state will be required to submit its proposed protocol for the 2022 program year by 60 days after the publication of this final notice. This submission will also need to include descriptions of how the state would collect the necessary data to determine the adjustment, including any contracting contingences that may be in place with participating standard health plan issuers. We will provide technical assistance to states as they develop their protocols, as requested. To implement the population health status adjustment, we must approve the state's protocol by December 31, 2021 for the 2022 program year. Finally, the state will be required to complete the population health status adjustment at the end of the program year based on the approved protocol. After the end of the program year, and once data is made available, we will review the state's findings, consistent with the approved protocol, and make any necessary adjustments to the state's federal BHP payment amounts. If we determine the federal BHP payments were less than they would have been using the final adjustment factor, we will apply the difference to the state's next quarterly BHP trust fund deposit. If we determine that the federal BHP payments were more than they would have been using the final reconciled factor, we will subtract the difference from the next quarterly BHP payment to the state.

IV. Collection of Information Requirements

Although the methodology's information collection requirements and burden had at one time been approved by the Office of Management and Budget (OMB) under control number 0938–1218 (CMS–10510), the approval was discontinued on August 31, 2017, since we adjusted our estimated number of respondents below the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) threshold of ten or more respondents (only New York and Minnesota operate a BHP at this time). Since we continue to estimate fewer than ten respondents, the final 2022 methodology is not subject to the requirements of the PRA.

V. Regulatory Impact Analysis

A. Statement of Need

Section 1331 of the Patient Protection and Affordable Care Act (42 U.S.C. 18051) requires the Secretary to establish a BHP, and section 1331(d)(1) specifically provides that if the Secretary finds that a state meets the requirements of the program established under section 1331(a) of the Patient Protection and Affordable Care Act, the Secretary shall transfer to the state federal BHP payments described in section 1331(d)(3). This final methodology provides for the funding methodology to determine the federal BHP payment amounts required to implement these provisions for program year 2022.

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 Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (the Congressional Review Act) (5 U.S.C. 801 *et seq.*).

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). As noted in the BHP final rule, the BHP provides states the flexibility to establish an alternative coverage program for low-income individuals who would otherwise be eligible to purchase coverage on an Exchange. To date, two states have established a BHP, and we expect state participation to remain static as a result of this payment methodology. However, the final payment methodology for program year 2022 differs from the payment methodology for program year 2021 due to the removal of the MTSF, which would increase BHP payments, compared to the methodology for program year 2021. OMB Office of

Information and Regulatory Affairs has determined this rulemaking is ''economically significant'' as measured by the $100 million threshold under Executive Order 12866, and hence also a major rule under the Congressional Review Act, 5 U.S.C. 804(2). Accordingly, we have prepared a RIA that, to the best of our ability, presents the costs and benefits of the rulemaking.

C. Detailed Economic Analysis

The aggregate economic impact of this payment methodology is estimated to be $1,114 million in transfers for CY 2022 (measured in real 2022 dollars), which would be an increase in federal payments to the state BHPs. For the purposes of this analysis, we have assumed that two states would implement BHPs in 2022. This assumption is based on the fact that two states have established a BHP to date, and we do not have any indication that additional states may implement the program. We also assumed there would be approximately 926,000 BHP enrollees in 2022. The size of the BHP depends on several factors, including the number of and which particular states choose to implement or continue a BHP, the level of QHP premiums, and the other coverage options for persons who would be eligible for the BHP. In particular, while we generally expect that many enrollees would have otherwise been enrolled in a QHP on the Exchange, some persons may have been eligible for Medicaid under a waiver or a state health coverage program. For those who would have enrolled in a QHP and thus would have received PTCs, the federal expenditures for the BHP would be expected to be more than offset by a reduction in federal expenditures for PTCs. For those who would have been enrolled in Medicaid, there would likely be a smaller offset in federal expenditures (to account for the federal share of Medicaid expenditures), and for those who would have been covered in non-federal programs or would have been uninsured, there likely would be an increase in federal expenditures.

Projected BHP enrollment and expenditures under the previous payment methodology were calculated using the most recent 2021 QHP premiums and state estimates for BHP enrollment. We projected enrollment for 2022 using the projected increase in the number of adults in the U.S. from 2021 to 2022 (0.4 percent), and we projected premiums using the NHE projection of premiums for private health insurance (4.7 percent). Prior to any changes made in the 2022 BHP payment methodology, federal BHP expenditures are projected to be $6,738 million in 2022. This projection serves as our baseline scenario when estimating the net impact of the 2022 final methodology on federal BHP expenditures.

The change in the PTCF percentages is the most significant change in the methodology from the proposed notice, and is prescribed in the ARP. To calculate the changes that result from these changes in the payment methodology, we compared the results before and after these changes using the BHP payment model, we maintain to calculate payments to states, with projections used to calculate impacts in 2022. We recalculated the BHP payments using the new PTCF percentages to calculate the impact of this change, and we estimate that this would increase BHP payments by $853 million in 2022 (as compared to using the previous PTCF percentages, as described in the proposed methodology). The new PTCF percentages can be found in Table 1 in section III.D.5 of this final notice. For the change in the methodology to remove the MTSF for benefit year 2022, the MTSF was calculated as having a value of 96.68 percent (as described previously). We recalculated the BHP payments excluding the MTSF from the formula, and we estimate this would increase BHP payments by $261 million in 2022 (as compared to the payments using a methodology including the MTSF factor). The projected BHP expenditures after these changes are $7,852 million, which is the sum of the prior estimate ($6,738 million) and the impacts of the changes to the methodology ($853 million and $261 million).

TABLE 2—ESTIMATED FEDERAL IMPACTS FOR THE BASIC HEALTH PROGRAM 2022 PAYMENT METHODOLOGY

[Millions of 2022 dollars]

Projected Federal BHP Payments under 2021 Final Methodology	$6,738
Projected Federal BHP Payment under 2022 Final Methodology	7,852
Federal costs	1,114

Totals may not add due to rounding.

The provisions of this final methodology are designed to determine the amount of funds that will be transferred to states offering coverage through a BHP rather than to individuals eligible for federal financial assistance for coverage purchased on the Exchange. We are uncertain what the total federal BHP payment amounts to states will be as these amounts will vary from state to state due to the state-specific factors and conditions. For example, total federal BHP payment amounts may be greater in more populous states simply by virtue of the fact that they have a larger BHP-eligible population and total payment amounts are based on actual enrollment. Alternatively, total federal BHP payment amounts may be lower in states with a younger BHP-eligible population as the RP used to calculate the federal BHP payment will be lower relative to older BHP enrollees. While state composition will cause total federal BHP payment amounts to vary from state to state, we believe that the methodology, like the methodology used in 2021, accounts for these variations to ensure accurate BHP payment transfers are made to each state.

D. Alternative Approaches

We considered several alternatives in developing the BHP payment methodology for 2022, and we discuss some of these alternatives below.

We considered alternatives as to how to calculate the PAF in the final methodology for 2022. The value for the PAF is 1.188, which is the same as was used for 2018, 2019, 2020, and 2021. We believe it would be difficult to obtain the updated information from QHP issuers comparable to what was used to develop the 2018 factor, because QHP issuers may not distinctly consider the impact of the discontinuance of CSR payments on the QHP premiums any longer. We do not have reason to believe that the value of the PAF would change significantly between program years 2018 and 2022. We are continuing to consider whether or not there are other methodologies or data sources we may be able to use to calculate the PAF.

We also considered alternatives as how to calculate the MTSF in the final methodology for 2022. Given the changes made to the determination of PTC for 2022 in the ARP, we are not including the MTSF in the 2022 payment methodology, as described in section III.D.6. of this final notice.

We also considered whether to continue to provide states the option to develop a protocol for a retrospective adjustment to the PHF as we did in previous payment methodologies. We believe that continuing to provide this option is appropriate and likely to improve the accuracy of the final payments.

We also considered whether to require the use of the program year premiums to develop the federal BHP payment rates, rather than allow the choice between the program year premiums and the prior year premiums

trended forward. We believe that the payment rates can still be developed accurately using either the prior year QHP premiums or the current program year premiums and that it is appropriate to continue to provide the states these options.

Many of the factors in this final methodology are specified in statute; therefore, for these factors we are limited in the alternative approaches we could consider. We do have some choices in selecting the data sources used to determine the factors included in the methodology. Except for state-specific RPs and enrollment data, we will use national rather than state-specific data. This is due to the lack of currently available state-specific data needed to develop the majority of the factors included in the methodology. We believe the national data will produce sufficiently accurate determinations of payment rates. In addition, we believe that this approach will be less burdensome on states. In many cases, using state-specific data would necessitate additional requirements on the states to collect, validate, and report data to CMS. By using national data, we are able to collect data from other sources and limit the burden placed on the states. For RPs and enrollment data, we will use state-specific data rather than national data, as we believe state-specific data will produce more accurate determinations than national averages. Our responses to public comments on these alternative approaches are in section II of this final notice.

E. Accounting Statement and Table

In accordance with OMB Circular A–4, Table 3 depicts an accounting statement summarizing the assessment of the transfers associated with these payment methodologies.

TABLE 3—ACCOUNTING STATEMENT CHANGES TO FEDERAL PAYMENTS FOR THE BASIC HEALTH PROGRAM FOR 2022

Category	Estimates	Units		
		Year dollar	Discount rate (%)	Period covered
Transfers: Annualized/Monetized ($million/year)	$1,114 1,114	2022 2022	7 3	2022 2022
From Whom to Whom	From the Federal Government to States Operating BHPs.			

F. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires agencies to prepare a final regulatory flexibility analysis to describe the impact of the final 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. Individuals and states are not included in the definition of a small entity.

Because this final methodology is focused solely on federal BHP payment rates to states, it does not contain provisions that would have a direct impact on hospitals, physicians, and other health care providers that are designated as small entities under the RFA. Accordingly, we have determined that the methodology, like the previous methodology and the final rule that established the BHP program, will not have a significant economic impact on a substantial number of small entities. Therefore, the Secretary has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a methodology may have a significant economic impact on the operations of a substantial number of small rural hospitals. 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. For the preceding reasons, we have determined that the methodology will not have a significant impact on a substantial number of small rural hospitals. Therefore, the Secretary has determined that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

G. Unfunded Mandates Reform Act (UMRA)

Section 202 of the Unfunded Mandates Reform Act (UMRA) of 2005 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, by state, local, or tribal governments, in the aggregate, or by the private sector. In 2021, that threshold was approximately $158 million. States have the option, but are not required, to establish a BHP. Further, the methodology would establish federal payment rates without requiring states to provide the Secretary with any data not already required by other provisions of the Patient Protection and Affordable Care Act or its implementing regulations. Thus, the final payment methodology does not mandate expenditures by state governments, local governments, or tribal governments.

H. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a final rule that imposes substantial direct effects on states, preempts state law, or otherwise has federalism implications. The BHP is entirely optional for states, and if implemented in a state, provides access to a pool of funding that would not otherwise be available to the state. Accordingly, the requirements of Executive Order 13132 do not apply to this final methodology.

I. Conclusion

Overall, federal BHP payments are expected to increase by $1,114 million in 2022 as a result of the changes to the payment methodology. The analysis above, together with the remainder of this preamble, provides an RIA.

This final regulation is subject to the Congressional Review Act (5 U.S.C. 801 *et seq.*) and has been transmitted to the Congress and the Comptroller General for review.

Dated: June 30, 2021.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2021–14393 Filed 7–2–21; 4:15 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 03–123, 10–51; DA 20–219; FRS 32654]

Structure and Practices of the Video Relay Services Program

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission's (Commission's) Consumer and Governmental Affairs Bureau (Bureau), pursuant to delegated authority, amends the Commission's interoperability requirements for video relay service (VRS) to remove reference to the Interoperability Profile for Relay User Equipment (RUE Profile).

DATES: These rules are effective August 6, 2021.

FOR FURTHER INFORMATION CONTACT: Michael Scott, Consumer and Governmental Affairs Bureau, at (202) 418–1264, or email *Michael.Scott@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Bureau's Order on Reconsideration, document DA 20–219, adopted on March 3, 2020, released on March 3, 2020, in CG Docket Nos. 10–51 and 03–123. The Bureau previous sought comment on a petition for reconsideration, published at 82 FR 33856, July 21, 2017, with a correction published at 82 FR 34471, July 25, 2017. The full text of document DA 20–219 is available for public inspection via the Commission's Electronic Comment Filing System (ECFS). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov,* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

Incorporation by Reference: The Commission notified the Director of the Federal Register of the removal of the incorporation by reference to the RUE Profile from § 64.621(c) on May 5, 2020.

Congressional Review Act

The Commission sent a copy of document DA 20–219 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Final Paperwork Reduction Act of 1995 Analysis

Document DA 20–219 does not contain new or modified or proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. 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, 44 U.S.C. 3506(c)(4).

Regulatory Flexibility Act Analysis

Document DA 20–219 does not require a Final Regulatory Flexibility Analysis, pursuant to the Regulatory Flexibility Act of 1980 as amended (RFA), 5 U.S.C. 601–612, as amended by Public Law 104–121. Document DA 20–219 will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

Incorporation by Reference Summary

Document DA 20–219 removes from the Commission's rules the Interoperability Profile for Relay User Equipment, draft-vrs-rue-dispatch-00 (2016) (RUE Profile). The RUE Profile provides technical specifications that define a standard interface between a relay user's equipment and the services offered by relay service providers. The document is available from IETF Secretariat, 5177 Brandin Court, Fremont, CA 94538, 510–492–4080, *https://datatracker.ietf.org/doc/draft-vrs-rue-dispatch*.

Synopsis

1. VRS, a form of telecommunications relay service (TRS), enables people with hearing or speech disabilities who use American Sign Language (ASL) to employ video equipment to communicate with voice telephone users. To ensure that consumers can communicate and port their service between VRS providers, the Commission requires VRS providers to ensure their services are interoperable and portable and has delegated rulemaking authority to the Bureau to adopt technical standards.

2. In response to a petition, the Bureau reconsiders its 2017 decision incorporating the RUE Profile and deletes the interoperability rule's reference to that standard. There are limited benefits to be gained from implementing the current version of the RUE Profile, which is undergoing review by a standards development organization, and at this time such limited benefits do not outweigh the costs of implementation.

3. *Benefits.* The need for a mandatory provider-to-device technical standard to ensure objective interoperability testing is not as critical as appeared to be the case when this proceeding began. In 2013, when the Commission delegated authority to the Bureau to adopt VRS technical standards, interoperability could not be assured due to the absence of any applicable standards, and there were disputes among providers over who was responsible for alleged failures of interoperability. More recently, however, the other technical standards adopted in 2017—the Provider Interoperability Profile and the xCard standard for porting consumer contact lists—appear to have been implemented successfully. Further, VRS providers now work together to ensure interoperability through an informal process in which engineers from each company collaborate on interoperability testing and information exchange. In addition, the MITRE Corporation has established a testing laboratory environment that enables effective testing of interoperability using provider-supplied user devices and software. In short, even though compliance with the RUE Profile has not been required to date, processes to implement the substance of the Commission's current interoperability and portability rules are in place and have produced positive results.

4. More fundamentally, the RUE Profile remains a work in progress, currently under consideration by a working group of the internet Engineering Task Force. No benefit can be gained by enforcing compliance with a technical standard that is not ready to be implemented.

5. *Costs.* Implementation of the RUE Profile at this time would require VRS providers to incur substantial costs. In addition, RUE Profile compliance may impose additional indirect costs that are difficult to quantify, including, *e.g.,* costs caused by unforeseen technical problems and security issues arising out of consumer use of the VATRP, as well as potential opportunity costs due to the diversion of engineering and research resources from technical improvements that may offer greater benefit to consumers.

6. The Bureau will maintain this docket as an open proceeding, to allow for consideration of new or updated technical standards, including further consideration of provider-to-device standards, should they be submitted for consideration.

Ordering Clauses

7. Pursuant to the authority contained in sections 4(i), 4(j), and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), (j), 225, and §§ 0.141, 0.361, and 1.3 of the Commission's rules, 47 CFR 0.141,

0.361, 1.3, the petition for reconsideration filed by Sorenson Communications, LLC, is *granted* in part and *dismissed* in part.

List of Subjects in 47 CFR Part 64

Incorporation by reference, Individuals with disabilities, Telecommunications, Telecommunications relay services.

Federal Communications Commission.

Gregory Haledjian,

Legal Advisor, Consumer and Governmental Affairs Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 262, 276, 403(b)(2)(B), (c), 616, 620, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

■ 2. Amend § 64.621 by

■ a. Revising paragraph (a)(3); and

■ b. Removing and reserving (c)(2)(ii).

The revision reads as follows:

§ 64.621 Interoperability and portability.

(a) * * *

(3) All VRS providers must ensure that their VRS access technologies and their video communication service platforms are interoperable with the VRS Access Technology Reference Platform, including for point-to-point calls. No VRS provider shall be compensated for minutes of use involving their VRS access technologies or video communication service platforms that are not interoperable with the VRS Access Technology Reference Platform.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 381, 382, 383, 384, 385, 390, and 391

[Docket No. FMCSA–2020–0135]

RIN 2126–AC33

General Technical, Organizational, Conforming, and Correcting Amendments to the Federal Motor Carrier Safety Regulations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FMCSA amends its regulations by making technical corrections throughout the Federal Motor Carrier Safety Regulations (FMCSRs). The Agency makes minor changes to correct inadvertent errors and omissions, remove or update obsolete references, and improve the clarity and consistency of certain regulatory provisions. The Agency also makes nondiscretionary, ministerial changes that are statutorily mandated and changes that merely align regulatory requirements with the underlying statutory authority. Finally, this rule contains two minor changes to FMCSA's rules of agency procedure or practice that relate to separation of functions and allowing FMCSA and State personnel to conduct off-site compliance reviews of motor carriers following the same safety fitness determination criteria used in on-site compliance reviews.

DATES: This final rule is effective July 7, 2021, except for amendatory instruction 31 which is effective September 7, 2021.

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SUPPLEMENTARY INFORMATION:

I. Legal Basis for the Rulemaking

Congress delegated certain powers to regulate interstate commerce to the United States Department of Transportation (DOT or Department) in numerous pieces of legislation, most notably in section 6 of the Department of Transportation Act (DOT Act) (Pub. L. 89–670, 80 Stat. 931, 937, Oct. 15, 1966). Section 6 of the DOT Act transferred to the Department the authority of the former Interstate Commerce Commission (ICC) to regulate the qualifications and maximum hours of service of employees, the safety of operations, and the equipment of motor carriers in interstate commerce (80 Stat. 939). This authority, first granted to the ICC in the Motor Carrier Act of 1935 (Pub. L. 74–255, 49 Stat. 543, Aug. 9, 1935), now appears in 49 U.S.C. chapter 315. The regulations issued under this (and subsequently enacted) authority became known as the FMCSRs, codified at 49 CFR parts 350–399. The administrative powers to enforce chapter 315 (codified in 49 U.S.C. chapter 5) were also transferred from the ICC to the DOT in 1966, and assigned first to the Federal Highway Administration (FHWA) and then to FMCSA. The FMCSA Administrator has been delegated authority under 49 CFR 1.87 to carry out the motor carrier functions vested in the Secretary of Transportation.

Between 1984 and 1999, several statutes added to FHWA's authority. Various statutes authorize the enforcement of the FMCSRs, the Hazardous Materials Regulations, and the Commercial Regulations, and provide both civil and criminal penalties for violations of these requirements. These statutes include the Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2832, Oct. 30, 1984), codified at 49 U.S.C. chapter 311, subchapter III; the Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99–570, Title XII, 100 Stat. 3207–170, Oct. 27, 1986), codified at 49 U.S.C. chapter 313; the Hazardous Materials Transportation Uniform Safety Act of 1990, as amended (Pub. L. 101–615, 104 Stat. 3244, Nov. 16, 1990), codified at 49 U.S.C. chapter 51; the Omnibus Transportation Employee Testing Act of 1991 (Pub. L. 102–143, Title V, 105 Stat. 917, 952, Oct. 28, 1991), codified at 49 U.S.C. 31306; and the ICC Termination Act of 1995 (Pub. L. 104–88, 109 Stat. 803, Dec. 29, 1995), codified at 49 U.S.C. chapters 131–149.

The Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106–159, 113 Stat. 1748, Dec. 9, 1999) established FMCSA as a new operating administration within DOT, effective January 1, 2000. The motor carrier safety responsibilities previously assigned to both the ICC and FHWA are now assigned to FMCSA.

Congress expanded, modified, and amended FMCSA's authority in the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub. L. 107–56, 115 Stat. 272, Oct. 26, 2001); the Safe, Accountable, Flexible, Efficient Transportation Equity

Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144, Aug. 10, 2005); the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572, June 6, 2008); the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141, 126 Stat. 405, July 6, 2012); and the Fixing America's Surface Transportation Act (Pub. L. 114–94, 129 Stat. 1312, Dec. 4, 2015).

The specific regulations amended by this rule are based on the statutes detailed above. Generally, the legal authority for each of those provisions was explained when the requirement was originally adopted and is noted at the beginning of each part in title 49 of the Code of Federal Regulations.

The Administrative Procedure Act (APA) specifically provides exceptions to its notice and comment rulemaking procedures when an agency finds there is good cause to dispense with them, and incorporates the finding, and a brief statement of reasons therefore, in the rules issued (5 U.S.C. 553(b)(3)(B)). Good cause exists when an agency determines that notice and public comment procedures are impractical, unnecessary, or contrary to the public interest. The amendments made in this final rule primarily correct inadvertent errors and omissions, remove or update obsolete references, and make minor language changes to improve clarity and consistency. Some changes are statutorily mandated or relate to previous changes that were statutorily mandated. In accommodating those changes, the Agency is performing nondiscretionary, ministerial acts. Other changes merely align regulatory requirements with the underlying statutory authority. The technical amendments do not impose any material new requirements or increase compliance obligations. In addition, the amendments removing the word ''on-site'' from the definitions of *Compliance review* and *Roadability review* in § 385.3 recognize the technological advances that allow FMCSA to perform the same investigative functions remotely in some cases that it could perform previously only by in-person reviews of the motor carrier's files. The regulatory standards are not changing as a result of this minor procedural adjustment. Moreover, the APA provides an additional exception to its notice and comment rulemaking procedures for ''rules of agency organization, procedure, or practice'' (5 U.S.C. 553(b)(3)(A)). For these reasons, FMCSA finds good cause that notice and public comment on this final rule are unnecessary.

The amendment adding a separation of functions provision in new § 385.21 also concerns the APA exception for ''rules of agency organization, procedure, or practice.'' The amendment is, therefore, excepted from the notice and public comment requirements.

The APA also allows agencies to make rules effective immediately with good cause (5 U.S.C. 553(d)(3)), instead of requiring publication 30 days prior to the effective date. For the reasons already stated, FMCSA finds there is good cause for this rule to be effective immediately, except as noted in amendatory instruction 31, concerning the revised Medical Examination Report Form, MCSA–5875, in § 391.43(f).

The Agency is aware of the regulatory requirements concerning public participation in FMCSA rulemaking (49 U.S.C. 31136(g)). These requirements pertain to certain major rules,[1] but, because this final rule is not a major rule, they are not applicable.

II. Section-by-Section Analysis

This section-by-section analysis describes the changes to the regulatory text in numerical order.

A. Section 381.110 What definitions are applicable to this part?

FMCSA adds parts 380 and 384 to the definition of *FMCSRs* in § 381.110. Through this amendment, in conjunction with the following amendments to §§ 381.200, 381.300, and 381.400, FMCSA adds parts 380 and 384 to the list of parts and sections of the FMCSRs from which, pursuant to part 381, FMCSA may grant a waiver, an exemption, or an exemption for a pilot program. This change is in accordance with 49 U.S.C. 31136(e) and 49 U.S.C. 31315(a), (b), and (c), which provide for waivers and exemptions from regulations prescribed under 49 U.S.C. 31136 and chapter 313, and for pilot programs, respectively. As all regulations set forth in parts 380 and 384 were promulgated under that authority, this change merely aligns the regulatory requirements in part 381 with the authority set forth in those statutes. FMCSA also changes the punctuation for the list in the parenthetical text.

[1] A ''major rule'' means any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in (a) an annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, Federal agencies, State agencies, local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 804(2)).

B. Section 381.200 What is a waiver?

In § 381.200(d), FMCSA adds parts 380 and 384 to the FMCSRs from which entities and individuals can request waivers pursuant to part 381, subpart B. This change is authorized as stated above in section II.A.

C. Section 381.300 What is an exemption?

In § 381.300(c), FMCSA adds parts 380 and 384 to the FMCSRs from which entities and individuals can request exemptions pursuant to part 381, subpart C. This change is authorized as stated above in section II.A.

D. Section 381.400 What is a pilot program?

In § 381.400(f), FMCSA adds parts 380 and 384 to the FMCSRs from which entities and individuals can request exemptions for pilot programs pursuant to part 381, subpart D. This change is authorized as stated above in section II.A.

E. Section 382.103 Applicability

In § 382.103(d)(1), FMCSA adds the word ''only'' after ''comply'' to clarify that drivers who perform only Federal Transit Administration (FTA)-regulated safety-sensitive functions are exempt from part 382, as are their employers. By contrast, FTA-regulated entities that employ drivers who also perform FMCSA-regulated safety-sensitive functions must comply with the relevant testing requirements of part 382. FMCSA makes this change, which reflects the purpose and intent of § 382.103(d)(1), as stated above, to improve clarity.

F. Section 382.121 Employee Admission of Alcohol and Controlled Substances Use

FMCSA inserts ''non-DOT'' before ''return to duty'' in paragraphs (b)(4)(i) and (ii) of § 382.121. Paragraph (a) provides that employees who self-admit alcohol misuse or controlled substances use to their employers are not subject to obtaining referral, evaluation, and treatment under parts 382 and 40. The changes in paragraph (b)(4) clarify that the ''return to duty'' (RTD) testing referenced is not the DOT testing required under parts 382 and 40. This clarification is intended to remind employers that, consistent with the purpose of this section, results of non-DOT RTD tests conducted in accordance with paragraph (b)(4) should not be reported to the Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse), an electronic database that contains driver-specific drug and alcohol program

violation information. The changes also provide consistency with the reference in paragraph (b)(5) to ''non-DOT follow-up testing.''

G. Section 382.123 Driver identification

In § 382.123(b)(2), FMCSA corrects a reference to the Alcohol Testing Form (ATF) (the subject of paragraph (a)), instead of the Federal Drug Testing Custody and Control Form (CCF) (the subject of paragraph (b)). The heading of § 382.123(b) (''Identification information on the Federal Drug Testing Custody and Control Form (CCF)'') indicates this paragraph relates to the information required to be provided on the CCF.

H. Section 382.701 Drug and Alcohol Clearinghouse

Subpart G of part 382, beginning with § 382.701, provides requirements and procedures for implementation of the Clearinghouse. In § 382.701, FMCSA amends paragraph (d) by adding after the first use of the word ''driver'' the words ''the employer employs or intends to hire or use.'' The sentence now reads, in part, ''No employer may allow a driver the employer employs or intends to hire or use to perform any safety-sensitive function if the results of a Clearinghouse query demonstrate that the driver has a verified positive, adulterated, or substituted controlled substances test result . . . .''

The purpose of the amendment is to align § 382.701(d) with 49 U.S.C. 31306a, which prohibits employers from using current and prospective employee-drivers to operate a commercial motor vehicle (CMV) if a query of the Clearinghouse shows the driver has violated the drug and alcohol testing program requirements and has not completed the return-to-duty process. In this regard, section 31306a(m)(5) defines ''employer'' as ''a person or entity employing, or seeking to employ, 1 or more employees (including an individual who is self-employed) to be commercial motor vehicle operators.'' As currently drafted, § 382.701(d) may imply that the prohibition against permitting a driver with unresolved drug and alcohol testing program violations to perform safety-sensitive functions applies to current, and not prospective, employee-drivers. This amendment makes clear that, consistent with the statute, the prohibition applies to employers of current and prospective drivers. In addition, the amendment conforms § 382.701(d) to § 382.301(a) (''Pre-employment testing''), which states, in part, ''No employer shall allow a driver, who the employer intends to hire or use, to perform safety-sensitive functions unless the employer has received a controlled substances test result from the [Medical Review Officer (MRO)] or [Consortium/Third party Administrator (C/TPA)] indicating a verified negative test result for that driver.''

I. Section 382.705 Reporting to the Clearinghouse

FMCSA amends three paragraphs of § 382.705(b). In paragraph (b)(3)(iii), FMCSA replaces the word ''designated'' with the phrase ''authorized to act'' for clarity. This clarifying change avoids potential confusion caused by use of the word ''designate'' elsewhere in the section. In paragraph (b)(6) of that same section, ''designate'' pertains to the designation of a C/TPA for Clearinghouse reporting purposes. By substituting ''authorized to act'' for ''designate'' in paragraph (b)(3)(iii), FMCSA makes clear that, as intended, the C/TPA must have been acting with actual authority as a service agent when the refusal occurred; whether the C/TPA is ''designated'' by the employer, as that term is used in paragraph (b)(6), when the refusal occurs, is not relevant.

In paragraphs (b)(3)(iv) and (b)(5)(vii), FMCSA adds ''(if applicable)'' to the end of each paragraph. This change clarifies that when reporting a ''failure to appear'' refusal under paragraph (b)(3) or an ''actual knowledge'' violation under paragraphs (b)(4) and (5), the requirement that employers submit documentation showing that the driver was provided with all the information reported to the Clearinghouse does not apply if the driver is registered in the Clearinghouse. Drivers who are registered in the Clearinghouse have electronic access to the information and documents referenced in paragraphs (b)(3) and (5), thereby making the employer's separate delivery of the documentation to the driver unnecessary.

J. Section 382.717 Procedures for Correcting Certain Information in the Database

In the heading of this section, FMCSA adds the word ''certain'' after the word ''correcting'' to reflect more accurately the limited scope of this section, which sets forth procedures drivers may use to request correction or removal of certain types of information about them that exists in the Clearinghouse. In the heading of paragraph (a), FMCSA replaces the word ''inaccurately'' with ''incorrectly.'' The Agency also makes clarifying changes to § 382.717(a)(1) to ensure that drivers understand the narrow basis for the correction or removal of their Clearinghouse records permitted under this section. These clarifications are consistent with the limited scope of § 382.717, as discussed in the preamble to the December 2016 final rule establishing the Clearinghouse requirements (81 FR 87686, 87715, Dec. 5, 2016), the Privacy Impact Assessment for the Clearinghouse, and the System of Records Notice for the Clearinghouse (84 FR 56521, 56526, Oct. 22, 2019). As explained collectively therein, the correction processes in § 382.717 apply only to administrative errors or an employer's failure to comply with documentation requirements for reporting certain test refusal and actual knowledge violations, as set forth in § 382.703, paragraphs (b)(3) and (5); drivers may not contest the accuracy of drug and alcohol program violation information, such as test results or refusals.

K. Section 382.725 Access by State Licensing Authorities

In § 382.725(c), FMCSA inserts the word ''commercial'' after ''chief'' in the second sentence for consistency with use of the term ''chief commercial driver's licensing official'' in that section. This amendment also helps to avoid confusion concerning the existing language, which may appear to introduce another category of licensing official.

L. Section 383.3 Applicability

In § 383.3(c), FMCSA corrects a typographical error by adding a missing ''s'' to the word ''member,'' in the phrase ''member of the national guard on active duty,'' to improve readability.

M. Section 383.5 Definitions

At the end of paragraph (1) in the definition of *Commerce* in § 383.5, FMCSA changes the conjunctive ''and'' to ''or'' to be consistent with the definition of *Commerce* in 49 U.S.C. 31301(2). This action updates language that has been in § 383.5 since FHWA amended the FMCSRs to implement the requirements of the Commercial Motor Vehicle Safety Act of 1986 on June 1, 1987 (52 FR 20574, 20587). Paragraph (2) of 49 U.S.C. 31301 provides that ''commerce'' means trade, traffic, and transportation in the United States between a place in a State and a place outside that State (including a place outside the United States); ''or'' in the United States that affects trade, traffic, and transportation between a place in a State and a place outside that State. This definition applies to 49 U.S.C. 31302 (''Commercial driver's license requirement''), including the definition of *Commerce* in § 383.5 of 49 CFR part 383 (''Commercial driver's license

standards; requirements and penalties''). To ensure consistency with the applicable statutory authority, the conjunction ''and'' is replaced with ''or'' in § 383.5. The Agency changes the punctuation before the conjunction ''or'' from a comma to a semicolon. FMCSA adds a comma after the word ''traffic'' in paragraph (1) to have consistent punctuation with paragraph (2).

N. Section 383.51 Disqualification of Drivers

FMCSA adds an additional exclusion to entry (6) in Table 1 to § 383.51 (which is found in paragraph (b) of that section) to make clear there is no enforcement discretion regarding the period of disqualification for human trafficking offenses. FMCSA added the human trafficking disqualification in entry (10) of Table 1 in a final rule published July 23, 2019 (84 FR 35335, 35338). The addition requires the State to disqualify a commercial driver's license (CDL) holder for life for a human trafficking conviction. Entry (10) reflects the statutory mandate that prohibits an individual from operating a CMV for life if the individual uses a CMV in the commission of a felony involving an act or practice of severe forms of trafficking in persons, as defined and described in 22 U.S.C. 7102(11). As amended, entry (6) excludes both a felony described in paragraph (b)(9) of Table 1 (entry (9)) and a felony described in paragraph (b)(10) of Table 1 (entry (10)).

O. Section 383.9 Commercial Motor Vehicle Groups

FMCSA updates the title of Figure 1 to § 383.91 from ''VEHICLE GROUPS AS ESTABLISHED BY FHWA (SECTION 383.91)'' to simply ''VEHICLE GROUPS (SECTION 383.91).'' This amendment eliminates the obsolete reference to FHWA, FMCSA's predecessor agency.

P. Section 384.401 Withholding of Funds Based on Noncompliance

In § 384.401, FMCSA revises the cross-references to 23 U.S.C. 104(b) to reflect changes to 49 U.S.C. 31314(c), the statutory provision that provides the cross-references in § 384.401. Section 1404(j) of MAP–21 (Pub. L. 112–141, 126 Stat. 405, 559, July 6, 2012) revised 49 U.S.C. 31314(c), effective October 1, 2011. Section 384.401 is no longer consistent with the underlying statutory authority in 49 U.S.C. 31314(c). To conform § 384.401 to 49 U.S.C. 31314(c), FMCSA changes the cross-references in paragraphs (a) and (b) of § 384.401 from ''each of sections 104(b)(1), (b)(3), and (b)(4) of title 23 U.S.C.'' to ''23 U.S.C. 104(b)(1) and (2).''

Q. Section 385.3 Definitions and Acronyms

FMCSA removes the word ''on-site'' from the definition of *Compliance review* in paragraph (1) of the definition of *Reviews* in § 385.3. This amendment recognizes the technological advances that allow FMCSA to perform the compliance review remotely in some cases. This amendment does not alter the Safety Fitness Rating Methodology (SFRM) in part 385, appendix B, nor does it eliminate the ability for FMCSA to conduct onsite examinations. From the point of view of the regulated entity, the same safety performance metrics are being evaluated, so there is no change. This amendment, however, clarifies that a safety investigator may, in some cases, perform all the investigative functions of the compliance review remotely when the motor carrier uploads its business records for review to FMCSA's online system and the investigator conducts subsequent discussions with motor carrier officials and employees remotely.

Further, FMCSA notes that this amendment also does not alter in any way the requirements of section 350 of the 2002 DOT Appropriations Act (Pub. L. 107–87, 115 Stat. 833, 864, Dec. 18, 2001 (49 U.S.C. 13902 note)), with which FMCSA will continue to comply, that certain compliance reviews under 49 CFR part 385, subpart B, as to Mexico-domiciled carriers, be conducted onsite.

FHWA first published the definition of *Compliance review* in 1988 (53 FR 50961, 50968, Dec. 19, 1988). The compliance review process at that time did not use a published methodology. In 1997, FHWA published the SFRM (62 FR 60035, Nov. 6, 1997) to codify a more objective safety rating process for the compliance review (62 FR 60037). Under the SFRM, safety investigators sample a carrier's records and document violations of acute regulations and patterns of violations of critical regulations to complete the compliance review (§ 385.9; appendix B to part 385). Section I (''Source of Data for Rating Methodology'') of appendix B to part 385 states that the sources of data for the compliance review's ''in-depth examination of a motor carrier's operations'' are ''[d]ocuments such as those contained in driver qualification files, records of duty status, vehicle maintenance records, and other records.'' The definition of *Compliance review* lists these records, along with other objective safety and transportation records, as examples of what a safety investigator would be reviewing during a compliance review. Until relatively recently, safety investigators had to visit the motor carrier's principal place of business to review these records. FMCSA is now able to ask carriers to upload their records to FMCSA's online system, making an ''on-site'' visit unnecessary in certain compliance reviews.

FMCSA also removes the word ''on-site'' from the definition of *Roadability review* in paragraph (4) of the definition of *Reviews* in § 385.3. FMCSA makes this amendment to provide consistency between the definitions of *Compliance review* and *Roadability review.* The roadability review program was modeled after FMCSA's compliance review program (71 FR 76796, 76798, Dec. 21, 2006). This amendment recognizes that the same technological advances that allow FMCSA to perform the compliance review remotely in some cases also allow FMCSA to perform the roadability review remotely in some cases.

In addition to the above amendments, FMCSA adds a missing apostrophe to the phrase ''commercial driver's license'' in the definition of *Compliance review.*

R. Section 385.21 Separation of Functions

In new § 385.21, FMCSA adds a separation of functions provision that applies to the various administrative review proceedings under part 385. This amendment clarifies that FMCSA applies a separation of functions between Agency employees engaged in the performance of investigative or prosecutorial functions and those who participate or advise in the decision in administrative review proceedings under part 385. This new section merely codifies the separation of functions that has, in fact, been maintained in FMCSA since the Agency was created in 2000. FMCSA adopts language for this section that is consistent with DOT policy and the requirements for adjudications in 5 U.S.C. 554. It also is similar to the language in § 386.3, which is the separation of functions provision applicable to administrative reviews of proposed civil penalties.

S. Appendix B to Part 385—Explanation of Safety Rating Process

FMCSA amends appendix B to part 385 to conform to a 2013 revision of the standard in § 383.37 from ''knowingly'' to ''knows or should reasonably know'' (78 FR 60226, 60227, 60231, Oct. 1, 2013). Specifically, FMCSA amends the entries for § 383.37(a) through (c) on the ''List of Acute and Critical Regulations'' found in Section VII of appendix B to part 385. In each of those entries,

FMCSA deletes the word ''knowingly'' at the beginning of the sentence and makes minor modifications to the sentence to ensure that the appendix entries more closely follow the language of the regulatory text to which they refer (*e.g.,* by using the term ''driver'' instead of ''employee'' in all three entries and adding the term ''CLP'' and the acronym ''CDL'' in the entries for paragraphs (b) and (c)) and to better accommodate the phrase ''knows or reasonably should have known'' into the entries.

T. Sections 390.5 (Suspended) and 390.5T Definitions

In §§ 390.5 (suspended) and 390.5T, FMCSA clarifies the meaning of *Covered farm vehicle* (CFV) to include combination vehicles, which are eligible for the CFV exemption, but not explicitly identified in the statutory definition in section 32934 of MAP–21 (Pub. L. 112–141, 126 Stat. 405, 830–31, July 6, 2012 (49 U.S.C. 31136 note)). The statutory definition does, however, explicitly include ''articulated'' vehicles. Combination vehicles are considered ''articulated'' because they combine a tractor with one or more trailers at one or more points of articulation (*e.g.,* for a single trailer, the point of articulation is the trailer kingpin that fits into the fifth wheel mounted on the chassis of the tractor behind the cab (or sleeper berth, if so equipped)). Because the terms ''gross vehicle weight rating'' and ''gross vehicle weight'' are universally applied to single-unit (*i.e.,* non-combination) vehicles, paragraphs (2)(i) and (ii) appear to conflict with the provision in section 32934(c)(1) explicitly allowing the CFV exemption for articulated (including combination) vehicles. Therefore, in paragraphs (2)(i) and (ii) of the definition, FMCSA adds the parallel phrases applicable to combination vehicles (''gross combination weight rating'' and ''gross combination weight'') to effectuate the intent of Congress expressed in section 32934(c)(1) to give operators of combination (*i.e.,* articulated) vehicles the benefit of the CFV exemption.

On January 17, 2017, FMCSA suspended certain regulations relating to the electronic Unified Registration System and delayed their effective date indefinitely (82 FR 5292). The suspended regulations were replaced by temporary provisions that contain the requirements in place on January 13, 2017. Section 390.5 was one of the sections suspended and § 390.5T, which is currently in effect, was added (82 FR 5311).

U. Section 391.41(b) Physical Qualifications for Drivers

In § 391.41(b), FMCSA corrects the punctuation by changing the ending punctuation in paragraphs (b)(2)(ii) and (b)(4) and (b)(11) from periods to semicolons. In paragraph (b)(12)(i), the Agency changes the ending punctuation from a period to a semicolon and inserts the conjunction ''or.'' In paragraph (b)(12)(ii), the Agency changes the ending punctuation from a period to a semicolon and inserts the conjunction ''and.'' These changes make the punctuation in the section consistent and grammatically correct.

V. Section 391.43 Medical Examination; Certificate of Physical Examination

FMCSA amends three paragraphs of § 391.43. In paragraph (e), FMCSA removes the word ''endocrinologist'' from the first sentence because it is no longer relevant to the requirements of § 391.64, referenced in this paragraph. On September 19, 2018, FMCSA amended its physical qualification standards to allow individuals with stable insulin regimens and properly controlled insulin-treated diabetes mellitus to drive CMVs in interstate commerce if certain requirements are met (83 FR 47486). The rule also eliminated the diabetes grandfather provision under § 391.64(a) 1 year after the effective date of the rule on November 19, 2019 (83 FR 47521). Section 391.64(a) required an annual examination by an endocrinologist. Because § 391.64(a) was eliminated on November 19, 2019, the reference to the findings of the annual examination by an endocrinologist is obsolete.

In paragraph (f), FMCSA changes the Medical Examination Report Form, MCSA–5875, by removing the request for gender information on page 1 in Section 1, pertaining to the personal information provided by the driver, and removing ''gender'' on page 6 of the instructions to Section 1. FMCSA makes these changes because it is unnecessary to collect gender information on the form. In the medical examiner's attestation for both the Federal and State Medical Examiner Determination sections (pages 4 and 5 respectively), FMCSA adds a missing comma after ''that'' to correct punctuation. On page 6 in the instructions for Section 1 regarding the driver's personal information, FMCSA removes ''Question:'' prior to the question asking if a medical certificate has ever been denied or issued for less than two years because it is unnecessary. In the instructions for both the Federal and State Medical Examiner Determination sections (pages 8 and 9, respectively), FMCSA makes changes to the second sentence in the ''Meets standards, but periodic monitoring is required'' paragraph to correct grammar. FMCSA adds ''for,'' deletes the comma after ''other,'' and puts ''other'' in quotation marks. The sentences read, ''Select the corresponding time frame that the driver is qualified for, and if selecting 'other' specify the time frame.'' FMCSA also makes minor formatting changes to correct errors and promote consistency in the style of bullet points and quotation and apostrophe marks, use of bolding and italics, and use of a forward slash instead of a comma. Use of the revised form will become effective 60 days after this rule is published to provide sufficient time for the public to make any necessary information technology changes.

In paragraph (g)(4), FMCSA makes minor edits for clarity concerning the reasons that a medical examiner may find that a determination should be delayed. Rather than a medical examiner finding that a determination should be delayed ''pending the receipt of additional information,'' the text makes clear that the delay may be in order ''to receive additional information.'' Similarly, rather than finding that a determination should be delayed ''pending . . . the conduct of further examination,'' the text makes clear that the delay may be in order ''to conduct further examination.''

W. Section 391.64 Grandfathering for Certain Drivers Who Participated in a Vision Waiver Study Program

In § 391.64, FMCSA revises the section heading to remove references to a diabetes waiver study program. On September 19, 2018, FMCSA amended its physical qualification standards to allow individuals with stable insulin regimens and properly controlled insulin-treated diabetes mellitus to drive CMVs in interstate commerce if certain requirements are met (83 FR 47486). The rule also eliminated the diabetes grandfather provision under § 391.64(a) 1 year after the effective date of the rule on November 19, 2019 (83 FR 47521). Because § 391.64(a) was eliminated on November 19, 2019, the reference to the diabetes waiver study program in the section title is obsolete.

III. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulations

This final rule is not a significant regulatory action under section 3(f) of E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and this final rule does not require an assessment of potential costs and benefits under section 6(a)(3) of E.O. 12866. Accordingly, the Office of Management and Budget has not reviewed it under that Order. In addition, this rule is not significant within the meaning of DOT regulations (49 CFR 5.13(a)). The amendments made in this final rule primarily correct inadvertent errors and omissions, remove or update obsolete references, and make minor language changes to improve clarity and consistency. Some changes are statutorily mandated or relate to previous changes that were statutorily mandated. In accommodating those changes, the Agency is performing nondiscretionary, ministerial acts. Other changes merely align regulatory requirements with the underlying statutory authority. Two changes relate to minor amendments to FMCSA's rules of practice or procedure. None of the changes in this final rule imposes material new requirements or increases compliance obligations; therefore, this final rule imposes no new costs and a full regulatory evaluation is unnecessary.

B. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801–808), the Office of Information and Regulatory Affairs designated this rule as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

C. Regulatory Flexibility Act (Small Entities)

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612), FMCSA is not required to complete a regulatory flexibility analysis because, as discussed earlier in the Legal Basis for the Rulemaking section, this action is not subject to notice and public comment under section 553(b) of the APA.

D. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857, Mar. 29, 1996), FMCSA wants to assist small entities in understanding this final rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the person listed under the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's 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 FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

E. Unfunded Mandates Reform Act of 1995

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 $165 million (which is the value equivalent of $100 million in 1995, adjusted for inflation to 2018 levels) or more in any 1 year. This final rule will not result in such an expenditure.

F. Paperwork Reduction Act (Collection of Information)

This final rule contains no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

G. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has ''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.'' FMCSA has determined that this rule will not have substantial direct costs on or for States, nor will it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

H. Privacy

The Consolidated Appropriations Act, 2005 (Pub. L. 108–447, 118 Stat. 2809, 3268, Dec. 8, 2004 (5 U.S.C. 552a note)), requires the Agency to conduct a privacy impact assessment of a regulation that will affect the privacy of individuals. Because this rule does not require the collection of personally identifiable information, the Agency is not required to conduct a privacy impact assessment.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002 (Pub. L. 107–347, sec. 208, 116 Stat. 2899, 2921, Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology will collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a privacy impact assessment.

I. E.O. 13175 (Indian Tribal Governments)

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.

J. National Environmental Policy Act of 1969

FMCSA analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, Mar. 1, 2004), Appendix 2, paragraphs 6.b and c. These Categorical Exclusions address minor corrections and regulations concerning internal agency functions, organization, or personnel administration such as those found in this rulemaking. Therefore, preparation

of an environmental assessment or environmental impact statement is not necessary.

List of Subjects

49 CFR Part 381

Motor carriers.

49 CFR Part 382

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Penalties, Safety, Transportation.

49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Penalties, Safety, Transportation.

49 CFR Part 384

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

49 CFR Part 385

Administrative practice and procedure, Highway safety, Incorporation by reference, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 391

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation.

In consideration of the foregoing, FMCSA amends 49 CFR chapter III as set forth below:

PART 381—WAIVERS, EXEMPTIONS, AND PILOT PROGRAMS

■ 1. The authority citation for part 381 continues to read as follows:

Authority: 49 U.S.C. 31136(e) and 31315; and 49 CFR 1.87.

■ 2. Amend § 381.110 by revising the definition of *FMCSRs* to read as follows:

§ 381.110 What definitions are applicable to this part?

* * * * *

FMCSRs means Federal Motor Carrier Safety Regulations (49 CFR parts 380, 382, 383, and 384; 49 CFR 390.19 and 390.21; and 49 CFR parts 391 through 393, 395, 396, and 399).

* * * * *

■ 3. Amend § 381.200 by:

■ a. Redesignating paragraphs (d)(3) through (10) as paragraphs (d)(5) through (12);

■ b. Redesignating paragraphs (d)(1) and (2) as paragraphs (d)(2) and (3); and

■ c. Adding new paragraphs (d)(1) and (4).

The additions read as follows:

§ 381.200 What is a waiver?

* * * * *

(d) * * *

(1) Part 380—Special Training Requirements;

* * * * *

(4) Part 384—State Compliance with Commercial Driver's License Program;

* * * * *

■ 4. Amend § 381.300 by:

■ a. Redesignating paragraphs (c)(3) through (8) as paragraphs (c)(5) through (10);

■ b. Redesignating paragraphs (c)(1) and (2) as paragraphs (c)(2) and (3); and

■ c. Adding new paragraphs (c)(1) and (4).

The additions read as follows:

§ 381.300 What is an exemption?

* * * * *

(c) * * *

(1) Part 380—Special Training Requirements;

* * * * *

(4) Part 384—State Compliance with Commercial Driver's License Program;

* * * * *

■ 5. Amend § 381.400 by:

■ a. Redesignating paragraphs (f)(3) through (8) as paragraphs (f)(5) through (10);

■ b. Redesignating paragraphs (f)(1) and (2) as paragraphs (f)(2) and (3); and

■ c. Adding new paragraphs (f)(1) and (4).

The additions read as follows:

§ 381.400 What is a pilot program?

* * * * *

(f) * * *

(1) Part 380—Special Training Requirements;

* * * * *

(4) Part 384—State Compliance with Commercial Driver's License Program;

* * * * *

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

■ 6. The authority citation for part 382 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31301 *et seq.,* 31502; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

§ 382.103 [Amended]

■ 7. In § 382.103, add the word ''only'' after the word ''comply'' in paragraph (d)(1).

■ 8. Amend § 382.121 by revising paragraphs (b)(4)(i) and (ii) to read as follows:

§ 382.121 Employee admission of alcohol and controlled substances use.

* * * * *

(b) * * *

(4) * * *

(i) Prior to the employee participating in a safety sensitive function, the employee shall undergo a non-DOT return to duty test with a result indicating an alcohol concentration of less than 0.02; and/or

(ii) Prior to the employee participating in a safety sensitive function, the employee shall undergo a non-DOT return to duty controlled substance test with a verified negative test result for controlled substances use; and

* * * * *

■ 9. Amend § 382.123 by revising paragraph (b)(2) to read as follows:

§ 382.123 Driver identification.

* * * * *

(b) * * *

(2) The employer's name and other identifying information required in Step 1, section A of the CCF.

■ 10. Amend § 382.701 by revising paragraph (d) introductory text to read as follows:

§ 382.701 Drug and Alcohol Clearinghouse.

* * * * *

(d) *Prohibition.* No employer may allow a driver the employer employs or intends to hire or use to perform any safety-sensitive function if the results of a Clearinghouse query demonstrate that the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of § 382.211; or that an employer has reported actual knowledge, as defined at § 382.107, that the driver used alcohol on duty in violation of § 382.205, used alcohol before duty in violation of § 382.207, used alcohol following an accident in violation of § 382.209, or used a controlled substance in violation of § 382.213, except where a query of the Clearinghouse demonstrates:

* * * * *

■ 11. Amend § 382.705 by revising paragraphs (b)(3)(iii) and (iv) and (b)(5)(vii) to read as follows:

§ 382.705 Reporting to the Clearinghouse.

* * * * *

(b) * * *

(3) * * *

(iii) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, showing that the C/TPA reporting the violation was authorized to act as a service agent for an employer who employs himself/herself as a driver pursuant to paragraph (b)(6) of this section when the reported refusal occurred (if applicable); and

(iv) Documentation, including a certificate of service or other evidence, showing that the employer provided the employee with all documentation reported under paragraph (b)(3) of this section (if applicable).

* * * * *

(5) * * *

(vii) A certificate of service or other evidence showing that the employer provided the employee with all information reported under paragraph (b)(4) of this section (if applicable).

* * * * *

■ 12. Amend § 382.717 by revising the section and paragraph (a) headings and paragraph (a)(1) to read as follows:

§ 382.717 Procedures for correcting certain information in the database.

(a) *Petitions limited to incorrectly reported information.* (1) Under this section, petitioners may request only that administrative errors be corrected (*e.g.,* errors in data entry or a duplicate report of a positive test result); petitioners may not contest the accuracy of test results, test refusals, or other violation information, under this section.

* * * * *

■ 13. Amend § 382.725 by revising paragraph (c) to read as follows:

§ 382.725 Access by State licensing authorities.

* * * * *

(c) The chief commercial driver's licensing official's use of information received from the Clearinghouse is limited to determining an individual's qualifications to operate a commercial motor vehicle. No chief commercial driver's licensing official may divulge or permit any other person or entity to divulge any information from the Clearinghouse to any person or entity not directly involved in determining an individual's qualifications to operate a commercial motor vehicle.

* * * * *

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 14. The authority citation for part 383 is revised to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.,* 31502; secs. 214 and 215, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b), Pub. L. 107–56, 115 Stat. 272, 397 (49 U.S.C. 31305(a)(5)); sec. 4140, Pub. L. 109–59, 119 Stat. 1144, 1746; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; secs. 5401 and 7208, Pub. L. 114–94, 129 Stat. 1312, 1546, 1593 (49 U.S.C. 31305(d)); and 49 CFR 1.87.

■ 15. Amend § 383.3 by revising paragraph (c) to read as follows:

§ 383.3 Applicability.

* * * * *

(c) *Exception for certain military drivers.* Each State must exempt from the requirements of this part individuals who operate CMVs for military purposes. This exception is applicable to active duty military personnel; members of the military reserves; members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training, and national guard military technicians (civilians who are required to wear military uniforms); and active duty U.S. Coast Guard personnel. This exception is not applicable to U.S. Reserve technicians.

* * * * *

■ 16. Amend § 383.5 by revising the introductory text and paragraph (1) of the definition of *Commerce* to read as follows:

§ 383.5 Definitions.

* * * * *

Commerce means:

(1) Any trade, traffic, or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States; or

* * * * *

■ 17. In § 383.51, amend table 1 to § 383.51 in paragraph (b) by revising entry (6) to read as follows:

§ 383.51 Disqualification of drivers.

* * * * *

(b) * * *

TABLE 1 TO § 383.51

If a driver operates a motor vehicle and is convicted of:	For a first conviction or refusal to be tested while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a first conviction or refusal to be tested while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a first conviction or refusal to be tested while operating a CMV transporting hazardous materials as defined in § 383.5, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV for * * *
*	*	*	*	*	*
(6) Using the vehicle to commit a felony, other than a felony described in paragraph (b)(9) or (10) of this table * * *.	1 year	1 year	3 years	Life	Life.
*	*	*	*	*	*

* * * * *

■ 18. Amend § 383.91 by revising figure 1 after paragraph (d) to read as follows:

§ 383.91 Commercial motor vehicle groups.

* * * * *

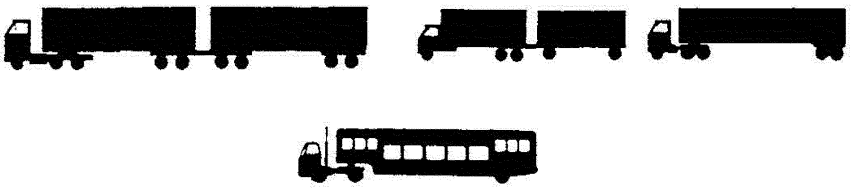
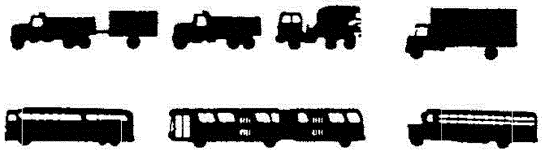
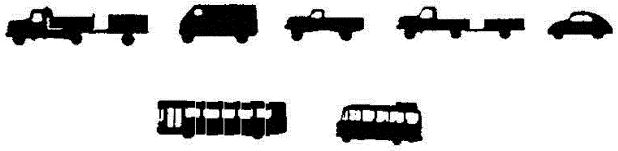
(d) * * *

BILLING CODE 4910–EX–P

1622

Figure 1
VEHICLE GROUPS (SECTION 383.91)

[Note: Certain types of vehicles, such as passenger and doubles/triples, will require an endorsement. Please consult text for particulars.]

Group:	*Description:
A	Any combination of vehicles with a GCWR of 26,001 or more pounds provided the GVWR of the vehicle(s) being towed is in excess of 10,000 pounds. (Holders of a Group A license may, with any appropriate endorsements, operate all vehicles within Groups B and C.) Examples include but are not limited to: 
B	Any single vehicle with a GVWR of 26,001 or more pounds, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR. (Holders of a Group B license may, with any appropriate endorsements, operate all vehicles within Group C.) Examples include but are not limited to: 
C	Any single vehicle, or combination of vehicles, that does not meet the definition of Group A or Group B as contained herein, but that either is designed to transport 16 or more passengers including the driver, or is placarded for hazardous materials. Examples include but are not limited to: 

* The representative vehicle for the skills test must meet the written description for that group. The silhouettes typify, but do not fully cover, the types of vehicles falling within each group.

BILLING CODE 4910–EX–C

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

■ 19. The authority citation for part 384 is revised to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.,* 31502; secs. 103 and 215, Pub. L. 106–159, 113 Stat. 1753, 1767; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; secs. 5401 and 7208, Pub. L. 114–94, 129 Stat. 1312, 1546, 1593 (49 U.S.C. 31305(a)); and 49 CFR 1.87.

■ 20. Revise § 384.401 to read as follows:

§ 384.401 Withholding of funds based on noncompliance.

(a) *Following the first year of noncompliance.* An amount up to 4 percent of the Federal-aid highway funds required to be apportioned to any State under 23 U.S.C. 104(b)(1) and (2) shall be withheld from a State on the first day of the fiscal year following such State's first year of noncompliance under this part.

(b) *Following second and subsequent year(s) of noncompliance.* An amount up to 8 percent of the Federal-aid highway funds required to be apportioned to any State under 23 U.S.C. 104(b)(1) and (2) shall be withheld from a State on the first day of the fiscal year following such State's second or subsequent year(s) of noncompliance under this part.

PART 385—SAFETY FITNESS PROCEDURES

■ 21. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(d), 5109, 5113, 13901–13905, 13908, 31135, 31136, 31144, 31148, and 31502; Sec. 113(a), Pub. L. 103–311; Sec. 408, Pub. L. 104–88, 109 Stat. 803, 958; Sec. 350 of Pub. L. 107–87, 115 Stat. 833, 864; and 49 CFR 1.87.

■ 22. In § 385.3, amend the definition of *Reviews* by revising the first sentence of paragraph (1) and paragraph (4) to read as follows:

§ 385.3 Definitions and acronyms.

* * * * *

Reviews. * * *

(1) *Compliance review* means an examination of motor carrier operations, such as drivers' hours of service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard in this part. * * *

* * * * *

(4) *Roadability review* means an examination of the intermodal equipment provider's compliance with the applicable FMCSRs.

* * * * *

■ 23. Add § 385.21 to read as follows:

§ 385.21 Separation of functions.

(a) An Agency employee engaged in the performance of investigative, advocacy, or prosecutorial functions in a proceeding under § 385.15, § 385.113, § 385.327, § 385.423, § 385.711, § 385.911(e), § 385.913(e), § 385.1009(d), or § 385.1011(d) may not, in that case or a factually-related case, discuss or communicate the facts or issues involved with, or otherwise advise or assist, the Agency decisionmaker or personnel advising the Agency decisionmaker, except as counsel or a witness in a public proceeding, or if the same facts and information are provided to all the parties involved in the matter. The prohibition in this paragraph (a) also includes the staff of those covered by this section.

(b) As used in this section, *decisionmaker* means the FMCSA official authorized to issue a final decision in the applicable proceeding listed in paragraph (a) of this section.

(c) Nothing in this part shall preclude Agency decisionmakers or anyone advising an Agency decision-maker from taking part in a determination to launch an investigation or issue a complaint, or similar preliminary decision.

■ 24. Amend appendix B to part 385 in section VII by revising the entries § 383.37(a), § 383.37(b), and § 383.37(c) to read as follows:

Appendix B to Part 385—Explanation of Safety Rating Process

* * * * *

VII. List of Acute and Critical Regulations

* * * * *

§ 383.37(a) Allowing, requiring, permitting, or authorizing a driver to operate a CMV who the employer knew or should reasonably have known does not have a current CLP or CDL, does not have a CLP or CDL with the proper class or endorsements, or operates a CMV in violation of any restriction on the CLP or CDL (acute).

§ 383.37(b) Allowing, requiring, permitting, or authorizing a driver to operate a CMV who the employer knew or should reasonably have known has a CLP or CDL disqualified by a State, has lost the right to operate a CMV in a State, or has been disqualified (acute).

§ 383.37(c) Allowing, requiring, permitting, or authorizing a driver to operate a CMV who the employer knew or should reasonably have known has more than one CLP or CDL (acute).

* * * * *

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

■ 25. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 504, 508, 31132, 31133, 31134, 31136, 31137, 31144, 31149, 31151, 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; secs. 212 and 217, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106–159 (as added and transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743; sec. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745; secs. 32101(d) and 32934, Pub. L. 112–141, 126 Stat. 405, 778, 830; sec. 2, Pub. L. 113–125, 128 Stat. 1388; secs. 5403, 5518, and 5524, Pub. L. 114–94, 129 Stat. 1312, 1548, 1558, 1560; sec. 2, Pub. L. 115–105, 131 Stat. 2263; and 49 CFR 1.81, 1.81a, 1.87.

■ 26. Amend § 390.5 as follows:

■ a. Lift the suspension of the section;

■ b. Revise paragraphs (2)(i) and (ii) of the definition of *Covered farm vehicle;* and

■ c. Suspend § 390.5 indefinitely.

The revision reads as follows:

§ 390.5 Definitions.

* * * * *

Covered farm vehicle * * *

(2) * * *

(i) With a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, whichever is greater, of 26,001 pounds or less may utilize the exemptions in § 390.39 anywhere in the United States; or

(ii) With a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, whichever is greater, of more than 26,001 pounds may utilize the exemptions in § 390.39 anywhere in the State of registration or across State lines within 150 air miles of the farm or ranch with respect to which the vehicle is being operated.

* * * * *

■ 27. Amend § 390.5T by revising paragraphs (2)(i) and (ii) of the definition of *Covered farm vehicle* to read as follows:

§ 390.5T Definitions.

* * * * *

Covered farm vehicle * * *

(2) * * *

(i) With a gross vehicle weight rating or gross combination weight rating, or

gross vehicle weight or gross combination weight, whichever is greater, of 26,001 pounds or less may utilize the exemptions in § 390.39 anywhere in the United States; or

(ii) With a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, whichever is greater, of more than 26,001 pounds may utilize the exemptions in § 390.39 anywhere in the State of registration or across State lines within 150 air miles of the farm or ranch with respect to which the vehicle is being operated.

* * * * *

PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS

■ 28. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 504, 508, 31133, 31136, 31149, 31502; sec. 4007(b), Pub. L. 102–240, 105 Stat. 1914, 2152; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215, Pub. L. 106–159, 113 Stat. 1748, 1767; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; secs. 5403 and 5524, Pub. L. 114–94, 129 Stat. 1312, 1548, 1560; sec. 2, Pub. L. 115–105, 131 Stat. 2263; and 49 CFR 1.87.

■ 29. Amend § 391.41 by revising paragraphs (b)(2)(ii) and (b)(4), (11), and (12) to read as follows:

§ 391.41 Physical qualifications for drivers.

* * * * *

(b) * * *

(2) * * *

(ii) An arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or any other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or has been granted a skill performance evaluation certificate pursuant to § 391.49;

* * * * *

(4) Has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure;

* * * * *

(11) First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951;

(12)(i) Does not use any drug or substance identified in 21 CFR 1308.11 Schedule I, an amphetamine, a narcotic, or other habit-forming drug; or

(ii) Does not use any non-Schedule I drug or substance that is identified in the other Schedules in 21 CFR part 1308 except when the use is prescribed by a licensed medical practitioner, as defined in § 382.107 of this chapter, who is familiar with the driver's medical history and has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle; and

* * * * *

■ 30. Amend § 391.43 by revising paragraphs (e) and (g)(4) to read as follows:

§ 391.43 Medical examination; certificate of physical examination.

* * * * *

(e) Any driver operating under a limited exemption authorized by § 391.64 shall furnish the medical examiner with a copy of the annual medical findings of the ophthalmologist or optometrist, as required under § 391.64. If the medical examiner finds the driver qualified under the limited exemption in § 391.64, such fact shall be noted on the Medical Examiner's Certificate.

* * * * *

(g) * * *

(4) Beginning December 22, 2015, if the medical examiner finds that the determination of whether the person examined is physically qualified to operate a commercial motor vehicle in accordance with § 391.41(b) should be delayed to receive additional information or to conduct further examination in order for the medical examiner to make such determination, he or she must inform the person examined that the additional information must be provided or the further examination completed within 45 days, and that the pending status of the examination will be reported to FMCSA.

* * * * *

■ 31. Effective September 7, 2021, further amend § 391.43 by revising paragraph (f) to read as follows:

§ 391.43 Medical examination; certificate of physical examination.

* * * * *

(f) The medical examination shall be performed, and its results shall be recorded on the Medical Examination Report Form, MCSA–5875, set out in this paragraph (f):

BILLING CODE 4910–EX–P

Form MCSA-5875 **OMB No.: 2126-0006**

Public Burden Statement
A Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2126-0006. Public reporting for this collection of information is estimated to be approximately 25 minutes per response, including the time for reviewing instructions, gathering the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Motor Carrier Safety Administration, MC-RRA, 1200 New Jersey Avenue, SE, Washington, D.C. 20590.

U.S. Department of Transportation
Federal Motor Carrier
Safety Administration

Medical Examination Report Form
(for Commercial Driver Medical Certification)

MEDICAL RECORD #
_____
(or sticker)

SECTION 1. Driver Information *(to be filled out by the driver)*

PERSONAL INFORMATION

Last Name: _____ First Name: _____ Middle Initial: ___ Date of Birth: _____ Age: ___

Street Address: _____ City: _____ State/Province: _____ Zip Code: _____

Driver's License Number: _____ Issuing State/Province: _____ Phone: _____

E-Mail *(optional)*: _____ CLP/CDL Applicant/Holder*: ◯ Yes ◯ No

Driver ID Verified By**: _____

Has your USDOT/FMCSA medical certificate ever been denied or issued for less than 2 years? ◯ Yes ◯ No ◯ Not Sure

*CLP/CDL Applicant/Holder: See instructions for definitions.

**Driver ID Verified By: Record what type of photo ID was used to verify the identity of the driver, e.g., CDL, driver's license, passport.

DRIVER HEALTH HISTORY

Have you ever had surgery? If "yes," please list and explain below. ◯ **Yes** ◯ **No** ◯ **Not Sure**

Are you currently taking medications *(prescription, over-the-counter, herbal remedies, diet supplements)*? If "yes," please describe below. ◯ **Yes** ◯ **No** ◯ **Not Sure**

(Attach additional sheets if necessary)

This document contains sensitive information and is for official use only. Improper handling of this information could negatively affect individuals. Handle and secure this information appropriately to prevent inadvertent disclosure by keeping the documents under the control of authorized persons. Properly dispose of this document when no longer required to be maintained by regulatory requirements.

Form MCSA-5875 OMB No.: 2126-0006

Last Name: _____ First Name: _____ DOB: _____ Exam Date: _____

DRIVER HEALTH HISTORY *(continued)*

Do you have or have you ever had:	Yes	No	Not Sure
1. Head/brain injuries or illnesses *(e.g., concussion)*	○	○	○
2. Seizures/epilepsy	○	○	○
3. Eye problems *(except glasses or contacts)*	○	○	○
4. Ear and/or hearing problems	○	○	○
5. Heart disease, heart attack, bypass, or other heart problems	○	○	○
6. Pacemaker, stents, implantable devices, or other heart procedures	○	○	○
7. High blood pressure	○	○	○
8. High cholesterol	○	○	○
9. Chronic (long-term) cough, shortness of breath, or other breathing problems	○	○	○
10. Lung disease *(e.g., asthma)*	○	○	○
11. Kidney problems, kidney stones, or pain/problems with urination	○	○	○
12. Stomach, liver, or digestive problems	○	○	○
13. Diabetes or blood sugar problems	○	○	○
Insulin used	○	○	○
14. Anxiety, depression, nervousness, other mental health problems	○	○	○
15. Fainting or passing out	○	○	○
16. Dizziness, headaches, numbness, tingling, or memory loss	○	○	○
17. Unexplained weight loss	○	○	○
18. Stroke, mini-stroke (TIA), paralysis, or weakness	○	○	○
19. Missing or limited use of arm, hand, finger, leg, foot, toe	○	○	○
20. Neck or back problems	○	○	○
21. Bone, muscle, joint, or nerve problems	○	○	○
22. Blood clots or bleeding problems	○	○	○
23. Cancer	○	○	○
24. Chronic (long-term) infection or other chronic diseases	○	○	○
25. Sleep disorders, pauses in breathing while asleep, daytime sleepiness, loud snoring	○	○	○
26. Have you ever had a sleep test *(e.g., sleep apnea)*?	○	○	○
27. Have you ever spent a night in the hospital?	○	○	○
28. Have you ever had a broken bone?	○	○	○
29. Have you ever used or do you now use tobacco?	○	○	○
30. Do you currently drink alcohol?	○	○	○
31. Have you used an illegal substance within the past two years?	○	○	○
32. Have you ever failed a drug test or been dependent on an illegal substance?	○	○	○

Other health condition(s) not described above: ○ **Yes** ○ **No** ○ **Not Sure**

Did you answer "yes" to any of questions 1-32? If so, please comment further on those health conditions below: ○ **Yes** ○ **No** ○ **Not Sure**

(Attach additional sheets if necessary)

CMV DRIVER'S SIGNATURE

I certify that the above information is accurate and complete. I understand that inaccurate, false or missing information may invalidate the examination and my Medical Examiner's Certificate, that submission of fraudulent or intentionally false information is a violation of 49 CFR 390.35, and that submission of fraudulent or intentionally false information may subject me to civil or criminal penalties under 49 CFR 390.37 and 49 CFR 386 Appendices A and B.

Driver's Signature: _____ Date: _____

SECTION 2. Examination Report *(to be filled out by the medical examiner)*

DRIVER HEALTH HISTORY REVIEW

Review and discuss pertinent driver answers and any available medical records. Comment on the driver's responses to the "health history" questions that may affect the driver's safe operation of a commercial motor vehicle (CMV).

(Attach additional sheets if necessary)

Form MCSA-5875 **OMB No.: 2126-0006**

Last Name: _____ First Name: _____ DOB: _____ Exam Date: _____

TESTING

Pulse Rate: _____ Pulse rhythm regular: ◯ Yes ◯ No Height: ___ *feet* ___ *inches* Weight: ____ *pounds*

Blood Pressure	Systolic	Diastolic
Sitting		
Second reading *(optional)*		

Urinalysis	Sp. Gr.	Protein	Blood	Sugar
Urinalysis is required. Numerical readings must be recorded.				

Other testing if indicated

Protein, blood, or sugar in the urine may be an indication for further testing to rule out any underlying medical problem.

Vision

Standard is at least 20/40 acuity (Snellen) in each eye with or without correction. At least 70° field of vision in horizontal meridian measured in each eye. The use of corrective lenses should be noted on the Medical Examiner's Certificate.

Acuity	Uncorrected	Corrected	Horizontal Field of Vision
Right Eye:	20/_____	20/_____	Right Eye: _____ degrees
Left Eye:	20/_____	20/_____	Left Eye: _____ degrees
Both Eyes:	20/_____	20/_____	

	Yes	No
Applicant can recognize and distinguish among traffic control signals and devices showing red, green, and amber colors	◯	◯
Monocular vision	◯	◯
Referred to ophthalmologist or optometrist?	◯	◯
Received documentation from ophthalmologist or optometrist?	◯	◯

Hearing

Standard: Must first perceive whispered voice at not less than 5 feet ***OR*** *average hearing loss of less than or equal to 40 dB, in better ear (with or without hearing aid).*

Check if hearing aid used for test: ☐ Right Ear ☐ Left Ear ☐ Neither

Whisper Test Results	Right Ear	Left Ear
Record distance *(in feet)* from driver at which a forced whispered voice can first be heard		

OR

Audiometric Test Results

Right Ear:			Left Ear:		
500 Hz	1000 Hz	2000 Hz	500 Hz	1000 Hz	2000 Hz

Average (right): _____ Average (left): _____

PHYSICAL EXAMINATION

The presence of a certain condition may not necessarily disqualify a driver, particularly if the condition is controlled adequately, is not likely to worsen, or is readily amenable to treatment. Even if a condition does not disqualify a driver, the Medical Examiner may consider deferring the driver temporarily. Also, the driver should be advised to take the necessary steps to correct the condition as soon as possible, particularly if neglecting the condition could result in a more serious illness that might affect driving.

Check the body systems for abnormalities.

Body System	Normal	Abnormal	**Body System**	Normal	Abnormal
1. General	◯	◯	8. Abdomen	◯	◯
2. Skin	◯	◯	9. Genito-urinary system including hernias	◯	◯
3. Eyes	◯	◯	10. Back/spine	◯	◯
4. Ears	◯	◯	11. Extremities/joints	◯	◯
5. Mouth/throat	◯	◯	12. Neurological system including reflexes	◯	◯
6. Cardiovascular	◯	◯	13. Gait	◯	◯
7. Lungs/chest	◯	◯	14. Vascular system	◯	◯

Discuss any abnormal answers in detail in the space below and indicate whether it would affect the driver's ability to operate a CMV. Enter applicable item number before each comment.

(Attach additional sheets if necessary)

Form MCSA-5875 OMB No.: 2126-0006

Last Name: _____ First Name: _____ DOB: _____ Exam Date: _____

Please complete only one of the following (Federal or State) Medical Examiner Determination sections:

MEDICAL EXAMINER DETERMINATION (Federal)

Use this section for examinations performed in accordance with the Federal Motor Carrier Safety Regulations (49 CFR 391.41-391.49):

◯ Does not meet standards *(specify reason)*: _____

◯ Meets standards in 49 CFR 391.41; qualifies for 2-year certificate

◯ Meets standards, but periodic monitoring required *(specify reason)*: _____

Driver qualified for: ◯ 3 months ◯ 6 months ◯ 1 year ◯ other *(specify)*: _____

☐ Wearing corrective lenses ☐ Wearing hearing aid ☐ Accompanied by a waiver/exemption *(specify type)*: _____

☐ Accompanied by a Skill Performance Evaluation (SPE) Certificate ☐ Qualified by operation of 49 CFR 391.64 *(Federal)*

☐ Driving within an exempt intracity zone *(see 49 CFR 391.62) (Federal)*

◯ Determination pending *(specify reason)*: _____

☐ Return to medical exam office for follow-up on *(must be 45 days or less)*: _____

☐ Medical Examination Report amended *(specify reason)*: _____

(if amended) Medical Examiner's Signature: _____ Date: _____

◯ Incomplete examination *(specify reason)*: _____

If the driver meets the standards outlined in 49 CFR 391.41, then complete a Medical Examiner's Certificate as stated in 49 CFR 391.43(h), as appropriate.

I have performed this evaluation for certification. I have personally reviewed all available records and recorded information pertaining to this evaluation, and attest that, to the best of my knowledge, I believe it to be true and correct.

Medical Examiner's Signature: _____

Medical Examiner's Name *(please print or type)*: _____

Medical Examiner's Address: _____ City: _____ State: _____ Zip Code: _____

Medical Examiner's Telephone Number: _____ Date Certificate Signed: _____

Medical Examiner's State License, Certificate, or Registration Number: _____ Issuing State: _____

☐ MD ☐ DO ☐ Physician Assistant ☐ Chiropractor ☐ Advanced Practice Nurse

☐ Other Practitioner *(specify)*: _____

National Registry Number: _____ Medical Examiner's Certificate Expiration Date: _____

Form MCSA-5875 **OMB No.: 2126-0006**

Last Name: _____ First Name: _____ DOB: _____ Exam Date: _____

MEDICAL EXAMINER DETERMINATION (State)

Use this section for examinations performed in accordance with the Federal Motor Carrier Safety Regulations (49 CFR 391.41-391.49) with any applicable State variances (which will only be valid for intrastate operations):

◯ Does not meet standards in 49 CFR 391.41 with any applicable State variances *(specify reason)*: _____

◯ Meets standards in 49 CFR 391.41 with any applicable State variances

◯ Meets standards, but periodic monitoring required *(specify reason)*: _____

Driver qualified for: ◯ 3 months ◯ 6 months ◯ 1 year ◯ other *(specify)*: _____

☐ Wearing corrective lenses ☐ Wearing hearing aid ☐ Accompanied by a waiver/exemption *(specify type)*: _____

☐ Accompanied by a Skill Performance Evaluation (SPE) Certificate ☐ Grandfathered from State requirements *(State)*

If the driver meets the standards outlined in 49 CFR 391.41, with applicable State variances, then complete a Medical Examiner's Certificate, as appropriate.

I have performed this evaluation for certification. I have personally reviewed all available records and recorded information pertaining to this evaluation, and attest that, to the best of my knowledge, I believe it to be true and correct.

Medical Examiner's Signature: _____

Medical Examiner's Name *(please print or type)*: _____

Medical Examiner's Address: _____ City: _____ State: _____ Zip Code: _____

Medical Examiner's Telephone Number: _____ Date Certificate Signed: _____

Medical Examiner's State License, Certificate, or Registration Number: _____ Issuing State: _____

☐ MD ☐ DO ☐ Physician Assistant ☐ Chiropractor ☐ Advanced Practice Nurse

☐ Other Practitioner *(specify)*: _____

National Registry Number: _____ Medical Examiner's Certificate Expiration Date: ☐

Instructions for Completing the Medical Examination Report Form (MCSA-5875)

I. Step-By-Step Instructions

Driver:

Section 1: Driver Information

- **Personal Information:** Please complete this section using your name as written on your driver's license, your current address and phone number, your date of birth, age, driver's license number and issuing state.
  - **CLP/CDL Applicant/Holder:** Check "yes" if you are a commercial learner's permit (**CLP**) or commercial driver's license (**CDL**) holder, or are applying for a CLP or CDL. CDL means a license issued by a State or the District of Columbia which authorizes the individual to operate a class of a commercial motor vehicle (**CMV**). A CMV that requires a CDL is one that: (1) has a gross combination weight rating or gross combination weight of 26,001 pounds or more inclusive of a towed unit with a gross vehicle weight rating (**GVWR**) or gross vehicle weight (**GVW**) of more than 10,000 pounds; or (2) has a GVWR or GVW of 26,001 pounds or more; or (3) is designed to transport 16 or more passengers, including the driver; or (4) is used to transport either hazardous materials requiring hazardous materials placards on the vehicle or any quantity of a select agent or toxin.
  - **Driver ID Verified By:** The Medical Examiner/staff completes this item and notes the type of photo ID used to verify the driver's identity such as, commercial driver's license, driver's license, or passport, etc.
  - **Has your USDOT/FMCSA medical certificate ever been denied or issued for less than two years?** Please check the correct box "yes" or "no" and if you aren't sure check the "not sure" box.
- **Driver Health History:**
  - **Have you ever had surgery:** Please check "yes" if you have ever had surgery and provide a written explanation of the details (type of surgery, date of surgery, etc.)
  - **Are you currently taking medications (prescription, over-the-counter, herbal remedies, diet supplements):** Please check "yes" if you are taking any diet supplements, herbal remedies, or prescription or over the counter medications. In the box below the question, indicate the name of the medication and the dosage.
  - **#1-32:** Please complete this section by checking the "yes" box to indicate that you have, or have ever had, the health condition listed or the "No" box if you have not. Check the "not sure" box if you are unsure.
  - **Other Health Conditions not described above:** If you have, or have had, any other health conditions not listed in the section above, check "Yes" and in the box provided and list those condition(s).
  - **Any yes answers to questions #1-32 above:** If you have answered "yes" to any of the questions in the Driver Health History section above, please explain your answers further in the box below the question. For example, if you answered "yes" to question #5 regarding heart disease, heart attack, bypass, or other heart problem, indicate which type of heart condition. If you checked "yes" to question #23 regarding cancer, indicate the type of cancer. Please add any information that will be helpful to the Medical Examiner.
- **CMV Driver Signature and Date:** Please read the certification statement, sign and date it, indicating that the information you provided in Section 1 is accurate and complete.

Medical Examiner:

Section 2: Examination Report

- **Driver Health History Review:** Review answers provided by the driver in the driver health history section and discuss any "yes" and "not sure" responses. In addition, be sure to compare the medication list to the health history responses ensuring that the medication list matches the medical conditions noted. Explore with the driver any answers that seem unclear. Record any information that the driver omitted. As the Medical Examiner conducting the driver's physical examination you are required to complete the entire medical examination even if you detect a medical condition that you consider disqualifying, such as deafness. Medical Examiners are expected to determine the driver's physical qualification for operating a commercial vehicle safely. Thus, if you find a disqualifying condition for which a driver may receive a Federal Motor Carrier Safety Administration medical exemption, please record that on the driver's Medical Examiner's Certificate, Form MCSA-5876, as well as on the Medical Examination Report Form, MCSA-5875.
- **Testing:**
  - **Pulse rate and rhythm, height, and weight:** record these as indicated on the form.
  - **Blood Pressure:** record the blood pressure (systolic and diastolic) of the driver being examined. A second reading is optional and should be recorded if found to be necessary.
  - **Urinalysis:** record the numerical readings for the specific gravity, protein, blood and sugar.
  - **Vision:** The current vision standard is provided on the form. When other than the Snellen chart is used, give test results in Snellen-comparable values. When recording distance vision, use 20 feet as normal. Record the vision acuity results and indicate if the driver can recognize and distinguish among traffic control signals and devices showing red, green, and amber colors; has monocular vision; has been referred to an ophthalmologist or optometrist; and if documentation has been received from an ophthalmologist or optometrist.
  - **Hearing:** The current hearing standard is provided on the form. Hearing can be tested using either a whisper test or audiometric test. Record the test results in the corresponding section for the test used.
- **Physical Examination:** Check the body systems for abnormalities and indicate normal or abnormal for each body system listed. Discuss any abnormal answers in detail in the space provided and indicate whether it would affect the driver's ability to safely operate a commercial motor vehicle.

In this next section, you will be completing either the Federal or State determination, not both.

- **Medical Examiner Determination (Federal):** Use this section for examinations performed in accordance with the FMCSRs (49 CFR 391.41-391.49). Complete the medical examiner determination section completely. When determining a driver's physical qualification, please note that English language proficiency (49 CFR part 391.11: General qualifications of drivers) is not factored into that determination.
  - **Does not meet standards:** Select this option when a driver is determined to be not qualified and provide an explanation of why the driver does not meet the standards in 49 CFR 391.41.
  - **Meets standards in 49 CFR 391.41; qualifies for 2-year certification:** Select this option when a driver is determined to be qualified and will be issued a 2-year Medical Examiner's Certificate.

- **Meets standards, but periodic monitoring is required:** Select this option when a driver is determined to be qualified but needs periodic monitoring and provide an explanation of why periodic monitoring is required. Select the corresponding time frame that the driver is qualified for, and if selecting "other" specify the time frame.
  - — **Determination that driver meets standards:** Select all categories that apply to the driver's certification (e.g., wearing corrective lenses, accompanied by a waiver/exemption, driving within an exempt intracity zone, etc.).
- **Determination pending:** Select this option when more information is needed to make a qualification decision and specify a date, on or before the 45 day expiration date, for the driver to return to the medical exam office for follow-up. This will allow for a delay of the qualification decision for as many as 45 days. If the disposition of the pending examination is not updated via the National Registry on or before the 45 day expiration date, FMCSA will notify the examining medical examiner and the driver in writing that the examination is no longer valid and that the driver is required to be re-examined.
  - — **MER amended:** A Medical Examination Report Form (MER), MCSA-5875, may only be amended while in determination pending status for situations where new information (e.g., test results, etc.) has been received or there has been a change in the driver's medical status since the initial examination, but prior to a final qualification determination. Select this option when a Medical Examination Report Form, MCSA-5875, is being amended; provide the reason for the amendment, sign and date. In addition, initial and date any changes made on the Medical Examination Report Form, MCSA-5875. A Medical Examination Report Form, MCSA-5875, cannot be amended after an examination has been in determination pending status for more than 45 days or after a final qualification determination has been made. The driver is required to obtain a new physical examination and a new Medical Examination Report Form, MCSA-5875, should be completed.
- **Incomplete examination:** Select this when the physical examination is not completed for any reason (e.g., driver decides they do not want to continue with the examination and leaves) other than situations outlined under determination pending.
- **Medical Examiner information, signature and date:** Provide your name, address, phone number, occupation, license, certificate, or registration number and issuing state, national registry number, signature and date.
- **Medical Examiner's Certificate Expiration Date:** Enter the date the **driver's** Medical Examiner's Certificate (MEC) expires.

- **Medical Examiner Determination (State):** Use this section for examinations performed in accordance with the FMCSRs (49 CFR 391.41-391.49) with any applicable State variances (which will only be valid for intrastate operations). Complete the medical examiner determination section completely.
  - **Does not meet standards in 49 CFR 391.41 with any applicable State variances:** Select this option when a driver is determined to be not qualified and provide an explanation of why the driver does not meet the standards in 49 CFR 391.41 with any applicable State variances.
  - **Meets standards in 49 CFR 391.41 with any applicable State variances:** Select this option when a driver is determined to be qualified and will be issued a 2-year Medical Examiner's Certificate.

- **Meets standards, but periodic monitoring is required:** Select this option when a driver is determined to be qualified but needs periodic monitoring and provide an explanation of why periodic monitoring is required. Select the corresponding time frame that the driver is qualified for, and if selecting "other" specify the time frame.
  - **Determination that driver meets standards:** Select all categories that apply to the driver's certification (e.g., wearing corrective lenses, accompanied by a waiver/exemption, etc.).
- **Medical Examiner information, signature and date:** Provide your name, address, phone number, occupation, license, certificate, or registration number and issuing state, national registry number, signature and date.
- **Medical Examiner's Certificate Expiration Date:** Enter the date the **driver's** Medical Examiner's Certificate (MEC) expires.

II. If updating an existing exam, you must resubmit the new exam results, via the Medical Examination Results Form, MCSA-5850, to the National Registry, and the most recent dated exam will take precedence.

III. To obtain additional information regarding this form go to the Medical Program's page on the Federal Motor Carrier Safety Administration's website at http://www.fmcsa.dot.gov/regulations/medical.

* * * * *

■ 32. Amend § 391.64 by revising the section heading to read as follows:

§ 391.64 Grandfathering for certain drivers who participated in a vision waiver study program.

* * * * *

Issued under authority delegated in 49 CFR 1.87.

Meera Joshi,

Deputy Administrator.

[FR Doc. 2021–13888 Filed 7–6–21; 8:45 am]

BILLING CODE 4910–EX–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 210629–0138]

RIN 0648–BG66

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Requirements To Safeguard Fishery Observers

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

ACTION: Final rule.

SUMMARY: Under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act), NMFS issues this final rule establishing requirements to safeguard fishery observers and establishing pre-trip notification procedures for observer placement. This action is necessary to satisfy the obligations of the United States under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), to which it is a Contracting Party.

DATES: This rule is effective on August 6, 2021.

ADDRESSES: Copies of supporting documents prepared for this final rule, including the regulatory impact review (RIR), as well as the proposed rule (85 FR 66513; October 20, 2020), are available via the Federal e-rulemaking Portal, at *www.regulations.gov* (search for Docket ID NOAA–NMFS–2020–0125). Those documents are also available from NMFS at the following address: Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

A final regulatory flexibility analysis (FRFA) prepared under authority of the Regulatory Flexibility Act is included in the Classification section of the **SUPPLEMENTARY INFORMATION** section of this document.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to PIRO at the address listed above, by email to *OIRA_Submission@omb.eop.gov,* or by fax to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Valerie Post, NMFS PIRO, 808–725–5034.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 2020, NMFS published a proposed rule in the **Federal Register** (85 FR 66513) proposing to establish requirements to safeguard fishery observers and to establish pre-trip notification procedures for observer placement. The 30-day public comment period for the proposed rule closed on November 19, 2020.

The final rule is issued under the authority of the WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), which authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC or Commission). The WCPFC Implementation Act further provides that the Secretary of Commerce shall ensure consistency, to the extent practicable, of fishery management programs administered under the WCPFC Implementation Act and the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*), as well as other specific laws (see 16 U.S.C. 6905(b)). The Secretary of Commerce has delegated the authority to promulgate regulations under the WCPFC Implementation Act to NMFS. A map showing the boundaries of the area of application of the Convention (Convention Area), which comprises the majority of the WCPO, can be found on the WCPFC website at: *www.wcpfc.int/doc/convention-area-map.*

This final rule implements specific provisions of Conservation and Management Measure (CMM) 2017–03, ''Conservation and Management Measure for WCPFC Regional Programme Observers,'' as well as establishes pre-trip notification procedures for observer placement. The preamble to the proposed rule provides background information, including information on the Convention and the Commission, the provisions that are being implemented in this rule, and the basis for the regulations, which is not repeated here.

The Action

The specific elements of the final rule are detailed below.

1. Observer Safety Requirements

This final rule implements specific requirements for vessel owners and operators to help ensure the safety of WCPFC observers.[1] CMM 2017–03 describes requirements for vessel owners and operators specifically related to vessel operations, notification, search and rescue procedures, and investigations in the event of death, injury, serious illness, missing overboard, or harassment of a WCPFC observer.

NMFS is not promulgating additional regulations in the event of death, loss or serious injury as they would be duplicative of U.S. Coast Guard regulations on marine casualties and investigations at 46 CFR part 4.

Under the final rule, vessel owners and operators are required to notify the designated authorities as specified by the Regional Administrator at *https://www.fisheries.noaa.gov/pacific-islands/commercial-fishing/western-and-central-pacific-longline-and-purse-seine-vessels* in the event of serious illness, assault, intimidation, threats, interference, or harassment of a WCPFC observer. NMFS has created a website that provides specific contact information of the designated authorities, including emails and phone numbers. At this time, NMFS has identified the observer provider and NOAA Office of Law Enforcement Pacific Islands Division Duty Officer as contacts in the event of serious assault,

[1] A WCPFC observer is a person authorized by the Commission in accordance with any procedures established by the Commission to undertake vessel observer duties as part of the Commission's Regional Observer Programme (ROP), including an observer deployed as part of a NMFS-administered observer program or as part of another national or sub-regional observer program, provided that such program is authorized by the Commission to be part of the Commission's ROP (see 50 CFR 300.211).

intimidation, threats, interference or harassment of a WCPFC observer, and the NOAA Office of Law Enforcement in the event of serious illness. Any changes or updates to these contacts will be posted on the website. Owners and operators are required to immediately notify the contacts of the situation and the status and location of the observer.

NMFS does not maintain a 24-hour hotline to handle search and rescue or urgent law enforcement response. Thus, in emergency situations that need an immediate response, vessel owners and operators are encouraged to contact the nearest U.S. Coast Guard Rescue Coordination Center (RCC) that can help coordinate with the closest Search and Rescue (SAR) facility in the area of the vessel: *https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Response-Policy-CG-5R/Office-of-Incident-Management-Preparedness-CG-5RI/US-Coast-Guard-Office-of-Search-and-Rescue-CG-SAR/RCC-Numbers/.*

In addition, under the final rule, the vessel owner or operator would be required to follow certain procedures in the event of serious illness, assault, intimidation, threats, interference or harassment of a WCPFC observer. The rule would require that, in these cases, the owner or operator of the fishing vessel must: (1) Immediately cease fishing operations; (2) take all reasonable actions to care for the observer and provide any medical treatment available and possible on board the vessel; (3) where directed by the observer provider, if not already directed by the appropriate U.S. Government contact, facilitate the disembarkation and transport of the observer to a medical facility equipped to provide the required care, as soon as practicable; and (4) cooperate fully in any official investigations into the cause of the illness or incident.

As stated above, the final rule specifies that the owner or operator of the fishing vessel must ''immediately cease fishing operations'' in the event of serious illness, assault, intimidation, threats, interference or harassment of a WCPFC observer. NMFS anticipates that there may be circumstances where ''immediately cease'' could allow for gear to be retrieved and NMFS does not encourage abandoning fishing gear. Although the owner or operator of a vessel is required to immediately cease fishing operations, this rule would not prohibit reasonable steps to recover gear and catch, if appropriate under the circumstances.

2. Pre-Trip Notification Procedures for Vessels Requiring a WCPFC Observer

To facilitate the placement of WCPFC observers on U.S. purse seine vessels when departing from American Samoa, this final rule requires U.S. purse seine vessel owners and operators to submit notifications to NMFS at least five business days before expected departure. The notification must include the name of the vessel, name of the operator of the vessel, telephone number or email at which the owner or operator may be contacted, and intended departure date.

As stated in the preamble to the proposed rule, after reviewing the current administrative process for observer placements, NMFS believes such notifications are needed to facilitate observer placement for trips departing from American Samoa.

NMFS notes that a variety of factors may influence a vessel's departure date, including the availability of an observer. Pursuant to the South Pacific Tuna Treaty (SPTT) and through a separate contractual agreement between the American Tunaboat Association (ATA) and the Pacific Islands Forum Fisheries Agency (FFA), U.S. purse seine vessels carry observers deployed by the FFA Observer Program. FFA observers are authorized WCPFC observers and are nationals of Pacific Island countries. Currently, NMFS coordinates with FFA and places WCPFC observers on U.S. purse seine vessels departing from American Samoa. As such, NMFS cannot guarantee that an observer will be placed within five business days of a request. Similarly, an observer may be placed earlier than five business days from intended departure (*e.g.,* an observer on board the vessel decides to continue on board for another trip), in which case the vessel may leave port earlier than the intended departure date specified in the notification. NMFS is clarifying in this final rule that the departure date submitted in the notification is the vessel owner or operator's intended departure date and not necessarily the date the vessel actually leaves port.

In the proposed rule, NMFS also proposed a pre-trip notification requirement of five business days prior to expected departure for vessels requesting a cross-endorsed observer.[2] This requirement would have applied to vessels of any gear type requesting a cross-endorsed observer though to-date only U.S. purse seine vessels have used cross-endorsed observers. NMFS has reviewed its existing processes for cross-endorsed observer requests, including a pre-trip notification requirement of at least five days prior to vessel departure at 50 CFR 216.24(b)(8)(iv)(A) for requests for cross-endorsed observers in the eastern Pacific Ocean (EPO), which became effective on September 18, 2020 (85 FR 58297; September 18, 2020). As the requirements for the EPO for requesting a cross-endorsed observer also apply to those purse seine vessels in the WCPO requesting a cross-endorsed observer, NMFS has decided not to implement the cross-endorsed observer notification requirements specified in the proposed rule.

Public Comments and Responses

NMFS received two comment letters on the proposed rule. Below, NMFS summarizes the matters raised in each of the individual comment letters, grouping similar comments together, and provides a response to each of these matters.

Comment 1: One commenter provided a general statement of support for the proposed rule so that observers would be protected when carrying out their duties. Another commenter provided a statement of support for NMFS to implement CMM 2017–03 and to protect observer health and safety.

Response: NMFS acknowledges the comments.

Comment 2: One commenter noted that CMM 2017–03 and the proposed regulatory language outline requirements for vessel owners or operators to follow in the event that an observer is seriously ill and requirements for vessel owners and operators to follow in the event of assault, intimidation, threats or harassment, but that the proposed rule's preamble erroneously characterized the requirements as being the same for the two types of events. The commenter requested that the final rule correct this misstatement and clarify that the regulatory language of the proposed rule and the provisions of CMM 2017–03 are what NMFS is promulgating.

Response: NMFS agrees that CMM 2017–03 describes specific requirements in the event that an observer is seriously ill and specific requirements in the event that an observer has been assaulted, intimidated, threatened or harassed. Although NMFS described the processes as similar in the proposed rule's preamble, the proposed regulatory text clearly differentiated between the events, in accordance with the language in CMM 2017–03. NMFS clarifies here

[2] A cross-endorsed observer is an observer that is ''cross-endorsed'' pursuant to a Memorandum of Cooperation between the Commission and the Inter-American Tropical Tuna Commission (IATTC) that specifies a process to allow the observer to meet the observer requirements of both organizations.

that in the event of serious illness, the owner and operator of the fishing vessel must: (1) Immediately cease fishing operations, (2) take all reasonable action to care for the observer and provide any medical treatment available and possible aboard the vessel; (3) where directed by the observer provider, if not already directed by the appropriate U.S. Government contact, facilitate the disembarkation and transport of the observer to a medical facility equipped to provide the required care, as soon as practicable, and (4) cooperate fully in any official investigation as to the cause of the illness. Additionally, in the event that an observer has been assaulted, intimidated, threatened or harassed, the owner and operator of the fishing vessel must: (1) Immediately take action to preserve the safety of the observer and mitigate and resolve the situation on board; (2) if the observer or the observer provider indicate that they wish to be removed from the vessel, facilitate the safe disembarkation of the observer in a manner and place, as agreed by the observer provider and a U.S. Government contact, that facilitates access to any needed medical treatment; and (3) cooperate fully in any official investigations into the incident.

Comment 3: One commenter requested that NMFS clarify that the observer safety protocols applicable to where an observer has been assaulted, intimidated, threatened, or harassed are triggered only where the vessel owner or operator either: (1) Has firsthand knowledge that the observer was assaulted, intimidated, threatened, or harassed (*i.e.,* saw or overhead the problem); or (2) where the vessel owner or operator has been presented with objective evidence from the observer or others clearly showing that the observer has been assaulted, intimidated, threatened, or harassed. The commenter stated that a response to mere allegations of harassment could result in costly ramifications if they are unjustified. The commenter noted that the proposed rule calculated the potential foregone opportunity for purse seine vessels as high as the revenue from a trip at $1.4 million dollars, and asserted that the costs were disproportionate compared to other fisheries being regulated under the same rule. The commenter stated that these clarifications are necessary to ensure that vessel owners and operators are afforded appropriate due process protections and that compliance costs and penalties are fairly applied. The commenter stated that without amendment or clarification by NMFS, the proposed rule could subject vessel owners or operators to penalties for not immediately knowing that one of the conditions triggering a set of duties has occurred. Although the commenter stated that NMFS would likely not impose penalties for not taking quick enough action where delay primarily was attributable to neither the vessel owner nor operator knowing about the observer's illness or other issues, the commenter requested that NMFS clarify that the respective duties to act are triggered when either the vessel owner or operator knows of the observer's condition triggering the duties.

Response: CMM 2017–03 does not qualify that these protocols are only triggered if vessel owners and operators have firsthand knowledge or have an evidentiary standard. Moreover, as discussed in the RIR, NMFS projects that these incidents will occur infrequently. Thus, NMFS does not believe it appropriate to limit the protocols accordingly.

Under the regulations at 50 CFR 300.43(a)(3), purse seine vessels operating under the SPTT, which includes most purse seine vessels fishing within the Convention Area, are required to disembark observers at the point and time notified by the FFA to the U.S. Government. This requirement is already in place and is not limited to observer safety-related events. NMFS also notes that similar observer safety protocol requirements to this rule are also already in place for vessels operating in the EPO under regulations at 50 CFR 300.29 so vessels operating in the EPO are already subject to them.

The intent of this rulemaking is protect observer safety and not necessarily to pre-judge the outcome of any investigation. NMFS disagrees with the statement that the proposed text does not afford due process protections. The rule will encourage owners and operators of U.S. purse seine vessels to take affirmative steps to train their crews and to prevent acts of harassment against observers. Under CMM 2017–03, the United States has the responsibility under the CMM to investigate any alleged incidents.

Moreover, NMFS believes the rule would not have disproportionate effects on purse seine vessels, but rather would affect all vessels equally in proportion to their individual trip costs.

Comment 4: One commenter stated that they opposed the proposed change to require purse seine vessels to provide pre-trip notifications and requests for observers because the scope of the requirement is not clear. The commenter stated that the preamble described reasons for the need for pre-trip notification for trips departing from American Samoa, but did not feel that the preamble identified specific shortcomings or deficiencies to the current process that justified the new requirement. The commenter noted that purse seine vessels cannot depart unless an observer is onboard, and did not feel there was sufficient explanation as to why the pre-trip notification requirement applies to when requesting a cross-endorsed observer and when departing from ports other than American Samoa. The commenter stated that they believed that the pre-trip notification requirement of five business days prior to trip departure would restrict operational flexibility and would result in larger costs to purse seine vessels than what are described in the proposed rule. The commenter requested that the pre-trip notification period be shortened to 48 hours if NMFS believes there is a real need for the requirement. Finally, the commenter requested confirmation that the pre-trip notification requirement does not apply to owners and operators of purse seine vessels picking up observers at ports other than American Samoa if they are not seeking a cross-endorsed observer.

Response: NMFS confirms that the pre-trip notification requirements apply to purse seine vessels requesting a WCPFC observer and departing from American Samoa and the requirements do not apply to vessels picking up observers at ports other than American Samoa. As discussed above, NMFS has also re-evaluated the need for pre-trip notification for vessels requesting placement of a cross-endorsed observer regardless of port of departure, and decided not to implement this requirement in this final rule because a similar requirement for cross-endorsed observer requests has already been implemented at 50 CFR 216.24(a)(8)(iv).

NMFS continues to believe that the notification prior to a trip is necessary for purse seine trips departing from American Samoa and requesting a WCPFC observer.

NMFS facilitates entry into American Samoa for WCPFC observers being placed on purse seine vessels. If adequate pre-trip notification is not given, entry into American Samoa may be delayed and this could delay placement of the observer and therefore vessel departure. As the placement of WCPFC observers on purse seine vessels is provided currently by FFA, vessel owners and operators have an incentive to ensure that adequate notice is given to ensure that observers can travel to the port of departure. Given that these observers are nationals from other countries, NMFS assists with obtaining the necessary entry permits into

American Samoa. NMFS commits significant resources facilitating the deployment of these observers in Pago Pago. The requirements in this final rule formalize an informal process that is already in place.

As stated above, this rule does not guarantee that a WCPFC observer will be placed on board a purse seine vessel within five business days of a notification being submitted. Similarly, as the commenter noted there may be circumstances in which a WCPFC observer is already in American Samoa and fewer than five days may be needed for an observer to be placed on a purse seine vessel in those circumstances. NMFS acknowledges that there may be times where observer placement could occur more quickly. In this final rule NMFS has changed the regulatory text so that the date that must be provided in the notification is the intended date and not necessarily the date the vessel leaves port.

NMFS does not believe that the pre-trip notification requirement would restrict operational flexibility for purse seine vessels.

Changes From the Proposed Rule

This final rule includes four changes to the regulatory text from the proposed rule. NMFS has removed the regulatory text requiring pre-trip notification requests for cross-endorsed observers, as well as the definition of *WCPFC–IATTC cross-endorsed observer* associated with that requirement. NMFS has also changed the timing of the pre-trip notification requirement at 50 CFR 300.215(d)(2) for purse seine vessels departing from American Samoa such that the notification must be submitted at least five business days before the vessel owner's or operator's intended departure date rather than the actual departure date. NMFS has made editorial changes to correctly spell the WCPFC Regional Observer Programme in 50 CFR 300.215(f). NMFS also added paragraph (aaa) in 50 CFR 300.222 prohibiting the failure to provide pre-trip notification.

Classification

The Administrator, Pacific Islands Region, NMFS, has determined that this final rule is consistent with the WCPFC Implementation Act and other applicable laws.

Coastal Zone Management Act (CZMA)

NMFS determined that this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, and the State of Hawaii. NMFS submitted determinations to Hawaii and each of the Territories on March 16, 2020, for review by the responsible state and territorial agencies under section 307 of the CZMA. Hawaii replied by letter dated March 19, 2020, stating that, because the proposed rule is outside of the jurisdiction of the Hawaii Coastal Zone Management Program's enforceable policies, it would not be responding to the consistency determination. The CNMI replied by letter dated May 12, 2020, stating that based on the information provided, it has determined that the action will be undertaken in a manner that is consistent to the maximum extent practicable with the enforceable policies of the CNMI's coastal management program. Guam replied by letter dated May 27, 2020, stating that based on the information provided, it has determined that the action will be consistent with the enforceable policies of Guam's Coastal Management Program. No response was received from American Samoa, and thus, concurrence with the respective consistency determinations is presumed (15 CFR 930.41).

Executive Order 12866

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

Regulatory Flexibility Act (RFA)

A final regulatory flexibility analysis (FRFA) was prepared, as required by section 604 of the RFA. The FRFA incorporates the initial regulatory flexibility analysis (IRFA) prepared for the proposed rule. The analysis in the IRFA is not repeated here in its entirety. A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** section and this **SUPPLEMENTARY INFORMATION** section of the preamble of this final rule. The FRFA analysis follows: Significant Issues Raised by Public Comments in Response to the IRFA

See comment three and response by NMFS above for matters raised regarding the IRFA, which pertains to potential disproportionate burden for purse seine vessels.

Description of Small Entities to Which the Rule Will Apply

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 114111) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide.

This final rule would apply to owners and operators of U.S. commercial fishing vessels that fish for highly migratory species (HMS) in the Convention Area that: (1) Carry a WCPFC Observer or (2) purse seine for HMS in the Convention Area. This includes vessels in the purse seine, longline, and albacore troll fleets. The estimated number of affected fishing vessels is as follows based on the number of vessels on the WCPFC Record of Fishing Vessels as of March 2, 2021: 20 Purse seine vessels, 154 longline vessels, and 27 albacore troll vessels. Thus, the total estimated number of commercial fishing vessels that would be subject to the rule is 201. The purse seine vessels operating in the Convention Area generally land in American Samoa and other ports in Pacific Islands, the longline vessels operating in the Convention Area generally land in American Samoa and Hawaii, and the albacore troll vessels operating in the Convention Area generally land their catch in California, Oregon, Washington, or Canada.

Based on (limited) financial information about the affected fishing fleets, and using individual vessels as proxies for individual businesses, NMFS believes that all the affected fish harvesting businesses in all the fleets, except the purse seine fleet, are small entities as defined by the RFA; that is, they are independently owned and operated and not dominant in their fields of operation, and have annual receipts of no more than $11.0 million. Within the purse seine fleet, analysis of average revenue, by vessel, for 2017–2019 reveals that average fleet revenue was $8,212,000 (NMFS unpublished data combined with price data from *https://www.ffa.int/node/425* and *https://www.wcpfc.int/node/46580* accessed on July 27, 2020); however, 14 participating vessels qualified as small entities with their average of the most recent three years of vessel revenue for which data is available of less than $11 million. Within the Hawaii based longline fleet, an average of 146 vessels recorded landings during 2017–2019 with a average vessel revenue of approximately $828,000 per vessel (estimate calculated using data from the 2019 Pelagic Fishery Ecosystem Plan Stock Assessment and Fishery Evaluation Report and Annual Reports of the Hawaii Longline Fishery). For the

American Samoa based longline fleet, an average of 15 vessels recorded landings during 2017–2019 with average vessel revenue of approximately $339,000 per vessel (estimate calculated using data from the 2019 Pelagic Fishery Ecosystem Plan Stock Assessment and Fishery Evaluation Report and Annual Reports of the American Samoa Longline Fishery). None of the other potentially directly regulated fishing sectors had total fishery revenue of all vessels combined that exceeded the small entity threshold.

Recordkeeping, Reporting, and Other Compliance Requirements

The reporting, recordkeeping and other compliance requirements of this final rule are described earlier in the preamble. The classes of small entities subject to the requirements and the expected costs of complying with the requirements are described above in the Classification section of this final rule.

As described in the Paperwork Reduction Act (PRA) subsection below, this final rule contains a revised collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the PRA.

Fulfillment of the requirements under the final rule is not expected to require any professional skills that affected vessel owners and operators do not already possess.

(1) *Reporting requirements when carrying a WCPFC observer:* This requirement is part of a proposed collection of information subject to approval by OMB under the PRA. It would apply to about 195 small business entities, (derived from subtracting the six vessels that do not qualify as small business entities from 201, the number of fishing vessels affected by this rule as estimated from vessels with WCPFC area endorsements). Complying would require that owners and operators of purse seine, longline and troll vessels to contact NMFS in the event of serious illness, assault, intimidation, threats, interference, or harassment of a WCPFC observer. NMFS estimates the cost of compliance as the cost of a five minute phone call though the cost of compliance could vary depending on the directions given by NMFS. NMFS cannot project how many calls would occur, but from 2015–2019, NOAA Office of Law Enforcement charged a total of six cases of harassment against purse seine and longline vessels in the Pacific Islands Region. Thus, NMFS expects events of serious illness, assault, intimidation, threats, interference, or harassment of a WCPFC observer to occur very rarely (average of one per year) and thus the cost of reporting to be very small. The Commission has indefinitely deferred implementation of placing WCPFC observers on troll vessels, and for the foreseeable future, NMFS does not believe that this requirement would add any new compliance costs for troll vessels. If the Commission were to change its position on placing WCPFC observers on troll vessels, troll operators may incur compliance costs similar to those described above. Fulfillment of this requirement is not expected to require any professional skills that the vessel owners and operators do not already possess.

(2) *Requirement to ensure observer safety:* This requirement is outside of the proposed collection of information under the PRA. In the event of serious illness, assault, intimidation, threats, interference or harassment of a WCPFC observer, the proposed rule would require the owner or operator of the fishing vessel to: (1) Immediately cease fishing operations; (2) take all reasonable actions to care for the observer and provide any medical treatment available and possible on board the vessel; (3) where directed by the observer provider, if not already directed by the appropriate U.S. Government contact, facilitate the disembarkation and transport of the observer to a medical facility equipped to provide the required care, as soon as practicable; and (4) cooperate fully in any official investigations into the cause of the illness. NMFS cannot project how often this would occur, but anticipates these events to occur rarely. As mentioned above, NOAA Office of Law Enforcement has charged six cases of harassment against purse seine and longline vessels over 2015–2019 in the Pacific Islands Region, which equates to approximately one per year. If such an event does occur, the impacts could vary depending on when the event occurs and what foregone opportunity is lost. For illustrative purposes, the average gross revenue of a U.S. purse seine fishing trip from 2017–2019 was a little under $1.4 million per trip (calculated by multiplying Bangkok fish prices by average catch per trip using NMFS data) so if an event occurred near the start of a fishing trip, the vessel could potentially forgo much of that revenue along with any trip costs already incurred. For U.S. longline vessels the average gross revenue from 2017–2019 (calculated using nominal revenue and trip information from the 2019 Pelagic Fishery Ecosystem Plan Stock Assessment and Fishery Evaluation Report) was around $664,000 per Hawaii-based deep-set trip, $64,000 per Hawaii-based shallow-set trip, and $39,000 per American Samoa-based trip so if an event occurred near the start of a fishing trip, the vessel could potentially forgo much of that revenue along with any trip costs already incurred.

(3) *Notification requesting a WCPFC Observer:* This requirement is part of a proposed collection of information subject to approval by OMB under the PRA. It would apply to about 199 small business entities. Vessels are already required to provide notification prior to trip departure if they intend to transship at sea, and this proposed requirement would expand notification requirements to purse seine vessels requesting a WCPFC observer and departing from American Samoa.

The proposed requirement may result in compliance costs for purse seine vessels requesting a WCPFC observer when departing from American Samoa. It is estimated that each notification would require 1 minute of labor and about $1 in communication costs. The value of the required labor is estimated to be $24.42 per hour. The estimated cost of compliance is less than $2 per notification. The number of requests and notifications cannot be predicted with any certainty, but for the purpose of this analysis, each purse seine vessel is expected to make 3.57 requests or notifications per year related to WCPFC observers (estimate based on the average number of trips per year from 2016–2020 divided by 20, the number of expected potential respondents). The estimated cost of compliance is therefore expected to be $4.96 for a vessel that makes 3.57 pre-trip notifications per year.

Duplicating, Overlapping, and Conflicting Federal Regulations

NMFS has not identified any Federal regulations that conflict with these regulations. NMFS has identified several Federal regulations that overlap with the final rule:

As mentioned above, the U.S. Coast Guard has regulations at 46 CFR part 4 relating to marine casualties. This final rule implements the requirements of CMM 2017–03 that are not marine casualties covered by the existing U.S. Coast Guard regulations.

IATTC adopted Resolution C 18–07 on Observer Safety, and NMFS published a final rule on May 18, 2020 (85 FR 29666) related to actions required in the event of loss of life, serious illness or injury and assault, intimidation, threats or harassment to observers on vessels that are on fishing

trips in the IATTC Area. The regulations in this final rule and the regulations applicable to the IATTC Area would apply to WCPFC observers that are on vessels that are fishing in the IATTC Area, such as WCPFC observers that are also cross-endorsed observers. In this case, there would be overlapping regulations, but NMFS has ensured consistency in the protocols and in the contacts required in the event of serious illness, assault, intimidation, threats or harassment such that both requirements for notification would be satisfied with one notification.

Alternatives to the Final Rule

NMFS has not been able to identify any alternatives that would minimize any significant economic impact of the final rule on small entities. NMFS rejected the alternative of taking no action at all because it would be inconsistent with the United States' obligations under the Convention. As a Contracting Party to the Convention, the United States is required to implement the decisions of the WCPFC. Consequently, NMFS has limited discretion as to how to implement those decisions.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. NMFS has prepared a small entity compliance guide for this rule, and will send copies of the appropriate guide to holders of permits in the relevant fisheries. The guide and this final rule also will be available via the Federal e-rulemaking Portal, at *www.regulations.gov* (search for ID NOAA–NMFS–2020–0125) and by request from NMFS PIRO (see **ADDRESSES**).

Paperwork Reduction Act

This final rule contains a collection-of-information requirement subject to review and approval by OMB under the PRA. This rule changes the existing requirements for the collection of information 0648–0649, ''Transshipment Requirements Under the WCPFC,'' and requires reporting in the event of serious illness, assault, intimidation, threats, interference, or harassment of a WCPFC observer as well as pre-trip notifications for purse seine vessels requesting a purse seine observer and departing from American Samoa. Public reporting burden for reporting events of serious illness, assault, intimidation, threats, or harassment of a WCPFC observer is estimated to be 5 minutes per response, and public reporting burden for purse seine vessels requesting a purse seine observer and departing from American Samoa is estimated to average 1 minute per response, including the time for reviewing instructions searching existing data sources, gathering and maitnaing the data needed and completing and reviewing the collection of information.

At the proposed rule stage, NMFS had considered revising Control Number 0648–0214, ''Pacific Islands Region Logbook Family of Forms'' to include the observer safety collection of information requirements for longline vessels. NMFS now believes that it makes more sense to include the observer safety collection of information requirements for all gear types in Control Number 0648–0649, ''Transshipment Requirements Under the WCPFC'', so the 0648–0214 collection will not be revised.

We invite the general public and other Federal agencies to comment on proposed and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Written comments and recommendations for this information collection should be submitted at the following website *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by using the search function and entering either the title of the collection or the OMB Control Number 0648–0649.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: June 29, 2021.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species

■ 1. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

Authority: 16 U.S.C. 6901 *et seq.*

■ 2. In § 300.215, revise paragraph (b) and add paragraph (f) to read as follows:

§ 300.215 Observers.

* * * * *

(b) *Notifications.* (1) If a fishing vessel of the United States used for commercial fishing for HMS in the Convention Area intends to conduct transshipments at sea, the owner or operator of that fishing vessel is required to carry a WCPFC observer under paragraph (d) of this section during the fishing trip and shall notify the Pacific Islands Regional Administrator of the need for a WCPFC observer at least 72 hours (exclusive of weekends and Federal holidays) before the vessel leaves port on the fishing trip. The notice shall be provided to the Observer Placement Contact specified by the Pacific Islands Regional Administrator and must include the official number of the vessel, the name of the vessel, the intended departure date, time, and location, the name of the operator of the vessel, and a telephone number at which the owner, operator, or a designated agent may be contacted during the business day (8 a.m. to 5 p.m. Hawaii Standard Time). If applicable, this notice may be provided in conjunction with the notice required under § 665.803(a) of this title.

(2) In order to obtain a WCPFC observer on a fishing trip departing from American Samoa, the owner or operator of a fishing vessel of the United States equipped with purse seine gear shall provide the Pacific Islands Regional Administrator with the following information before departure on the fishing trip, at least five days (exclusive of weekends and Federal holidays) before the owner or operator of the fishing vessel's intended departure: The name of the vessel; name of the operator of the vessel; a telephone number or

email at which the owner or operator may be contacted; and the intended departure date. This information shall be provided to the address specified by the Pacific Islands Regional Administrator.

* * * * *

(f) *Observer safety.* The following requirements apply when a WCPFC observer is on a fishing trip operating under the Commission's Regional Observer Programme.

(1) The owner or operator of a fishing vessel of the United States shall immediately report the serious illness that threatens the health or safety of a WCPFC observer to the U.S Government contact on the list provided by the Pacific Islands Regional Administrator *at https://www.fisheries.noaa.gov/pacific-islands/commercial-fishing/western-and-central-pacific-longline-and-purse-seine-vessels.* In addition, the owner or operator of the fishing vessel must:

(i) Immediately cease fishing operations;

(ii) Take all reasonable actions to care for the observer and provide any medical treatment available and possible on board the vessel, and where appropriate seek external medical advice;

(iii) Where directed by the observer provider, if not already directed by the appropriate U.S. Government contact, facilitate the disembarkation and transport of the observer to a medical facility equipped to provide the required care, as soon as practicable; and

(iv) Cooperate fully in any official investigations into the cause of the illness.

(2) In the event that a WCPFC observer on a fishing vessel of the United States has been assaulted, intimidated, threatened, or harassed, the owner or operator of the fishing vessel shall immediately notify the U.S. Government contact and observer program contact on the list provided by the Pacific Islands Regional Administrator at *https://www.fisheries.noaa.gov/pacific-islands/commercial-fishing/western-and-central-pacific-longline-and-purse-seine-vessels* of the situation and the status and location of the observer. In addition, the owner or operator of the fishing vessel must:

(i) Immediately take action to preserve the safety of the observer and mitigate and resolve the situation on board;

(ii) If the observer or the observer provider indicate that they wish to be removed from the vessel, facilitate the safe disembarkation of the observer in a manner and place, as agreed by the observer provider and a U.S. Government contact, that facilitates access to any needed medical treatment; and

(iii) Cooperate fully in any official investigations into the incident.

■ 3. In § 300.222, add paragraphs (zz) and (aaa) to read as follows:

§ 300.222 Prohibitions.

* * * * *

(zz) Fail to comply with the observer safety requirements in § 300.215(f).

(aaa) Fail to provide pre-trip notification per requirements in § 300.215(b).

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Proposed Rules

Federal Register
Vol. 86, No. 127
Wednesday, July 7, 2021

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

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2020–BT–TP–0041]

RIN 1904–AE15

Energy Conservation Program: Test Procedures for Consumer Products; Early Assessment Review: Consumer Furnace Fans

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (''DOE'') is undertaking an early assessment review to determine whether amendments are warranted for the test procedure for consumer furnace fans. DOE has identified certain issues associated with the currently applicable test procedure on which DOE is interested in receiving comment. The issues outlined in this document mainly concern: Test settings (selection of airflow control settings and external static pressure (''ESP'') requirement for airflow settings other than the maximum setting); incorporation by reference of the most recent industry test method; clarifications for testing of certain products, including furnace fans with modulating controls, furnace fans and modular blowers tested with electric heat kits, certain two-stage furnaces that operate at reduced input only for a preset period of time, dual-fuel furnaces, and certain oil-fired furnaces; and issues related to test procedure repeatability and reproducibility. DOE welcomes written comments from the public on any subject within the scope of this document, including topics not raised in this request for information (''RFI'').

DATES: Written comments and information are requested and will be accepted on or before August 6, 2021.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2020–BT–TP–0041, by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email:* to *FurnFans2020TP0041@ee.doe.gov.* Include docket number 2020–BT–TP–0041 and/or RIN 1904–AE15 in the subject line of the message.

No telefacsimiles (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see section III of this document.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including email, postal mail, or hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the COVID–19 pandemic health emergency is resolved, DOE anticipates resuming its regular options for public comment submission, including postal mail and hand delivery/courier.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *https://www.regulations.gov.* All documents in the docket are listed in the *https://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at: *https://beta.regulations.gov/docket/EERE-2020-BT-TP-0041.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section III of this document for information on how to submit comments through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Rivest, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–7335. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9496. Email: *Peter.Cochran@hq.doe.gov.*

For further information on how to submit a comment or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction

DOE established an early assessment review process to conduct a more focused analysis that would allow DOE to determine, based on statutory criteria, whether an amended test procedure is warranted. 10 CFR part 430, subpart C, appendix A, section 8(a). This RFI requests information and data regarding whether an amended test procedure would more accurately and fully comply with the requirement that the test procedure produce results that measure energy use during a representative average use cycle for the product, and not be unduly burdensome

to conduct. To inform interested parties and to facilitate this process, DOE has identified several issues associated with the currently applicable test procedures on which DOE is interested in receiving comment. Based on the information received in response to the RFI and DOE's own analysis, DOE will determine whether to proceed with a rulemaking for an amended test procedure.

If DOE makes an initial determination that an amended test procedure would more accurately or fully comply with statutory requirements, or DOE's analysis is inconclusive, DOE will undertake a rulemaking to issue an amended test procedure. If DOE makes an initial determination based upon available evidence that an amended test procedure would not meet the applicable statutory criteria, DOE will engage in notice and comment rulemaking before issuing a final determination that an amended test procedure is not warranted.

A. Authority

EPCA, among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [1] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include consumer furnace fans, the subject of this document. (42 U.S.C. 6295(f)(4)(D))

Under EPCA, DOE's energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption in limited instances for particular State laws or regulations, in accordance with the procedures and other provisions set forth under 42 U.S.C. 6297(d).

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of those consumer products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s)) EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including consumer furnace fans, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6293(b)(1)(A)) DOE is publishing this RFI to collect data and information to inform its decision to satisfy the 7-year-lookback review requirement.

B. Rulemaking History

DOE published a final rule on January 3, 2014, establishing the test procedure for consumer furnace fans at title 10 of the Code of Federal Regulations (''CFR'') part 430, subpart B, Appendix AA, *Uniform Test Method for Measuring the Energy Consumption of Furnace Fans* (''Appendix AA''). 79 FR 499 (''January 2014 Final Rule''). The test procedure is applicable to air circulation fans used by weatherized and non-weatherized gas furnaces, oil furnaces, electric furnaces, and modular blowers.[2] Section 1, Appendix AA. For each of these categories, the test procedure covers both mobile home and non-mobile home models. The test procedure is not applicable to non-ducted products, such as whole-house ventilation systems without ductwork, central air-conditioning condensing unit fans, room fans, and furnace draft inducer fans.

As established in the January 2014 Final Rule, Appendix AA incorporates by reference the definitions, test setup and equipment, and procedures for measuring steady-state combustion efficiency from the 2007 version of American National Standards Institute (''ANSI'')/American Society of Heating, Refrigerating and Air Conditioning Engineers (''ASHRAE'') Standard 103, *Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers* (''ANSI/ASHRAE 103–2007''). In addition to these provisions, Appendix AA includes provisions for apparatuses and procedures for measuring temperature rise, external static pressure, and furnace fan electrical input power. Appendix AA also incorporates by reference provisions for measuring temperature and external static pressure from ANSI/ASHRAE 37–2009, *Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment* (''ASHRAE 37–2009'').

In the January 2014 Final Rule, DOE determined that there is no need to address standby and off mode energy use in the test procedure for furnace fans, as the standby mode and off mode energy use associated with furnace fans is measured by test procedures for the products in which furnace fans are used (*i.e.,* residential furnaces and residential central air conditioners and heat pumps). 79 FR 499, 504–505.

On October 12, 2018, DOE received a petition (''AHRI Petition'') from the Air-Conditioning, Heating, and Refrigeration Institute (''AHRI'') requesting that DOE consider adopting a new test procedure and associated performance metric, ''AFUE2,'' that would combine and replace the DOE test methods and associated performance metrics currently required for furnace fans (*i.e.,* Fan Energy Rating (''FER'')) and consumer furnaces (*i.e.,* annual fuel utilization efficiency (''AFUE''), standby mode energy consumption ($P_{W,SB}$), and off mode energy consumption ($P_{W,OFF}$)). On November 14, 2018, DOE published a notice of petition for rulemaking and requested comments to assist DOE in its determination of whether to proceed with the petition. 83 FR 56746. DOE received numerous comments on the petition, which are available for review in the docket at *https://www.regulations.gov/document/EERE-2018-BT-PET-0017-0004.* Accordingly, and consistent with the separate docket maintained for this matter, DOE will publish its final decision in the **Federal Register** on whether to grant or deny this petition in a separate notice. As DOE has already requested comments on the AFUE2 performance metric through the petition for rulemaking process, DOE is not requesting

[2] DOE defines the term ''modular blower'' in section 2.9 of Appendix AA as a product which only uses single-phase electric current, and which: (a) Is designed to be the principal air circulation source for the living space of a residence; (b) Is not contained within the same cabinet as a furnace or central air conditioner; and (c) Is designed to be paired with HVAC products that have a heat input rate of less than 225,000 Btu per hour and cooling capacity less than 65,000 Btu per hour.

additional comment on this topic in this RFI.

II. Request for Information

DOE is publishing this RFI to collect data and information during the early assessment review to inform its decision, consistent with its obligations under EPCA, as to whether the Department should proceed with an amended test procedure rulemaking, and if so, to assist in the development of proposed amendments. Accordingly, in the following sections, DOE has identified specific issues on which it seeks input to aid in its analysis of whether an amended test procedure for consumer furnace fans would more accurately or fully comply with the requirement that the test procedure produces results that measure energy use during a representative average use cycle for the product, and not be unduly burdensome to conduct. DOE also welcomes comments on other issues relevant to its early assessment that may not specifically be identified in this document.

A. Scope and Definitions

A ''furnace fan'' is ''an electrically-powered device used in a consumer product for the purpose of circulating air through ductwork.'' 10 CFR 430.2. As stated, DOE's furnace fan test procedure is applicable to circulation fans used in weatherized and non-weatherized gas furnaces, oil furnaces, electric furnaces, and modular blowers. Section 1, Appendix AA. The test procedure is not applicable to non-ducted products, such as whole-house ventilation systems without ductwork, central air-conditioning condensing unit fans, room fans, and furnace draft inducer fans.

Section 2 of Appendix AA provides additional definitions relevant to furnace fans through incorporating by reference the definitions of section 3 of ASHRAE 103–2007 and defining additional terms both in addition to and in place of those from section 3 of ASHRAE 103–2007. Of particular relevance for this RFI (see further discussion in section II.B.1 of this document), section 2.2 of Appendix AA defines ''Airflow-control settings'' as ''programmed or wired control system configurations that control a fan to achieve discrete, differing ranges of airflow—often designated for performing a specific function (*e.g.,* cooling, heating, or constant circulation)—without manual adjustment other than interaction with a user-operable control such as a thermostat that meets the manufacturer specifications for installed-use. For the purposes of [the furnace fan test procedure], manufacturer specifications for installed-use shall be found in the product literature shipped with the unit.'' Section 2.6 of Appendix AA defines ''Default airflow-control settings'' as ''the airflow-control settings specified for installed-use by the manufacturer. For the purposes of [the furnace fan test procedure], manufacturer specifications for installed-use are those specifications provided for typical consumer installations in the product literature shipped with the product in which the furnace fan is installed. In instances where a manufacturer specifies multiple airflow-control settings for a given function to account for varying installation scenarios, the highest airflow-control setting specified for the given function shall be used for the procedures specified in this appendix.''

Issue 1: DOE seeks comment on whether any changes are warranted to the scope of applicable products currently covered by the test procedure in Appendix AA, and if so, how the scope should be revised.

Issue 2: DOE seeks comment on whether any definitions in the test procedure at Appendix AA require any revision, and if so, how the definitions should be revised.

B. Test Procedure

Furnace fans are currently tested according to Appendix AA, which is used to calculate the Fan Energy Rating (''FER''). FER is expressed as watts per 1,000 cubic feet per minute of airflow (''W/1000 cfm'') and is calculated as the estimated annual electrical energy consumption of the furnace fan (in watt-hours) normalized by: (a) The estimated total number of annual fan operating hours (1,870); and (b) the airflow in the maximum airflow-control setting. For the purposes of the DOE furnace fan test procedure, the estimated annual electrical energy consumption is the sum of the furnace fan electrical input power (in watts), measured separately for multiple airflow-control settings at different ESPs representing a typical installation, multiplied by national average operating hours associated with each setting. Section 10, Appendix AA.

1. Default Airflow-Control Settings

For furnace fans used in furnaces or modular blowers with single-stage heating, the three airflow-control settings required to be tested are: The maximum setting, the default constant-circulation setting, and the default setting when operated using the maximum heat input rate.[3] For furnace fans used in furnaces or modular blowers with multi-stage heating or modulating heating, the airflow-control settings to be tested are: The maximum setting; the default constant-circulation setting; and the default setting when operated using the reduced heat input rate. See sections 8.6.1, 8.6.2 and 8.6.3 of Appendix AA. For both single-stage and two-stage or modulating units, if a default constant-circulation setting is not specified, the lowest airflow-control setting is used to represent constant circulation. See section 8.6.2, Appendix AA. In addition, if the manufacturer specifies multiple heating airflow-control settings, the highest airflow-control setting specified for the given function (*i.e.,* at the maximum or reduced input, as applicable) is used. See section 8.6.3, Appendix AA.

Inquiries sent to DOE since the publication of the January 2014 Final Rule indicate that there are differing interpretations regarding the appropriate airflow-control settings for testing, with some manufacturers possibly interpreting the DOE test procedure as requiring testing only the ''as-shipped'' airflow-control settings. However, as stated in section II.A, the definition for ''Default airflow-control setting'' specifically states that ''[i]n instances where a manufacturer specifies multiple airflow-control settings for a given function to account for varying installation scenarios, the highest airflow-control setting specified for the given function shall be used for the procedures specified in this appendix.'' Section 2.6 Appendix AA. Further, the definition defines the default airflow-control settings as airflow-control settings specified for installed-use by the manufacturer, which are those specifications provided for typical consumer installations in the product literature shipped with the product in which the furnace fan is installed. *Id.* These provisions account for manufacturer installation instructions that specify installation of a furnace fans with a setting other than the ''as shipped'' airflow-control settings and that specify multiple potential settings based on varying installation scenarios. For example, a furnace may be shipped with the low speed airflow-control setting configured for the heating function, but the installation manual shipped with the

[3] For furnaces where the maximum airflow control setting is a heating setting, the maximum airflow control setting test and the default heating airflow control setting test would be identical, so only two tests are required: (1) Maximum airflow (which is the same as the default heating setting) and (2) constant circulation.

furnace fan specifies the medium speed airflow-control setting for the heating function for certain installations, which is the highest airflow-control setting specified for the heating function. In this scenario, the DOE definition for ''Default airflow-control setting'' instructs to test the medium airflow-control setting for heating, rather than the ''as shipped'' setting (*i.e.,* the low setting), since there are multiple airflow-control settings for the heating function and the medium setting is the highest setting specified. *See id.*

The inquiries DOE has received from manufacturers also indicate that some manufacturers may be interpreting the test procedure to require testing according to installation instructions printed on the control board. DOE notes that the same control board can be used across multiple products to reduce manufacturing complexity and cost, so instructions provided on a control board may not be applicable to every unit in which a control board is used, which could lead to contradictory specifications regarding the installed use of consumer furnace fans. For this reason, DOE specifies in the definition of default airflow-control setting that the manufacturer specifications for installed-use are those specifications provided for typical consumer installations in the product literature shipped with the product in which the furnace fan is installed.

Issue 3: DOE requests comment on whether further instruction is needed for determining the appropriate airflow control settings for testing.

Issue 4: In the event of conflicting airflow-control setting information across multiple sources, DOE seeks comment on what the hierarchy should be for following manufacturers' instructions.

In inquiries received after the January 2014 Final Rule, manufacturers have stated that requiring testing of the highest airflow-control setting for a given function when presented with multiple airflow-control setting options may result in a control configuration that is not representative of field installation.

Issue 5: DOE requests information about configuration of control settings for field installations of furnace fans. Specifically, for instances in which a manufacturer specifies multiple airflow-control settings for a given function, DOE requests information and data that could help inform which airflow-control setting would be most representative of consumer use, such as data indicating the frequency with which a furnace fan is installed using each of the specified airflow-control settings.

In addition to specifying the airflow-control settings for testing, the DOE test procedure also specifies operating conditions (*e.g.,* temperature rise ranges and ESP ranges). See section 8 of Appendix AA. In some instances, manufacturers specify that an airflow-control setting is to be used only under certain specified conditions, which are typically expressed as a maximum recommended ESP or temperature rise range associated with each airflow-control setting. In such instances, the manufacturer-specified operating conditions may not be consistent with the operating conditions required by the DOE test procedure. As a result, the furnace fan would be tested at conditions outside of those specified by the manufacturer for the applicable setting, if the airflow-control setting is one that is required to be tested. Section 8 of Appendix AA requires measurements of the heating setting operating within the ESP range and the temperature rise range defined by the test procedure, regardless of the range specified by the manufacturer. The operating conditions required by DOE are intended to produce results that measure energy efficiency during a representative average use cycle for furnace fans. See 79 FR 500, 504 (Jan. 3, 2014).

Moreover, testing outside the conditions specified by the manufacturer may not be possible. Because furnaces are designed with safety controls that will automatically shut off the furnace when the outlet temperature reaches a certain temperature threshold, if the unit is operated at conditions other than those it is designed for, it may shut down before testing can be completed. For example, a thermal cutout switch might ''trip'' during testing causing the unit to shut down if the outlet temperature exceeds the temperature threshold of the safety control.

Issue 6: DOE requests data on the operating conditions typically encountered in the field for furnace fans across the various design options and input capacities currently available on the market.

Issue 7: DOE requests information on whether and to what extent safety shut-downs have occurred during testing.

In other cases, furnace fans have airflow-control settings that are designated by the manufacturer as being suitable for multiple functions (*i.e.,* heating, cooling, circulation); however, in the field each setting would be used only for a single function. The function that the setting would be used for when installed varies depending on installation needs (*e.g.,* assignment of a given airflow-control speed that can be used either for heating or cooling may be based on design considerations such as the size of the cooling coil paired with the furnace). In some field installations, the furnace fan must be physically reconfigured or re-wired to assign a particular function to the desired airflow-control setting. As discussed in section II.A, Appendix AA defines airflow-control settings as being configured so that they perform a certain function without manual adjustment other than interaction with a user-operable control such as a thermostat that meets the manufacturer specifications for installed use.

However, in cases where multiple functions are assigned to the same airflow-control setting, the current test procedure could be understood to require that the unit be tested in multiple functions, meaning that the unit would need to be manually reconfigured or rewired during testing. For example, for a single-stage furnace fan, if the same airflow-control setting was designated as both the highest default heat function and the highest default constant-circulation function, then laboratory personnel would be required to first wire the fan motor to conduct the heating test at that airflow control setting, and later rewire the fan motor to conduct the constant circulation test at the same airflow control setting. Similarly, rewiring could be required for multi-stage or modulating furnace fans for which the same airflow control setting was the highest airflow control setting for constant circulation function and the highest airflow control setting for reduced heat function, and the setting was not able to be configured for both functions without reconfiguring or re-wiring the setting. (DOE notes that there is no requirement to test at a specific manufacturer specified airflow-control setting for cooling function for the DOE test.) See sections 8.6.1.1, 8.6.1.2, and 8.6, Appendix AA. Re-configuring or re-wiring an airflow-control setting in such a manner would not be representative of how that unit is installed and operated in the field and conflicts with the requirement that an airflow-control setting perform a certain function without manual adjustment.

Issue 8: DOE seeks comment on whether there are furnace fans on the market for which the combination of control settings required by the DOE test procedure would require reconfiguration or re-wiring of the unit during testing under the current DOE test procedure. DOE also requests information on whether manufacturers have plans to introduce such furnace

fans into the market. If so, DOE requests comment on whether a hierarchy should be established to give precedence to a given function.

2. Modulating Controls and Thermostat Pairings

DOE is aware that an increasing proportion of furnace fans employ modulating controls for heating, and constant circulation modes that allow fan speed to continuously vary as opposed to operating at a discrete speed for each function. These fans are characterized by having electrically commutated brushless permanent magnet (''BPM'') motors, which can be paired with thermostats that have the capability to provide modulating control in order to make use of the BPM's ability to vary its speed to maintain a constant airflow at various ESPs. Because input from the thermostat is essential to the functioning of these types of systems, furnace fan performance may be dependent on the specific type of thermostat with which the system is paired as it could vary depending on the types of control signals provided by the thermostat. In field operation, modulating controls enable the furnace fan to reduce its speed to match heating demand during periods of low heating demand.

Section 8.3 of Appendix AA requires that the system operate continuously for at least 30 minutes at each discrete airflow setting, which would preclude dynamic response to thermostat signals that vary more frequently than 30 minutes. In addition, there are no specific provisions for testing the performance of the furnace fan under modulating control conditions. Further, the furnace fan test procedure relies on an assumed number of hours each year that the furnace fan is in heating mode operating at a constant fan speed. See Table IV.2, Appendix AA. A modulating furnace fan could potentially spend a portion of these hours operating at a fan speed other than the speed required by the test method, impacting the energy use during periods of lower heating demand and, consequently, reduced fan speed.

Issue 9: DOE requests information about available control features that impact fan performance. Specifically, DOE requests information and data regarding modulating control approaches currently in use or planned for future use, whether the performance differences of such modulating furnace fans are currently adequately captured by the furnace fan test procedure, and, if necessary, what new provisions could be necessary to reflect the impact of these control features in FER ratings. If new provisions are suggested, DOE also seeks comment on any burdens associated with those provisions.

Issue 10: DOE requests comment on the most common type of thermostats used by consumers, particularly with regards to furnace fans with modulating control strategies.

DOE has also observed that some furnace fans have a ''ramping profile'' setting that is selectable through dual in-line package (''DIP'') switch adjustments during installation. Ramping profiles allow a modulating furnace fan to gradually ramp up or down over time to meet the target fan speed instead of immediately controlling to the target fan speed. Ramping profiles are often marketed as providing additional benefits to users by increasing dehumidification in cooling mode, providing faster outlet temperature change in heating mode, and reducing fan noise. As noted, section 8.3 of Appendix AA requires that the system operate continuously for at least 30 minutes at each test point before steady state conditions are achieved and test parameters start to be recorded, and testing is conducted at steady-state and would not account for any ramping period.

Issue 11: DOE requests information on the prevalence of field installations for modulating furnace fans where dip switches are selected to allow for ramping behavior.

Issue 12: DOE requests information on whether ramping profiles may result in any difference in tested performance vs field performance, and whether this difference should be captured by the furnace fans test procedure.

3. ESP Requirements for Airflow-Control Settings Other Than the Maximum

Sections 8.6.2 and 8.6.3 of Appendix AA provide the test requirements for taking measurements in airflow-control settings other than the maximum airflow-control setting. Both sections state that their respective required operating settings be maintained ''until steady-state conditions are attained as specified in section 8.3, 8.4, and 8.5'' of Appendix AA. Regarding ESP, sections 8.3, 8.4, and 8.5 state that stabilization is ''indicated by an external static pressure within the range shown in Table 1.'' The ESP values in Table 1, as indicated by the table's title, apply only to the maximum airflow-control setting (section 8.6.1), and therefore are not applicable to sections 8.6.2 and 8.6.3. In an accompanying statement immediately below Table 1, Appendix AA directs that ''once the specified ESP has been achieved, the same outlet duct restrictions shall be used for the remainder of the furnace fan test.'' As such, the test procedure specifies the ESP conditions in terms of the ductwork geometry when testing at airflow-control settings other than the maximum airflow-control setting.

Given that the ESP will vary as the airflow-control setting is changed if the outlet duct restriction remains unchanged, the ESP targets in Table 1 are not required to be met at the airflow-control settings other than the maximum setting. DOE is considering whether it would be helpful to instruct more directly that the Table 1 ESP requirements are only applicable to the maximum airflow control setting; for all other airflow-control settings, the required ESP is that which results from using the same test duct restrictions as used for the maximum airflow-control setting. Further, DOE is seeking feedback on whether additional criteria is necessary to limit variability in ESP readings for steady-state operation during the tests for airflow-control settings other than the maximum airflow setting.

Issue 13: DOE requests comment on how manufacturers are currently implementing sections 8.6.2 and 8.6.3 with respect to ESP.

Issue 14: DOE requests comments on whether it is necessary to further clarify that the specific ESP values in Table 1 are not required to be maintained for testing to sections 8.6.2 and 8.6.3.

Issue 15: DOE requests comments on whether additional direction is needed as to the ESP requirement provided in the statement accompanying Table 1, including whether additional criteria is necessary to limit variability in ESP readings for steady-state operation during the tests for airflow-control settings other than the maximum airflow setting, and if so, what that direction should be.

4. ESP Limits for Electric Resistance Heat Kits

Modular blowers are not contained in the same cabinet as a furnace or central air conditioner and are sold as stand-alone products that can come with a variety of sizes of heating elements. During testing, they must be paired with the electric resistance ''heat kit'' that is likely to have the largest volume of retail sales with that basic model of modular blower. Section 6.3, Appendix AA. An electric resistance heat kit is a group of usually three to seven electric resistance coils, called elements, each of which typically is rated at five kilowatts. These heating elements can activate in stages to provide the

appropriate amount of heat to the conditioned space.

Section 6.3 of Appendix AA requires modular blowers to be tested with the electric resistance heat kit with the largest volume of retail sales with that basic model of modular blower. Section 6.6 of Appendix AA also includes provisions for electric furnaces that use electric resistance heat elements. With an electric resistance heat kit, some modular blowers and electric furnaces shut off the electric resistance heat elements beyond certain ESP limits. These ESP limits may be lower than the ESP levels required by Appendix AA. As a result, the resistance heat elements would not be energized during testing, making it impossible to complete a test that reflects the electrical energy consumption of the electric heating elements as required in section 8.6.3 of Appendix AA. Since these elements would be energized during typical field use, the test procedure may not produce results that measure energy efficiency during a representative average use cycle.

Issue 16: DOE requests comment on the prevalence of electric resistance heating kits installed in modular blowers and electric furnaces that have cutoff limits based on ESP.

Issue 17: DOE requests comment on the typical range of ESP values at which electric resistance heat kits will automatically shut off.

Issue 18: DOE requests data on the ESP ranges that this equipment experiences in the field and the frequency with which electric resistance heat kits are turned off during actual operation of modular blowers and electric furnaces.

5. Updates to Industry Standards and Consensus-Based Test Procedures

In general, DOE will adopt industry test standards as DOE test procedures for covered equipment, unless such methodology would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, water use (as specified in EPCA) or estimated operating costs of that equipment during a representative average use cycle. Section 8(c) of appendix A to subpart C of 10 CFR part 430.

The current DOE test procedure for furnace fans incorporates by reference ANSI/ASHRAE 103–2007. ANSI/ASHRAE 103–2007 is a test procedure for residential furnaces and boilers, rather than a specific test procedure for furnace fans, and calculates AFUE, rather than FER. Therefore, DOE's test procedure for furnace fans in Appendix AA includes references to only certain sections of ANSI/ASHRAE 103–2007, including requirements for instrumentation and test apparatus setup as well as test methodology. Appendix AA also includes additional instructions for conducting the FER test, including instructions for calculating FER.

In July 2017, ASHRAE published an update to ASHRAE 103, *i.e.,* ANSI/ASHRAE 103–2017. The 2017 version made several editorial changes to the 2007 version, including use of mandatory language and use of the International System of units. In addition to these editorial changes, the 2017 revision made updates to the test duct and plenum figure (Figure 2 of ANSI/ASHRAE 103–2017) and the system number table (Table 6 of ANSI/ASHRAE 103–2017), and removed figures for surface heat transfer and coefficient of radiation (Figures 12 and 13 of ANSI/ASHRAE 103–2007). It also adopted an amendment made by DOE in a July 10, 2013 final rule that modified the residential furnace and boiler test procedure to provide a means to accurately calculate AFUE for two-stage and modulating condensing furnace and boiler models meeting the criteria in section 9.10 of ANSI/ASHRAE 103–1993 (the version incorporated by reference at the time of the 2013 final rule). 78 FR 41265, 41268.

Figure 2 of ANSI/ASHRAE 103–2017 was changed to reflect an extension of the minimum length of the inlet duct from 12 inches to 18 inches. The current DOE test procedure requires that ESP taps be placed a minimum of 12 inches from the product inlet, indicating that models installed with a return (inlet) air duct must have a duct length greater than 12 inches. Section 6.4.1, Appendix AA. In practice, DOE does not expect this change to interfere with nor impact the performance rating of consumer furnace fans, because the external static pressure and airflow will not change with this alteration. Additional notes were also added to Figure 2 to clarify inlet duct construction and pressure measurement.

Issue 19: DOE seeks comment on any additional changes (not discussed above) made in the 2017 version of ANSI/ASHRAE 103 as compared to 2007 version currently incorporated by reference in the DOE test procedure for furnace fans.

Issue 20: DOE requests comment on whether to update the referenced version of ANSI/ASHRAE 103 to the 2017 version and if so, what impacts would that have on the test procedure and test procedure results.

Issue 21: DOE seeks comment on whether its assumption that increasing the minimum inlet duct length from 12 inches to 18 inches will not impact the performance rating is correct and, if not, how this duct length change would change the rating.

Issue 22: DOE seeks comment on the availability of consensus-based test procedures for measuring the energy use of furnace fans that could be adopted without modification and more accurately or fully comply with the requirement that the test procedure produces results that measure energy use during a representative average use cycle for the product, and not be unduly burdensome to conduct.

6. Tolerance on Temperature Measuring Instruments

Section 5.1 of Appendix AA, which references Section 5.1 of ASHRAE 37–2009, requires that temperature measuring instruments must be accurate to within 0.75 °F. Section 6 of Appendix AA references section 7 of ASHRAE 103–2007 for the test apparatus setup. Section 7.6 of ASHRAE 103–2007 includes instructions to take temperature measurements with thermocouple grids constructed of either 5, 9, or 17 thermocouples, depending on the stack diameter. The measurement accuracy of a thermocouple grid depends on the type and number of thermocouples used, as well as the magnitude of the air temperature being measured. Using the types of thermocouples commonly used in test facilities (including ''T-type'' and ''K-type''), the measurement accuracy required in Appendix AA is achievable with a minimum of 5 thermocouples at temperatures up to approximately 450 °F.[4] Stack temperatures in gas-fired furnaces are unlikely to exceed this temperature. However, DOE has observed some oil-fired furnaces with stack temperatures exceeding 500 °F. DOE is considering whether additional specifications are required to accommodate the measurement of stack temperatures of oil-fired furnaces to ensure the repeatability and reproducibility of FER calculations.

Issue 23: DOE seeks comment on the number and types of thermocouples, or other temperature measurement devices, that laboratories use to measure the stack temperatures of oil-fired furnaces.

Issue 24: DOE requests comment on whether stack temperatures of gas-fired

[4] Achievement of the measurement accuracy requirement was calculated using the thermocouple characteristics found in Table 1 of ANSI/ASTM E230/E230M–17 and assuming that the overall measurement accuracy is equal to the measurement tolerance of individual thermocouples of that type divided by the square root of 'n', where n is the number of thermocouples.

furnaces are likely to exceed 450 °F. If so, DOE also seeks comment on the number and types of thermocouples or other temperature measurement devices, that laboratories use to measure the stack temperatures of such gas-fired furnaces.

Issue 25: DOE requests comment on the accuracy of measurement devices currently used to test oil-fired furnaces or gas-fired furnaces with stack temperatures exceeding 450 °F.

Issue 26: DOE requests comment on any burdens that would be associated with adding specifications to address the measurement of outlet air temperatures greater than 450 °F.

7. Dual-Fuel Heating Products

Some residential heating products include an electric heat pump and gas burner, often referred to as dual-fuel or hybrid heating units. These products are designed to provide heating with the heat pump and/or gas burner, depending on the operating conditions (*e.g.,* outdoor air temperature and heating demand). The annual operating characteristics of a dual-fuel product may differ significantly from a typical furnace. This is because the inclusion of a heat pump may change the amount of operating time necessary to meet the heating load demand when compared with a gas burner alone, resulting in changes to the operating hours of the fan. Therefore, the estimated national annual operating values provided in Table IV.2 of Appendix AA may not be representative of an average use cycle for furnaces installed in dual-fuel applications. In addition, under the current DOE test procedure, there are no provisions to set up or operate furnace fans as dual-fuel heating units.

Issue 27: DOE requests comment on the typical operating characteristics of dual-fuel systems. Specifically, DOE requests comment on what conditions dictate when the heat pump or gas burner are providing heat, and during what conditions the heat pump and gas burner operate simultaneously.

Issue 28: DOE requests comment on whether and how the user has control over which heating source is used in a dual-fuel system.

8. Two-Stage Furnaces With Limited-Duration Reduced Stages

The DOE test procedure requires testing two-stage furnaces in ''reduced'' heating mode, which corresponds to burner operation at the nameplate minimum input rating. Section 8.6.3, Appendix AA. Typically, two-stage furnaces determine whether to operate at the reduced or maximum input based on heating demand and are capable of operating in reduced heating mode for extended periods of time if demand remains low. However, DOE has identified two-stage furnace models that use the reduced heating stage only temporarily and that ramp-up to the high heating stage after a pre-set period of time if the call for heat from the thermostat is not satisfied. DOE has observed that the ramp-up period for these models may be configurable by the user, but is temporary and shorter in duration than the time required to achieve the steady-state conditions during a test.[5] A ramp period that is shorter than the DOE-required period to achieve steady-state precludes these furnaces from completing a valid test as a two-stage furnace because the steady-state conditions cannot be met at the reduced input rate before the unit automatically ramps up to the maximum input rate.

Issue 29: DOE requests comment on how the industry currently tests and certifies two-stage furnaces that automatically ramp up from the reduced input to the maximum input after a set period.

Issue 30: DOE requests comment on the prevalence of two-stage furnaces that are controlled such that they are unable to achieve steady-state operation under the DOE test procedure in reduced heating mode.

9. Furnaces Shipped Without Burners

DOE is aware that some furnaces are shipped without a burner and the furnace manufacturer specifies one or multiple options for compatible burners in product literature (*e.g.,* brochures and installation manuals). This is particularly common for oil-fired furnaces. In cases where multiple burner options from multiple manufacturers are specified, the different burners may have performance differences that impact FER even though the various options may each provide the same heating capacity. These burners may be constructed differently between manufacturers, potentially resulting in different steady-state heating efficiency and/or different airflow resistance characteristics, both of which would impact FER. DOE's furnace fan test procedure and certification requirements do not specify whether to test and certify a furnace that is compatible with multiple burners with each specified burner, or a single manufacturer-specified burner. If different burner options are used in tests for a given oil furnace and burner selection impacts FER, this could result in test repeatability issues.

Issue 31: DOE requests comments on whether and by how much burner selection can impact furnace fan performance, particularly as measured by FER. If burner selection does impact furnace fan performance, DOE requests comment on potential approaches for specifying burner(s) for testing.

10. Test Procedure Repeatability

DOE understands that variations in ESP[6] or ambient conditions (such as dry bulb temperature or relative humidity) can affect test results. In particular, the relative humidity and dry bulb temperature of the test room must be measured at the beginning of the test, but there is no specified value or tolerance that must be met. DOE seeks comment and information on whether these factors could pose a challenge to obtaining repeatable test results and reproducible results across laboratories.

Issue 32: DOE requests comment on whether stakeholders have encountered difficulty obtaining repeatable and reproducible FER results using Appendix AA. Specifically, DOE seeks information and data on how significantly fluctuations in ESP and ambient conditions (within the boundaries allowed by Appendix AA) can impact FER ratings.

C. Test Procedure Waivers

A person may seek a waiver from the test procedure requirements for a particular basic model of a type of covered product when the basic model for which the petition for waiver is submitted contains one or more design characteristics that: (1) Prevent testing according to the prescribed test procedure, or (2) cause the prescribed test procedures to evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). On February 20, 2019, DOE received a petition for waiver and an application for interim waiver from ECR International, Inc. (''ECR'') for several

[5] For gas and oil furnaces, Section 8.3 of Appendix AA specifies that steady-state operation is indicated by specific defined ranges of ESP and temperature for 3 measurements taken 15 minutes apart, for a total steady-state operation period of 30 minutes. For electric furnaces and modular blowers, Section 8.4 of Appendix AA specifies that steady-state operation is indicated by specific defined ranges of ESP and temperature for 4 measurements taken 15 minutes apart, for a total steady-state operation period of 45 minutes.

[6] Table 1 in Section 8.6.1.2 specifies the required minimum external static pressure in the maximum airflow-control setting by installation type. For each installation type, the furnace fan must be tested within a 0.05 in. w.c. range of the required ESP test condition. ESP adjustment is accomplished by symmetrically restricting the outlet of the test duct until the target ESP condition is attained within tolerance.

models of belt-driven, single-speed furnace fans designed for heating-only applications in oil-fired warm air furnaces.[7]

The current DOE test procedure for furnace fans does not contain any provisions specific to ''heating-only'' units. In a notice of proposed rulemaking published on May 15, 2012, DOE initially determined that for heating-only furnaces, a reference system ESP of 0.50 in. w.c. would provide test results representative of an average use cycle. 77 FR 28674, 28686. However, DOE withdrew the proposal for separate conditions for heating-only furnace fans in a subsequent supplemental notice of proposed rulemaking, because DOE was unable to identify heating-only models on the market at that time that were within the scope of the rulemaking. 78 FR 19606, 19619 (April 2, 2013). Therefore, in the January 2014 Final Rule, DOE did not adopt separate ESP requirements for heating-only furnace fans. See 79 FR 500, 505–506.

In its petition for waiver, ECR asserted that the furnace fan basic models specified in its petition have design characteristics that prevent testing of the basic model according to the test procedure prescribed in Appendix AA. Specifically, ECR claimed that testing such furnace fans at the ESP requirements in Appendix AA reduces airflow and increases temperature rise to the point where the units shut off during testing due to high temperature limits, making it impossible to reach steady state for testing at the required conditions. On March 9, 2021, DOE published a Decision and Order granting ECR a waiver from the applicable test procedure at 10 CFR part 430, subpart B, appendix AA for specified basic models of furnace fans, which specifies an alternate test procedure (specifically it specifies alternate ESP test conditions). 86 FR 13530. The Decision and Order provides that ECR must test and rate such products using the alternate test procedure set forth in the Decision and Order.[8] *Id.* at 86 FR 13534–13535.

The test procedure waiver for these furnace fans basic models provides alternate test provisions to measure energy that are representative of real-world use conditions for the basic models specified in the Order.

Issue 33: DOE requests feedback on whether the test procedure waiver approach is generally appropriate for testing all basic models of furnace fans designed for heating-only applications.

III. Submission of Comments

DOE invites all interested parties to submit in writing by the date specified in the **DATES** heading, comments and information on matters addressed in this RFI and on other matters relevant to DOE's early assessment of whether an amended test procedure for furnace fans is warranted and if so, what such amendments should be.

Submitting comments via https://www.regulations.gov. The *https://www.regulations.gov* web page requires you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *https://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *https://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *https://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *https://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted via email also will be posted to *https://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of the process for developing test procedures and

[7] See: *https://www.regulations.gov/document?D=EERE-2019-BT-WAV-0004-0001.*

[8] See: *https://www.regulations.gov/document/EERE-2019-BT-WAV-0004-0015.*

energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of this process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov.*

Signing Authority

This document of the Department of Energy was signed on June 29, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on June 30, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2021–14338 Filed 7–6–21; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2021–BT–STD–0003]

RIN 1904–AF13

Energy Conservation Program for Appliance Standards: Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy (EERE), Department of Energy.

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The U.S. Department of Energy (''DOE'' or the ''Department'') proposed major revisions to the Department's ''Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Certain Commercial/Industrial Equipment'' (''Process Rule'') in a notice of proposed rulemaking that was published on April 12, 2021. DOE accepted comments on those proposed revisions through May 27, 2021. In this document, DOE proposes additional revisions to the Process Rule and requests comment on the proposals and any potential alternatives. These additional proposed revisions are consistent with current DOE practice and would remove unnecessary obstacles to DOE's ability to meet its statutory obligations under the Energy Policy and Conservation Act (''EPCA'').

DATES: *Comments:* DOE will accept comments, data, and information regarding all aspects of this notice of proposed rulemaking on or before August 23, 2021. DOE will hold a webinar on Tuesday, August 10, 2021 from 11:00 a.m. to 4:00 p.m. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *https://www.regulations.gov/docket/EERE-2021-BT-STD-0003.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments by email to the following address: *processrule2021STD0003@ee.doe.gov.* Include ''2nd 2021 Process Rule NOPR'' and docket number EERE–2021–BTD–STD–0003 and/or RIN number 1904–AF13 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing coronavirus disease 2019 (''COVID–19'') pandemic. DOE is currently accepting only electronic submissions at this time. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the Covid–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

No telefacsimiles (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section V (Public Participation) of this document.

Docket: The docket for this rulemaking, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *https://www.regulations.gov.* All documents in the docket are listed in the *https://www.regulations.gov* index. This docket also contains all comments and rulemaking documents associated with the notice of proposed rulemaking that was published on April 12, 2021. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at: *https://www.regulations.gov/docket/EERE-2021-BT-STD-0003.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT:

Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9496. Email: *Peter.Cochran@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Summary of Proposal

On February 14, 2020, the United States Department of Energy (''DOE'' or ''the Department'') published a final rule (''February 2020 Final Rule'') in the **Federal Register** that made significant revisions to its ''Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Certain Commercial/Industrial Equipment'' (''Process Rule'') found in 10 CFR part 430, subpart C, appendix A. 85 FR 8626. DOE also published a companion final rule on August 19, 2020 (''August 2020 Final Rule''), that clarified how DOE would conduct a comparative analysis across all trial standard levels when determining whether a particular trial standard level was economically justified. *See* 85 FR 50937. These rules collectively modified the Process Rule that DOE had originally issued on July 15, 1996 (''1996 Process Rule'') into its current form. *See* 61 FR 36974 and 10 CFR part 430, subpart C, appendix A (2021). While the 1996 Process Rule acknowledged that it would not be applicable to every rulemaking and that the circumstances of a particular rulemaking should dictate application of these generally applicable practices,[1] the revisions made in the February 2020 Final Rule sought to create a standardized rulemaking process that was binding on the Department. 85 FR 8626, 8634. In creating this one-size-fits-all approach, the February 2020 Final Rule and the August 2020 Final Rule also added additional steps to the rulemaking process that are not required by any applicable statute.

Subsequent events have caused DOE to reconsider the merits of a one-size-fits-all rulemaking approach to establishing and amending energy conservations standards and test procedures. Two of these events are particularly salient. First, on October 30, 2020, a coalition of non-governmental organizations filed suit under EPCA alleging that DOE has failed to meet rulemaking deadlines for 25 different consumer products and commercial equipment.[2] On November 9, 2020, a coalition of States filed a virtually identical lawsuit.[3] In response to these lawsuits, DOE has had to reconsider whether the benefits of a one-size-fits-all rulemaking approach outweigh the increased difficulty such an approach poses in meeting DOE's statutory deadlines and obligations under EPCA. As mentioned previously, the 1996 Process Rule allowed for ''case-specific deviations and modifications of the generally applicable rule.'' 61 FR 36974, 36979. This allowed DOE to tailor rulemaking procedures to fit the specific circumstances of a particular rulemaking. For example, under the 1996 Process Rule, minor modifications to a test procedure would not automatically result in a 180-day delay before DOE could issue a notice of proposed energy conservation standards. Eliminating these unnecessary delays would better enable DOE to meet its obligations and deadlines under EPCA. Further, the sooner new or amended energy conservation standards eliminate less-efficient covered products and equipment from the market, the greater the resulting energy savings and environmental benefits.

Second, on January 20, 2021, the White House issued Executive Order (''E.O.'') 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.'' 86 FR 7037 (Jan. 25, 2021). Section 1 of that Order lists a number of policies related to the protection of public health and the environment, including reducing greenhouse gas emissions and bolstering the Nation's resilience to the impacts of climate change. 86 FR 7037, 7041. Section 2 of the Order instructs all agencies to review ''existing regulations, orders, guidance documents, policies, and any other similar agency actions (agency actions) promulgated, issued, or adopted between January 20, 2017, and January 20, 2021, that are or may be inconsistent with, or present obstacles to, [these policies].'' 86 FR 7037, 7041. Agencies are directed, as appropriate and consistent with applicable law, to consider suspending, revising, or rescinding these agency actions and to immediately commence work to confront the climate crisis. 86 FR 7037, 7041. For certain explicitly enumerated agency actions, including the February 2020 and the August 2020 Final Rules, the Order directs agencies to consider publishing for notice and comment a proposed rule suspending, revising, or rescinding the agency action within a specific time frame. 86 FR 7037, 7037–7038. Under this mandate, DOE is directed to propose any major revisions to these two rules by March 2021, with any remaining revisions to be proposed by June 2021. 86 FR 7037, 7038.

In light of these events, DOE has identified several aspects of the February 2020 and the August 2020 Final Rules (together, representing the current Process Rule) that present obstacles to DOE's ability to meet its obligations under EPCA. In accordance with E.O. 13990, DOE proposed major revisions to the current Process Rule in a notice of proposed rulemaking (NOPR) that was published on April 12, 2021 (''April 2021 NOPR''). 86 FR 18901. The comment period on the April 2021 NOPR ended on May 27, 2021.

In this document, DOE proposes additional revisions that would: Further revise the process for coverage determination rulemakings; provide additional flexibility for DOE during the pre-NOPR stages of energy conservation standard and test procedure rulemakings, while preserving opportunities for stakeholders to provide early input in the rulemaking process; provide clarification on EPCA's rulemaking process for ASHRAE equipment; and revise the sections on DOE's analytical methods to reflect current rulemaking practices. These revisions are summarized in the following table. Note that for ease of use and clarity, the proposed regulatory text in this document contains both the proposed regulatory text in the April 2021 NOPR and the new text being proposed in this document. DOE is currently only soliciting comments on the new, additional regulatory text proposed in this NOPR.

[1] *Id.* 61 FR 36979.

[2] *Natural Resources Defense Council* v. *DOE,* Case No. 20–cv–9127 (S.D.N.Y. 2020).

[3] *State of New York* v. *DOE,* Case No. 20–cv–9362 (S.D.N.Y. 2020).

LIST OF PROPOSED REVISIONS TO THE PROCESS RULE [4]

Section	Proposed revisions from the April 2021 NOPR	Proposed additional revisions in this document
1. Objectives	Revise language to be consistent with the newly proposed Section 3.	No revisions proposed.
2. Scope	No revisions proposed	No revisions proposed.
3. Mandatory Application of the Process Rule	Replace with new Section 3, ''Application of the Process Rule''.	No revisions proposed.
4. Setting Priorities for Rulemaking Activity	No revisions proposed	No revisions proposed.
5. Coverage Determination Rulemakings	Eliminate the 180-day period in paragraph (c) between finalization of DOE test procedures and issuance of a NOPR proposing new or amended energy conservation standards.	Proposed introductory text and revised paragraph (a) would eliminate the requirement that a coverage determination rulemaking begins with a notice of proposed determination and allow DOE to seek early stakeholder input through preliminary rulemaking documents; revised paragraphs (b) and (c) would eliminate the requirement that final coverage determinations be published prior to the initiation of any test procedure or energy conservation standard rulemaking and at least 180 days prior to publication of a test procedure NOPR; revised paragraph (d) would allow DOE to propose, if necessary, an amended coverage determination before proceeding with a test procedure or standards rulemaking.
6. Process for Developing Energy Conservation Standards.	Eliminate paragraph (b), ''Significant Savings of Energy''.	Revised paragraph (a) would eliminate the requirement for a separate early assessment request for information (''RFI'') and clarify that DOE will issue one or more documents during the pre-NOPR stage of a rulemaking; revised paragraphs (a) and (b) would clarify public comment periods for pre-NOPR and NOPR documents; revised paragraph (a)(5) would reflect current DOE rulemaking practice.
7. Policies on Selection of Standards	Eliminate text in paragraph (e)(2)(i) requiring DOE to conduct a comparative analysis when determining whether a proposed standard level is economically justified.	No revisions proposed.
8. Test Procedures	Clarify in paragraph (c) that DOE may revise consensus industry test procedure standards for compliance, certification, and enforcement purposes; eliminate the 180-day period in paragraph (d) between finalization of DOE test procedures and issuance of a NOPR proposing new or amended energy conservation standards.	Revised paragraph (a) would eliminate the requirement for a separate early assessment request for information (''RFI'') and clarify that DOE will issue one or more documents during the pre-NOPR stage of a rulemaking; revised paragraphs (a) and (b) would clarify public comment periods for pre-NOPR and NOPR documents and eliminate the requirement that DOE identify necessary modifications to a test procedure prior to initiating an associated energy conservation standard rulemaking.
9. ASHRAE Equipment	No revisions proposed	Revise section to follow ASHRAE rulemaking requirements in EPCA.
10. Direct Final Rules	Revise section to clarify that DOE will implement its direct final rule authority on a case-by-case basis.	No revisions proposed.
11. Negotiated Rulemaking Process	Eliminate section	No revisions proposed.
12. Principles for Distinguishing Between Effective and Compliance Dates.	No revisions proposed	No revisions proposed.
13. Principles for the Conduct of the Engineering Analysis.	No revisions proposed	Revise to reflect current DOE rulemaking practice.
14. Principles for the Analysis of Impacts on Manufacturers.	Eliminate incorrect cross reference	Revise to reflect current DOE rulemaking practice.
15. Principles for the Analysis of Impacts on Consumers.	No revisions proposed	Revise to reflect current DOE rulemaking practice.
16. Consideration of Non-Regulatory Approaches.	No revisions proposed	Revise to reflect current DOE rulemaking practice.
17. Cross-Cutting Analytical Assumptions	No revisions proposed	Revise to reflect current DOE rulemaking practice; move discussion of emissions analysis into new section.

* As part of the proposed revisions, DOE will reorganize and renumber sections and subsections as required.

II. Authority and Background

A. Authority

Title III, Parts B [5] and C [6] of the Energy Policy and Conservation Act, as amended, (''EPCA'' or ''the Act''), Public Law 94–163 (42 U.S.C. 6291–6317, as codified), established the Energy Conservation Program for Consumer Products and Certain Industrial Equipment.[7] Under EPCA, DOE's energy conservation program for covered products consists essentially of four parts: (1) Testing; (2) certification and enforcement procedures; (3) establishment of Federal energy conservation standards; and (4) labeling. Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, water use (as applicable), or estimated annual operating cost of each covered product and covered equipment during a representative average use cycle or period of use. (42 U.S.C. 6293; 42 U.S.C. 6314) Manufacturers of covered products and covered equipment must use the prescribed DOE test procedure when certifying to DOE that their products and equipment comply with the applicable energy conservation standards adopted under EPCA and when making any other representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c); 42 U.S.C. 6295(s); 42 U.S.C. 6314(a); and 42 U.S.C. 6316(a)) Similarly, DOE must use these test procedures to determine whether the products comply with energy conservation standards adopted pursuant to EPCA. (42 U.S.C. 6295(s); 42 U.S.C. 6316(a))

In addition, pursuant to EPCA, any new or amended energy conservation standard for covered products (and at least certain types of equipment) must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A); 42 U.S.C. 6316(a)) In determining whether a standard is economically justified, EPCA requires DOE, to the greatest extent practicable, to consider the following seven factors: (1) The economic impact of the standard on the manufacturers and consumers; (2) the savings in operating costs, throughout the estimated average life of the products (*i.e.,* life-cycle costs), compared with any increase in the price of, or in the initial charges for, or operating and maintaining expenses of, the products which are likely to result from the imposition of the standard; (3) the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard; (4) any lessening of the utility or the performance of the products likely to result from the imposition of the standard; (5) the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard; (6) the need for national energy and water conservation; and (7) other factors DOE finds relevant. (42 U.S.C. 6295(o)(2)(B)(i)) Furthermore, the new or amended standard must result in a significant conservation of energy (42 U.S.C. 6295(o)(3)(B); 42 U.S.C. 6313(a)(6); and 42 U.S.C. 6316(a)) and comply with any other applicable statutory provisions.

B. Background

DOE conducted an effort between 1995 and 1996 to improve the process it follows to develop energy conservation standards for covered appliance products. This effort involved reaching out to many different stakeholders, including manufacturers, energy-efficiency advocates, trade associations, State agencies, utilities, and other interested parties for input. The result was the publication of the 1996 Process Rule. 61 FR 36974. This document was codified at 10 CFR part 430, subpart C, appendix A, and it became known colloquially as the ''Process Rule.'' The goal of the Process Rule was to elaborate on the procedures, interpretations, and policies that would guide the Department in establishing new or revised energy conservation standards for consumer products. The rule was issued without notice and comment under the Administrative Procedure Act's (''APA'') exception for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'' (5 U.S.C. 553(b)(A))

On December 18, 2017, DOE issued an RFI on potential revisions to the Process Rule. 82 FR 59992. DOE subsequently published a NOPR regarding the Process Rule in the **Federal Register** on February 13, 2019. 84 FR 3910. DOE held public meetings for both the RFI and NOPR. After considering the comments it received, DOE then published a final rule in the **Federal Register** on February 14, 2020, which significantly revised the Process Rule. 85 FR 8626.

While DOE issued the 1996 Process Rule without notice and comment as an interpretative rule, general statement of policy, or rule of agency organization, procedure, or practice, the February 2020 Final Rule was issued as a legislative rule subject to notice and comment. For several reasons, as stated throughout this document and in the April 2021 NOPR, DOE believes the Process Rule is best described and utilized as generally applicable guidance that may guide, but not bind, the Department's rulemaking process. In accordance with E.O. 13990, DOE is using a notice and comment process to propose revisions to the Process Rule. 86 FR 7037.

III. Discussion of Proposed Revisions to the Process Rule

The following sections discuss the additional, proposed revisions to the Process Rule and request comment on those proposals. DOE is currently only soliciting comments on the new, additional revisions proposed in this NOPR and is not soliciting comments on the revisions proposed in the April 2021 NOPR. In addition to those specific requests for comment, DOE requests comment, data, and information regarding all aspects of this notice of proposed rulemaking.

A. Coverage Determinations

In addition to specifying a list of covered products and equipment, EPCA contains provisions that enable the Secretary of Energy to classify additional types of consumer products and commercial/industrial equipment as ''covered'' within the meaning of EPCA. (42 U.S.C. 6292(b); 42 U.S.C. 6312(b)) This authority allows DOE to consider regulating additional products and equipment to further the goals of EPCA, *i.e.,* to conserve energy, as long as certain statutory requirements are met. Under 42 U.S.C. 6312(b), DOE is required to include commercial/industrial equipment as covered equipment ''by rule.'' While there is no corresponding requirement to include consumer products as covered products by rule,[8] DOE conducts coverage determination rulemakings for both

[4] These proposed revisions are separate from and complementary to the revisions contained in DOE's proposed regulatory text from its April 2021 NOPR. See 86 FR 18901, 18915–18921 (April 12, 2021).

[5] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[6] Part C was added by Public Law 95–619, Title IV, § 441(a). For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

[7] All references to EPCA in this document refer to the statute as amended through Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

[8] Under 42 U.S.C. 6292(b), DOE is authorized to ''classify'' a consumer product as a covered product if certain conditions are met. But there is no mention of DOE having to make such classifications by rule.

commercial/industrial equipment and consumer products.

In the February 2020 Final Rule, DOE added a section on coverage determination rulemakings. Among other things, the new section provided that DOE will: (1) Initiate a coverage determination rulemaking with a notice of proposed determination; (2) publish final coverage determinations as separate notices prior to the initiation of any test procedure or energy conservation standard rulemaking and at least 180 days prior to publication of a test procedure NOPR; and (3) finalize any changes to an existing scope of coverage before proceeding with a test procedure or energy conservation standard rulemaking. 85 FR 8626, 8648–8653.

As discussed previously, DOE is reconsidering whether the benefits of a one-size-fits-all rulemaking approach that lacks flexibility and includes extra procedural steps not required by EPCA outweigh the increased difficulty such an approach poses in meeting DOE's statutory deadlines and obligations under EPCA. (DOE is including a chart to depict its proposed revised process for energy conservation standards and test procedure rulemakings, as discussed in this document, in Docket No. EERE–2021–BT–STD–0003. Available at: *https://www.regulations.gov/docket/EERE-2021-BT-STD-0003.*) First, with respect to the requirement that DOE initiate a coverage determination rulemaking with a notice of proposed determination, DOE notes that in some cases it may be necessary to gather information about a consumer product or commercial/industrial equipment before issuing a proposed determination of coverage. For instance, DOE may only classify a consumer product as a covered product if it is necessary or appropriate to carry out the purposes of EPCA and the average annual per-household energy use of the consumer product is likely to exceed 100 kilowatt-hours per year. (42 U.S.C. 6292(b)) As such, it may be beneficial to first issue an RFI or other document to solicit comment on whether a consumer product is likely to meet these requirements. Based on the information received, DOE may choose not to proceed with a notice of proposed determination. Accordingly, DOE proposes that it may issue an RFI or other pre-rule document prior to a notice of proposed coverage determination. DOE requests comments, information, and data on whether its proposed approach is appropriate or on any suggested alternatives.

Second, regarding the requirements to finalize coverage determinations prior to the initiation of any test procedure or energy conservation standard rulemaking and at least 180 days prior to publication of a test procedure NOPR, DOE notes that coverage determination, test procedure, and energy conservation standard rulemakings are interdependent. A coverage determination defines the product/equipment scope for which DOE can establish test procedures and energy conservation standards. It also signals that inclusion of the consumer product or commercial/industrial equipment is necessary to carry out the purposes of EPCA, *i.e.,* to conserve energy and/or water. In order to make this determination, DOE needs to consider whether a test procedure and energy conservation standards can be established for the consumer product or commercial/industrial equipment. If DOE cannot develop a test procedure that measures energy use during a representative average use cycle and is not unduly burdensome to conduct (42 U.S.C. 6293(b)(3); 42 U.S.C. 6314(a)(2)) or prescribe energy conservation standards that result in significant energy savings (42 U.S.C. 6295(o); 42 U.S.C. 6316(a)), then making a coverage determination is not necessary as it will not result in the conservation of energy. Thus, it is important that DOE be able to initiate test procedure and energy conservation standard rulemakings while the Department conducts a coverage determination rulemaking. Accordingly, DOE proposes to eliminate the requirement that coverage determination rulemakings must be finalized prior to initiation of a test procedure or energy conservation standard rulemaking. DOE requests comments, information, and data on whether its proposed approach is appropriate or on any suggested alternatives.

As for the requirement that a coverage determination be finalized 180 days prior to publication of a test procedure NOPR, DOE notes that there are significant differences between the benefits of finalizing a coverage determination prior to publishing a test procedure NOPR and the benefits of finalizing a test procedure prior to publishing an energy conservation standards NOPR. As discussed in the April 2021 NOPR, a delay between publication of a test procedure final rule and an energy conservation standards NOPR may be beneficial in some cases as it could allow stakeholders to gain greater familiarity with complex test procedure amendments before providing comment on a proposal to amend standards. 86 FR 18901, 18908. But DOE does not see a corresponding potential benefit for delaying publication of a test procedure NOPR after a coverage determination, which establishes the scope of coverage, *i.e.,* a definition, for the newly covered product or equipment, is finalized. Accordingly, DOE proposes to eliminate the requirement that coverage determination rulemakings must be finalized 180 days prior to publication of a test procedure NOPR. DOE requests comments, information, and data on whether its proposed approach is appropriate or on any suggested alternatives. DOE notes that it will continue to follow the requirements at 42 U.S.C. 6312(b) for coverage determinations for commercial/industrial equipment and at 42 U.S.C. 6292(b) for consumer products.

B. Process for Developing Energy Conservation Standards

As part of the February 2020 Final Rule, DOE made a number of changes to section 6, *Process for Developing Energy Conservation Standards,* of the Process Rule, at least one of which has been revisited in the April 2021 NOPR. Most significantly, the February 2020 Final Rule amended the Process Rule to include a two-part test for determining whether EPCA's significant energy savings threshold has been met (*see* section 6(b) of the 2020 Process Rule amendments). 85 FR 8626, 8655–8676, 8705. However, for the reasons explained in the April 2021 NOPR, DOE has proposed to revise the Process Rule to eliminate the significant energy savings threshold test and to return to assessment of energy savings on a case-by-case basis. 86 FR 18901, 18905.

Although the aforementioned provision represents the primary change to the Process Rule regarding the development of energy conservation standards, DOE also adopted a number of other standards-related provisions in the February 2020 Final Rule, which are outlined in the paragraphs that follow. The Department has decided to revisit these provisions in this document and proposes further changes, as explained subsequently.

First, in section 6(a) of the Process Rule, the February 2020 Final Rule included an early assessment process for energy conservation standards. More specifically, in section 6(a)(1) of the Process Rule, DOE committed to publishing a notice in the **Federal Register** when it is considering initiation of a rulemaking to establish or amend any energy conservation standard, in which the agency will request submission of comments, data, and information on whether DOE

should proceed with such rulemaking, including whether any new or amended rule would be: (1) Cost-effective; (2) economically justified; (3) technologically feasible, or (4) would result in a significant savings of energy. Based upon available information, if DOE determines that a new or amended standard would not satisfy the applicable statutory criteria, it will publish a notice of proposed determination to that effect in the **Federal Register** for notice and comment. Otherwise, section 6(a)(2) of the Process Rule provides that DOE would undertake the preliminary stages of a rulemaking to issue or amend the energy conservation standard, proceeding with either a framework document/preliminary analysis or an advance notice of proposed rulemaking (''ANOPR''). The Process Rule further provides that RFIs and notices of data availability (''NODA'') could be issued, as appropriate, in addition to these preliminary-stage documents. Finally, in section 6(a)(3) of the Process Rule, DOE clarifies that initiation of a standards rulemaking does not guarantee that standards will be issued, because it could later be discovered that the applicable statutory criteria ultimately could not be satisfied. 85 FR 8626, 8704–8705.

Upon further consideration, DOE is proposing to modify these provisions to allow for a more expedited rulemaking process in appropriate cases, particularly in light of the significant number of legal deadlines confronting the Appliance Standards Program and the anticipated benefits to the Nation of the associated energy conservation standards. Because interested parties are free to raise the matter of the likelihood of satisfying or not satisfying the applicable statutory criteria needed for adoption of a new or amended energy conservation standard at any stage of the rulemaking, DOE has tentatively concluded that a separate rulemaking document limited to only that topic (*i.e.,* the early assessment RFI) may unnecessarily delay the overall process without appreciable benefit if used in all cases. Consequently, DOE proposes to remove the requirement for a separate early assessment RFI for energy conservation standards. Instead, DOE would welcome the same type of information in the context of an RFI, preliminary analysis, ANOPR, or some other pre-NOPR document, while at the same time asking other relevant questions and gathering information in the event that the Department decides to proceed with an energy conservation standards rulemaking. DOE requests comments, information, and data on whether its proposed approach is appropriate or on any other suggested alternatives.

Second, in section 6(e)(1) of the Process Rule, the February 2020 Final Rule clarified that if DOE determines it appropriate to move forward with an energy conservation standards rulemaking after conducting an early assessment, then the Department will publish in the **Federal Register** either a framework document with a subsequent preliminary analysis or an ANOPR. That same subsection provides that if DOE finds, based upon the early assessment, that one or more of the required statutory criteria for setting an energy conservation standard cannot be met, then the Department will publish a proposed determination to that effect in the **Federal Register** for notice and comment (which may lead to a final determination, as appropriate). Section 6(e)(2) of the Process Rule provides that the length of the public comment period for pre-NOPR rulemaking documents will vary depending upon the circumstances of the particular rulemaking, but will not be less than 75 calendar days, and it further provides that DOE will determine whether a public hearing is appropriate for such documents. 85 FR 8626, 8705.

After further consideration, DOE proposes to modify and clarify these provisions as follows. As noted previously, DOE is proposing to eliminate the requirement for an energy conservation standard early assessment RFI, while maintaining the opportunity for early public input through other rulemaking documents as to whether new or amended energy conservation standards are warranted under the applicable statutory criteria. The Department has tentatively concluded that one round of pre-NOPR input may be sufficient in some cases. For instance, DOE is required to revisit final determinations that energy conservation standards do not need to be amended within three years. (42 U.S.C. 6295(m)(3)(B)) In such cases, DOE may only need to issue an RFI or NODA to update its rulemaking analysis in preparation for proposing amended standards or a determination that standards do not need to be amended. Another example for which a single round of pre-NOPR input may be sufficient would be if a product has been subject to multiple rounds of rulemaking, relies on mature technologies, and for which the market is well understood. As such, DOE proposes to publish one or more documents in the **Federal Register** during the pre-NOPR stage of a rulemaking to gather information on key issues. Such document(s) could take several forms depending upon the specific proceeding, including a framework document, RFI, NODA, preliminary analysis, or ANOPR.

Additionally, DOE proposes to remove the 75-day comment period requirement for pre-NOPR energy conservation standards documents, as it is not compelled by EPCA or other applicable law. Instead, for these pre-NOPR documents for which there is no statutorily required comment period, DOE would provide an appropriate comment period,[9] determined on a case-by-case basis, which is commensurate with the nature and complexity of the energy conservation standard at issue, and will consider requests from the public for extension of the comment period to allow additional opportunities for public input. Particularly given the many legal deadlines the Department faces for various appliance rulemakings, DOE reasons that these proposed changes would promote efficiency by eliminating redundant requests for the same information and otherwise streamlining the rulemaking process. It is DOE's belief that these changes would improve the efficiency of the Appliance Standards Program without sacrificing the quality of DOE's analyses or the opportunity for public input. Thus, for the reasons stated, DOE proposes to revise section 6(e) of the Process Rule to reflect these changes. DOE requests comments, information, and data on whether its proposed approach is appropriate or on any other suggested alternatives. DOE also seeks comment on whether these changes would affect the quality of DOE's analyses or opportunities for public comment.

In section 6(g)(2) of the Process Rule, the February 2020 Final Rule stated that there would be a public comment period of at least 75 days for an energy conservation standards NOPR, with at least one public hearing or workshop. 85 FR 8626, 8706.

After further consideration, DOE proposes to modify the provision at section 6(g)(2) as follows. DOE proposes to remove the 75-day comment period

[9] See, for example, Executive Order 12866(6)(a)(1): ''Each agency shall (consistent with its own rules, regulations, or procedures) provide the public with meaningful participation in the regulatory process. In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation (including, specifically, State, local, and tribal officials). In addition, each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days.''

requirement for energy conservation standards NOPRs, replacing it with a 60-day comment period as required by EPCA. (42 U.S.C. 6295(p)(2); 42 U.S.C. 6316(a)) Although the Department believes that 60 days offers an adequate amount of time for comment in most cases, DOE may extend the comment period, as appropriate and on a case-by-case basis, commensurate with the nature and complexity of the energy conservation standard at issue. While the 2020 Process Rule has not been in effect for long enough to cause these missed deadlines, for the reasons discussed throughout, DOE has tentatively concluded that this proposed change would promote the efficiency of the Appliance Standards Program by streamlining the rulemaking process. DOE requests comments, information, and data on whether its proposed approach is appropriate or on any other suggested alternatives.

Finally, section 6(f)(4) of the current Process Rule discusses factors to be considered in selecting a proposed standard. These provisions were not modified in the February 2020 Final Rule. DOE proposes to make minor updates to these provisions (now in proposed section 6(a)(5)(iv)) to reflect current Departmental practice, which has evolved in the decades since development of the 1996 Process Rule. The descriptions of the analyses currently in sections 13–17 present the procedures, interpretations, and policies as set forth in the 1996 Process Rule. In the years following that final rule, DOE's analyses have evolved and been refined. DOE also notes that stakeholders are afforded the opportunity to comment on the specific application of these analyses as part of the individual product and equipment rulemakings. The revisions proposed in the following sections reflect the current state of DOE's analytical methodologies. Specifically, DOE proposes and seeks public comment on the following proposed revisions:

- Impacts on manufacturers: Remove specification of ''private'' in relation to manufacturer impacts, change assessment of impacts on plant closures to impacts on employment, and clarify that changes to capital investment may not be negative.
- Private impacts on consumers: Clarify that DOE typically uses regional energy prices rather than national prices and remove reference of sensitivity analyses from this section as they correctly apply to the national impacts section.
- Impacts on utilities: Revise to specify that this analysis considers utility generation and capacity rather than costs and revenues.
- Impacts on the environment: Remove reference to impacts on pollution control costs, which DOE does not consider.

Additional detail regarding these proposed changes is provided in section III.E of this NOPR.

C. Process for Developing Test Procedures

As part of the February 2020 Final Rule, DOE made a number of changes to section 8, *Test Procedures,* of the Process Rule, some of which have been revisited in the April 2021 NOPR. First, the February 2020 Final Rule amended the Process Rule's title to reflect DOE's long practice of including test procedure rulemakings (as well as certain commercial/industrial equipment) within its scope, as the 1996 Process Rule only explicitly referred to energy conservation standards rulemakings for consumer products. 85 FR 8626, 8703. Although DOE has proposed in its April 2021 NOPR to once again make the Process Rule nonbinding guidance for the reasons explained in that document, DOE has maintained the applicability of the Process Rule to covered consumer products and certain commercial/industrial equipment, as well as to energy conservation standards and test procedures. 86 FR 18901, 18904–18905, 18915. The February 2020 Final Rule also required DOE to finalize a test procedure 180 days prior to publication of a NOPR to prescribe new or amended energy conservation standards, and it set a presumption that the Department would adopt applicable industry consensus test procedures without modification, unless such industry test procedures do not meet the requirements of EPCA. 85 FR 8626, 8676–8682, 8707–8708. However, in the April 2021 NOPR, DOE proposed to revise the Process Rule to eliminate the mandatory 180-day spacing requirement, and the Department also proposed to clarify that DOE will only adopt industry consensus test procedures if they meet the requirements of EPCA and that DOE may also adopt industry test procedure standards with modifications, or draft its own procedures as necessary to ensure compatibility with the relevant statutory requirements, as well as DOE's compliance, certification, and enforcement requirements. 86 FR 18901, 18906–18908, 18918–18919.

Although the aforementioned provisions represent the primary changes to the Process Rule test procedure provisions, DOE also adopted a small number of other test procedure-related provisions in the February 2020 Final Rule, which are outlined in the paragraphs that follow. The Department has decided to revisit these provisions in this document and proposes further changes, as explained subsequently.

First, in section 8(a) of the Process Rule, the February 2020 Final Rule included an early assessment process for test procedures similar to that adopted for energy conservation standards. Consequently, DOE committed to publishing a notice in the **Federal Register** when it is considering initiation of a rulemaking to amend a test procedure, in which the agency will request submission of comments, data, and information on whether an amended test procedure rule would: (1) More accurately measure energy efficiency, energy use, water use (as specified in EPCA), or estimated annual operating cost of a covered product during a representative average use cycle or period of use without being unduly burdensome to conduct; or (2) reduce testing burden. Based upon available information, if DOE determines that an amended test procedure is not justified at that time, it will publish a notice of proposed determination to that effect in the **Federal Register** for notice and comment. Otherwise, DOE would undertake the preliminary stages of a rulemaking to amend the test procedure. 85 FR 8626, 8707–8708.

Upon further consideration, DOE is proposing to modify this provision to allow for a more expedited rulemaking process in appropriate cases, particularly in light of the significant number of legal deadlines confronting the Appliance Standards Program and the anticipated benefits to the Nation of the associated energy conservation standards. Because interested parties are free to raise the matter of the need for an amended test procedure at any preliminary stage of the rulemaking, DOE has tentatively concluded that a separate rulemaking document limited to only that topic (*i.e.,* the early assessment RFI) unnecessarily delays the overall process without appreciable benefit. Consequently, DOE proposes to remove the requirement for a separate early assessment RFI for test procedures. Instead, DOE would welcome the same type of information in the context of an RFI, preliminary analysis, ANOPR, or some other pre-NOPR document, while at the same time asking relevant questions and gathering information about other test procedure issues, such as the applicability of any industry test procedure, in the event that the Department decides to proceed with a test procedure rulemaking.

Additionally, for these pre-NOPR documents for which there is no statutorily required comment period, DOE proposes to clarify that the Department would provide an appropriate comment period for pre-NOPR documents, determined on a case-by-case basis, which is commensurate with the nature and complexity of the test procedure rulemaking at issue. DOE also proposes to clarify that it will provide a minimum 60-day public comment period with at least one public hearing or workshop for test procedure NOPR documents. DOE has historically provided a 75-day comment period for test procedure NOPRs, consistent with the comment period requirement for technical regulations in the North American Free Trade Agreement, U.S.-Canada-Mexico (''NAFTA''), Dec. 17, 1992, 32 I.L.M. 289 (1993); the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057 (1993) (codified as amended at 10 U.S.C.A. 2576) (1993) (''NAFTA Implementation Act''); and Executive Order 12889, ''Implementation of the North American Free Trade Agreement,'' 58 FR 69681 (Dec. 30, 1993). However, Congress repealed the NAFTA Implementation Act and has replaced NAFTA with the Agreement between the United States of America, the United Mexican States, and the United Canadian States (''USMCA''), Nov. 30, 2018, 134 Stat. 11, thereby rendering E.O. 12889 inoperable. Consequently, since the USMCA is consistent with EPCA's public comment period requirements and normally requires a minimum comment period of 60 days for technical regulations, DOE now proposes to provide a minimum 60-day public comment period for test procedure NOPRs. DOE requests comments, information, and data on whether its proposed approach is appropriate or on any other suggested alternatives.

Second, in section 8(b) of the Process Rule, the February 2020 Final Rule contemplated further opportunities for early public input if the Department determines to move forward with the test procedure rulemaking after considering comments on the early assessment RFI. Also, in that subsection, the February 2020 Final Rule stated that DOE will identify any necessary modifications to established test procedure prior to initiating the standards development process. 85 FR 8626, 8708. After further consideration, DOE proposes to modify and clarify these provisions as follows. As noted previously, DOE is proposing to eliminate the requirement for a test procedure early assessment RFI, while maintaining the opportunity for early public input through other rulemaking documents (potentially including RFIs) as to whether test procedure amendments are warranted under the applicable statutory criteria. The Department has tentatively concluded that one round of pre-NOPR input may be sufficient in some cases. Furthermore, DOE would clarify that its intention in section 8(b) was that Department will identify all test procedure modifications prior to issuing a proposed standard for that appliance, not to preclude the agency from preparing other pre-rulemaking standards documents, such as RFIs, NODAs, and preliminary analyses. DOE believes that such preliminary standards-related work and data gathering can commence in concert with the test procedure proceeding, as long as any anticipated test procedure changes are identified and evaluated in time for them to be factored into the energy conservation standards proposal. It is DOE's belief that these changes would improve the efficiency of the Appliance Standards Program without sacrificing the quality of DOE's analyses or the opportunity for public input. DOE requests comments, information, and data on whether its proposed approach is appropriate or on any other suggested alternatives. In addition, DOE seeks comment on whether these changes would affect the quality of DOE's analyses or opportunities for public comment.

D. ASHRAE Equipment

In EPCA, Congress established a separate and unique regulatory scheme pertaining to DOE rulemaking of certain covered equipment addressed by ASHRAE Standard 90.1, *Energy Standard for Buildings Except Low-Rise Residential Buildings,* including specific requirements for both energy conservation standards and test procedures. *See* 42 U.S.C. 6313(a)(6) and 42 U.S.C. 6314(a)(4), respectively. In the February 2020 Final Rule, DOE added a section to the Process Rule specifically addressing ASHRAE equipment for the first time.[10] 85 FR 8626, 8708.

While DOE sees value in setting forth the statutory requirements and the Department's regulatory process for covered ASHRAE equipment, a subsequent review suggests that DOE's initial efforts to explain the applicable ASHRAE requirements could be improved, both in terms of better delineating the process for energy conservation standards/test procedures and removing constraints that are neither compelled by the statute nor consistent with DOE's historic practice, and would impede DOE's ability to achieve EPCA's energy conservation purposes.

Consequently, DOE proposes to reorganize and revise the ASHRAE section of the Process Rule to focus on the requirements in EPCA, to increase clarity, and to be consistent with longstanding DOE practices. As part of this effort, DOE is proposing to remove extraneous language relating to DOE's interpretations of the statute's ASHRAE provisions, because the Department has found matters pertaining to scope, triggering, and applicable statutory criteria to typically involve nuances most appropriately addressed in individual ASHRAE rulemaking actions. One such example would be an update to the relevant ASHRAE standard that specifies standard levels for a type of covered equipment that previously was not subject to standards, as was the case with computer room air conditioners. See 77 FR 28928 (May 16, 2012). In such an instance, the application of EPCA's trigger provision is not the typical scenario in which existing standard levels for covered equipment are updated. Such matters may not lend themselves to a standardized approach suitable for inclusion in the Process Rule, but instead, are better addressed on a case-by-case basis in the context of the specific ASHRAE rulemaking in question. In light of the above, DOE's proposed changes are discussed in the paragraphs that follow.

First, DOE proposes to include separate sections delineating the EPCA requirements under two scenarios: (1) ASHRAE action regarding standards and test procedures (*i.e.,* ''ASHRAE trigger'' under 42 U.S.C. 6313(a)(6)(A) and 42 U.S.C. 6314(a)(4)(A)–(B), respectively) and (2) DOE's obligation to periodically review energy conservation standards and test procedures for ASHRAE equipment (*i.e.,* 6-year-lookback or 7-year-lookback under 42 U.S.C. 6313(a)(6)(C) and 42 U.S.C. 6314(a)(1), respectively). It is expected that this refinement would provide additional clarity to stakeholders by more clearly articulating the statutory scheme regarding standards and test procedure rulemakings for ASHRAE equipment.

Within the ASHRAE trigger section, DOE proposes to further separate out the statutory requirements for energy conservation standards and test procedures. In the current version of the

[10] The 1996 Process Rule final rule did not address ASHRAE equipment specifically. 61 FR 36974 (July 15, 1996).

Process Rule, EPCA's timelines for energy conservation standards were erroneously applied to test procedures as well. DOE wishes to make clear the applicable statutory timelines applicable to energy conservation standard and test procedure rulemakings in the Process Rule. DOE also proposes to clarify what type of action on the part of ASHRAE would trigger a DOE review for amended energy conservation standards and test procedures. With respect to amended energy conservation standards, DOE only considers ASHRAE to have acted in a manner triggering DOE review when an updated version of ASHRAE Standard 90.1 publishes (*i.e.,* not at the time that an addendum to ASHRAE Standard 90.1 is released or approved), and the updated version includes an increase in stringency of standard levels or a new design requirement relative to the current Federal standards. With respect to test procedures, DOE only considers ASHRAE to have acted in a manner triggering DOE review when an updated version of ASHRAE Standard 90.1 publishes (*i.e.,* not at the time that an addendum to ASHRAE Standard 90.1 is released or approved), and that updated version adopts a new or amended test procedure. This approach is consistent with the ASHRAE-specific provisions in EPCA and generally consistent with past DOE practice. DOE notes in the past that it has treated an update to the industry test procedure standard referenced by ASHRAE Standard 90.1 as a trigger. See *e.g.,* 77 FR 2356, 2358 (Jan. 17, 2012). DOE proposes to only consider an update to ASHRAE Standard 90.1 that modifies the referenced industry test procedure to be a trigger under the statute. This approach is consistent with EPCA and provides certainty to the public regarding when DOE is required to consider updating test procedures for ASHRAE equipment. Finally, DOE notes that ASHRAE reviewing and reaffirming (*i.e.,* not amending) a standard or test procedure does not trigger a DOE review or affect the timing of DOE's separate obligation under EPCA to periodically review standards and test procedures for each class of covered equipment.

Under the ASHRAE trigger for test procedures (42 U.S.C. 6314(a)(4)), when ASHRAE Standard 90.1 is amended, the statute requires DOE to amend the Federal test procedure to be consistent with the updated version of Standard 90.1, unless the Department determines, by rule, published in the **Federal Register** and supported by clear and convincing evidence, that the amended industry test standard would not be representative of the equipment's energy efficiency, energy use, or estimated operating cost during a representative average use cycle and not be unduly burdensome to conduct. In such cases, DOE may then develop its own test procedure which does meet these statutory requirements related to representativeness and burden, even if the test procedure is not consistent with the amended industry test standard. Further, DOE notes that the statutory language ''consistent with'' itself provides some flexibility in adopting the amended industry test procedure. As EPCA does not require DOE to adopt a test procedure identical to applicable industry test standard, DOE may make modifications that are consistent with the applicable industry test standard.

In addition, DOE proposes to clarify that it is not required to adopt or align with sections of the industry test standard that are not necessary for the method of test for metrics included in the DOE test procedure (*e.g.,* sections of the industry test procedure regarding selection of models for testing under an industry certification program, verification of represented values and the associated tolerances, and operational requirements need not be referenced or aligned with by DOE). These proposals are consistent with the Department's longstanding historic practice.

DOE proposes to remove the statement that DOE will adopt the revised ASHRAE levels or the industry test procedure, except in very limited circumstances. The circumstances under which DOE will adopt a more-stringent standard than the ASHRAE standard or a different test procedure are laid out in the statute. For example, DOE will issue a more-stringent standard than the ASHRAE standard if DOE determines, supported by clear and convincing evidence, that the more-stringent standard would result in significant additional conservation of energy and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(II)) ''Very limited circumstances'' is an ambiguous description for a process that is delineated in EPCA. As a result, DOE proposes to remove this description of the circumstances under which DOE will not adopt the amended ASHRAE standard or industry test procedure.

In addition, DOE proposes to remove the discussion of what constitutes clear and convincing evidence. As DOE previously noted in the February 2020 Final Rule, the clear and convincing evidence standard has a specific meaning that the courts have routinely addressed through case law. See 85 FR 8626, 8642 (discussing in detail application of the ''clear and convincing'' evidentiary standard by courts and legal commentators). DOE does not believe the elaboration contained in the current paragraph adds value to the EPCA language already referenced in this section or to the established case law pertaining to the standard of review for clear and convincing evidence.

DOE also proposes to remove the statement that DOE believes that ASHRAE not acting to amend Standard 90.1 is tantamount to a decision that the existing standard remain in place. This statement does not have any effect on DOE's rulemaking obligations under the ASHRAE provisions in EPCA. As discussed previously, DOE initiates an ASHRAE rulemaking because: (1) Standard 90.1 is amended to include more-stringent standards or a new design requirement; or (2) EPCA requires DOE to evaluate each class of covered equipment every 6 years. Neither of these situations would be affected by a decision by ASHRAE to reaffirm an existing standard.

Finally, DOE also proposes to make two clarifications regarding its ASHRAE review process, which are consistent with longstanding DOE practice. First, in an ASHRAE trigger analysis, DOE will assess energy savings from amended ASHRAE Standard 90.1 levels as compared to the current Federal standard (or the market baseline in cases where ASHRAE adds new equipment classes or categories not previously subject to Federal standards), and will also assess energy savings from more-stringent standards as compared to the ASHRAE Standard 90.1 levels. DOE notes that the analysis period differs for these assessments, as EPCA specifies different compliance dates for adopting levels in ASHRAE as opposed to adopting more-stringent levels. And, second, DOE notes that under an ASHRAE trigger, it may review all metrics for the equipment category, even though ASHRAE only amended DOE's regulated metric(s), and the Department may also consider changing regulated metrics (while assessing equivalent stringency between metrics). DOE may also consider changing metrics during a 6-year-lookback or 7-year-lookback review. DOE believes this is consistent with EPCA's requirement that test procedures (and metrics) be representative of an average use cycle.

DOE requests comments, information, and data on whether its proposed approaches to ASHRAE standards and test procedure rulemakings are appropriate or on any other suggested alternatives.

E. Analytical Methodology

In the February 2020 Process Rule, DOE stated that it would consider changes to sections of the Process Rule involving its analytical methodologies in a subsequent proceeding after completion of a peer review. 85 FR 8686–8687. As such, these sections remained largely unchanged from the 1996 Process Rule. Subsequently, DOE engaged with the National Academy of Sciences (''NAS'') to review DOE's analytical methodologies to ascertain whether modifications are needed to improve the Department's analyses. That review process is still ongoing. Upon further reconsideration, DOE believes that it is important to revise the analytical sections in the Process Rule to better reflect Departmental practice. The descriptions of the analyses currently in sections 13–17 present the procedures, interpretations, and policies as set forth in the 1996 Process Rule. In the years following that final rule, DOE's analyses have evolved and been refined. The revisions proposed in the following sections reflect the current state of DOE's analytical methodologies. If DOE makes any revisions to its analytical methods based on the NAS peer review, the Department will propose any necessary corresponding revisions to the Process Rule in a subsequent proceeding.

1. New Section 12 Principles for the Conduct of the Engineering Analysis

DOE proposes to update the description of the analysis to more comprehensively describe the various approaches DOE takes in developing cost-efficiency relationships. Specifically, DOE proposes to reorganize the discussion to clearly describe the two key aspects of the engineering analysis: The efficiency analysis (*i.e.,* identifying the efficiency levels for analysis) and the cost analysis (*i.e.,* estimating the costs at each analyzed efficiency level).

In particular, DOE typically uses one of two approaches to develop energy efficiency levels for the engineering analysis: (1) Relying on observed efficiency levels in the market (*i.e.,* the efficiency-level approach), or (2) determining the incremental efficiency improvements associated with incorporating specific design options to a baseline model (*i.e.,* the design-option approach).

DOE typically uses one or a combination of approaches to conduct the cost analysis, including (1) physical teardowns (*i.e.,* physically dismantling a commercially available product/equipment model, component-by-component, to develop a detailed bill of materials for the model); (2) catalog teardowns (*i.e.,* identifying each component using parts diagrams available from manufacturer websites or appliance repair websites, in lieu of physically deconstructing the product/equipment, to develop the bill of materials for the product/equipment); and/or (3) price surveys (*i.e.,* deriving costs using publicly available pricing data published on major online retailer websites and/or by soliciting prices from distributors and other commercial channels). The choice of approach depends on a suite of factors, including the availability and reliability of public information, characteristics of the subject product/equipment, and the availability and timeliness of purchasing the product/equipment on the market.

2. New Section 13 Principles for the Analysis of Impacts on Manufacturers

In the preamble to the July 1996 Process Rule, the Department of Energy committed to a detailed review of the existing manufacturer impact analysis methodologies. 61 FR 36974, 36979. During a series of public consultations in 1997, the Department presented a draft work plan for the development of new methods for assessing manufacturer impacts and invited comments and suggestions from interested parties. *See* 62 FR 8189 (Feb. 24, 1997). The Department implemented its revised Manufacturer Impact Analysis methodologies for final rules issued subsequently. DOE proposes to update the Process Rule to align with the manufacturer impact analysis methodologies that are the result of the 1997 process and subsequent stakeholder input. DOE proposes to clarify the process used to evaluate manufacturers impacts and expands the guidance on the methodologies used to solicit stakeholder input. The updates include:

- Acknowledgement of the manufacturer interview process. DOE adds language to reflect a critical tool used as part of the current process, wherein manufacturer specific data and information are used to develop and validate key inputs for the manufacturer impact analysis.
- Added detail on use of the Government Regulatory Impact Model (GRIM). The 1996 and 2020 Process Rules make mention of the GRIM without explanation of the model. DOE adds language on the structure, underlying principles, and outputs of the model.
- Differentiation between types of cost impacts. To better reflect the current process, DOE expands discussion about the types of manufacturer cost impacts considered in the analysis.
- Clarification on the treatment of manufacturer subgroups. To be consistent with the current process, DOE adds criteria on the evaluation of subgroups of manufacturers that may be disproportionately impacted by standards or that may not be accurately represented by the average cost assumptions.
- Consideration of competitive impacts, as required by EPCA. To be consistent with the current process and with EPCA, DOE adds criteria to consider any lessening of competition that is likely to result from imposition of standards and clarifies how the Department will coordinate with the Department of Justice.
- Inclusion of stakeholder concerns related to manufacturing capacity and direct employment impacts. To be consistent with the current process, DOE highlights criteria related to manufacturing capacity and direct employment impacts that the Department considers in its assessment of impacts on manufacturers.

3. New Section 14 Principles for the Analysis of Impacts on Consumers

DOE proposes minor changes to the discussion of analytical principles related to consumer impacts. These changes reflect the analytical methodologies that are the result of several iterations of stakeholder input and regulatory review, advances in data availability, and advances in analytical techniques in the academic literature. In particular, DOE proposes the following changes: (1) Clarifications regarding the use of analytical input distributions in order to establish representative consumer samples and evaluate the range of potential impacts. These changes help to differentiate variation in consumer impacts captured in the Life-Cycle Cost (LCC) analysis from additional sensitivity or scenario analyses used for data or assumptions subject to a higher degree of uncertainty; (2) clarifications to differentiate the LCC analysis from the consumer subgroup analysis, the latter of which considers impacts on subgroups of consumers who may be disproportionately impacted by a potential standard; (3) removal of discussion of magnitude of first cost and length of payback period triggering additional assessments, as those assessments are always made when relevant to a given products; and (4) the addition of a discussion on consumer discount rates, found in section 17 of the current Process Rule.

The revised discussion reflects DOE's established practice of calculating weighted discount rates based on debt and equity holdings for both residential and commercial/industrial consumers, for the purposes of the LCC analysis.

4. New Section 15 Consideration of Non-Regulatory Approaches

DOE proposes to simplify the text to reflect its current practice and to clarify the data available for use in DOE's analyses. Specifically, the proposed revisions clarify that DOE's established practice is to compare non-regulatory initiatives relative to candidate/trial standard levels rather than considering their individual impacts. In addition, the proposed revisions clarify that DOE bases its assessment on the actual impacts of existing non-regulatory initiatives, and does not typically speculate on potential future non-regulatory initiatives or initiatives that have not yet been implemented. Finally, DOE proposes to eliminate reference to assessing appropriate compliance dates, as these are nearly always statutorily defined.

5. New Section 16 Cross-Cutting Analytical Assumptions

DOE proposes minor updates to reflect DOE's long-standing analytical practice. In particular, DOE proposes the following clarifications: (1) DOE will continue to utilize a 30-year analysis period along with a 9-year sensitivity analysis, but DOE no longer analyzes a time length specific to each product; (2) energy-efficiency trends will be based on the best available historical market data (which may or may not be based on NEMS); (3) analyses will generally adopt the reference energy price scenario of EIA's most current *Annual Energy Outlook* (while demand is not typically considered); and (4) the discount rates used in determining national costs and benefits (formerly referred to as social discount rates) are in accordance with the Office of Management and Budget (OMB)'s guidance to Federal agencies on developing regulatory analyses (OMB Circular A–4, September 17, 2003, and section E., ''Identifying and Measuring Benefits and Costs,'' therein).

6. New Section 17 Emissions Analysis

DOE also proposes a new section 17 discussing the Department's emissions analysis that is based on text that is currently part of section 17, Cross-Cutting Analytical Assumptions. The proposed updates clarify that DOE will estimate emissions reductions of greenhouse gases and pollutants likely to result from candidate/trial standard levels following best practices at the time. These emissions reductions will potentially include the effect on electric power sector and site combustion emissions, as well as on ''upstream activities'' in the fuel production chain. The proposed updates also clarify that estimation of the monetary value of the avoided greenhouse gas emissions, as well as those of other air pollutants, will be based on best practices at the time, for example, by using accepted benefit-per-ton values from the scientific literature.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

This regulatory action is a significant regulatory action under section 3(f)(4) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). Accordingly, this proposed regulatory action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

The revisions contained in this proposed regulatory action are procedural changes designed to improve DOE's ability to meet its rulemaking obligations and deadlines under EPCA. These proposed revisions would not impose any regulatory costs or burdens on stakeholders, nor would they limit public participation in DOE's rulemaking process. Instead, these proposed revisions would allow DOE to tailor its rulemaking processes to fit the facts and circumstances of a particular rulemaking for a covered product or equipment.

DOE currently has energy conservation standards and test procedures in place for more than 60 categories of covered products and equipment and is typically working on anywhere from 50 to 100 rulemakings (for both energy conservation standards and test procedures) at any one time. Further, these rulemakings are all subject to statutory or other deadlines. Typically, review cycles for energy conservation standards and test procedures for covered products are 6 and 7 years, respectively. (42 U.S.C. 6295(m)(1); 42 U.S.C 6293(b)(1)) Additionally, if DOE decides not to amend an energy conservation standard for a covered product, the subsequent review cycle is shortened to 3 years. (42 U.S.C. 6295(m)(3)(B)) It is challenging to meet these cyclical deadlines for more than 60 categories of covered products and equipment. In fact, as previously discussed, DOE is currently facing two lawsuits that allege DOE has failed to meet rulemaking deadlines for 25 different consumer products and commercial equipment.

In order to meet these rulemaking deadlines, DOE cannot afford the inefficiencies that come with a one-size-fits-all rulemaking approach. For example, having to issue an early assessment RFI followed by an ANOPR to collect early stakeholder input when a NODA or other pre-rule document would accomplish the same purpose unnecessarily lengthens the rulemaking process and wastes limited DOE resources. Similarly, having to identify any necessary modifications to a test procedure prior to initiating an energy conservation standard rulemaking makes it more difficult for DOE to meet rulemaking deadlines, while offering little to no benefit to stakeholders. The revisions proposed in this document would allow DOE to eliminate these types of inefficiencies that lengthen the rulemaking process and waste DOE resources, while not affecting the ability of the public to participate in the rulemaking process. Eliminating inefficiencies that lengthen the rulemaking process allows DOE to more quickly develop energy conservation standards that deliver the environmental benefits, including reductions in greenhouse gas emissions, that DOE is directed to pursue under E.O. 13990. Further, the sooner new or amended energy conservation standards eliminate less-efficient covered products and equipment from the market, the greater the resulting energy savings and environmental benefits.

Finally, the revisions proposed in this document would not dictate any particular rulemaking outcome in an energy conservation standard or test procedure rulemaking. DOE will continue to calculate the regulatory costs and benefits of new and amended energy conservation standards and test procedures issued under EPCA in future, individual rulemakings.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment and a final regulatory flexibility analysis (FRFA) for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A

regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative effects. Also, as required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website at: *https://www.energy.gov/gc/office-general-counsel.*

This proposed rule details generally applicable guidance that may guide, but not bind, the Department's rulemaking process. The proposed revisions are intended to improve DOE's ability to meet the obligations and deadlines outlined in EPCA by allowing DOE to tailor its rulemaking procedures to fit the specific facts and circumstances of a particular covered product or equipment, while not affecting the ability of any interested person, including small entities, to participate in DOE's rulemaking process. Because this proposed rule imposes no regulatory obligations on the public, including small entities, and does not affect the ability of any interested person, including small entities, to participate in DOE's rulemaking process, DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, and, therefore, no initial regulatory flexibility analysis is required. *Mid-Tex Elec. Cooperative, Inc.* v. *F.E.R.C.,* 773 F.2d 327 (D.C. Cir. 1985).

C. Review Under the Paperwork Reduction Act of 1995

DOE is not amending its existing information collections through this proposed rule. Under existing provisions, manufacturers of covered products/equipment must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for such products/equipment, including any amendments adopted for those test procedures, on the date that compliance is required. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment. 76 FR 12422 (March 7, 2011); 80 FR 5099 (Jan. 30, 2015). The collection-of-information requirement for certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Specifically, this proposed rule, addressing clarifications to the Process Rule itself, does not contain any collection of information requirement that would trigger the PRA.

D. Review Under the National Environmental Policy Act of 1969

DOE is analyzing this proposed regulation in accordance with the National Environmental Policy Act (NEPA) and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for rulemakings interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. 10 CFR part 1021, subpart D, appendix A5. DOE's regulations include a categorical exclusion for rulemakings that are strictly procedural. 10 CFR part 1021, subpart D, appendix A6. DOE anticipates that this rulemaking qualifies for categorical exclusion A5 and A6 because it is amending a rule and because it is a procedural rulemaking, it does not change the environmental effect of the rule and otherwise meets the requirements for application of a categorical exclusion. See 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final rule.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it 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. It will primarily affect the procedure by which DOE develops proposed rules to revise energy conservation standards and test procedures. EPCA governs and prescribes Federal preemption of State regulations that are the subject of DOE's regulations adopted pursuant to the statute. In such cases, States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) Therefore, Executive Order 13132 requires no further action.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that each Executive agency make every reasonable effort to ensure that when it issues a regulation, the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) specifies whether administrative proceedings are to be required before parties may file suit in court and, if so, describes those proceedings and requires the exhaustion of administrative remedies; (6)

adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and has determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. (Pub. L. 104–4, sec. 201 (codified at 2 U.S.C. 1531)) For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. (62 FR 12820) (This policy is also available at *https://www.energy.gov/gc/office-general-counsel* under ''Guidance & Opinions'' (Rulemaking)) DOE examined the proposed rule according to UMRA and its statement of policy and has determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. Accordingly, no further assessment or analysis is required under UMRA.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with the applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that the regulatory action in this document, which makes clarifications to the Process Rule that guides the Department in proposing energy conservation standards is not a significant energy action because it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects for this proposed rule.

L. Review Consistent With OMB's Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.'' *Id.* at 70 FR 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report,'' dated February 2007, has been

disseminated and is available at the following website: *www.energy.gov/eere/buildings/peer-review.* Because available data, models, and technological understanding have changed since 2007, DOE has engaged with the National Academy of Sciences to review DOE's analytical methodologies to ascertain whether modifications are needed to improve the Department's analyses. The results from that review are expected later in 2021.

V. Public Participation

A. Participation in the Webinar

The time and date of the webinar are listed in the **DATES** section at the beginning of this document. If no participants register for the webinar, it will be cancelled. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *https://www.energy.gov/eere/buildings/process-rule.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this proposed rulemaking, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Such persons may submit requests to speak by email to the Appliance and Equipment Standards Program, *ApplianceStandardsQuestions@ee.doe.gov.* Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the webinar. At its discretion, DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar will be conducted in an informal, conference style. DOE will present summaries of comments received before the webinar, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the webinar will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar.

A transcript of the webinar will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this NOPR. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via https://www.regulations.gov. The *https://www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *https://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *https://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *https://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *https://www.regulations.gov* provides after you

have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted via email also will be posted to *https://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and free of any defects or viruses. Documents should not contain special characters or any form of encryption, and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses, Test procedures.

Signing Authority

This document of the Department of Energy was signed on June 29, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on June 30, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE proposes to amend part 430 of title 10 of the Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Appendix A to subpart C of part 430 is revised to read as follows:

Appendix A to Subpart C of Part 430—Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Certain Commercial/Industrial Equipment

1. Objectives

This appendix establishes procedures, interpretations, and policies to guide the Department of Energy (''DOE'' or the ''Department'') in the consideration and promulgation of new or revised appliance energy conservation standards and test procedures under the Energy Policy and Conservation Act (EPCA). This appendix applies to both covered consumer products and covered commercial/industrial equipment. The Department's objectives in establishing these procedures include:

(a) *Provide for early input from stakeholders.* The Department seeks to provide opportunities for public input early in the rulemaking process so that the initiation and direction of rulemakings is informed by comment from interested parties. DOE will be able to seek early input from interested parties in determining whether establishing new or amending existing energy conservation standards will result in significant savings of energy and is economically justified and technologically feasible. In the context of test procedure rulemakings, DOE will be able to seek early input from interested parties in determining whether—

(1) Establishing a new or amending an existing test procedure will better measure the energy efficiency, energy use, water use (as specified in EPCA), or estimated annual operating cost of a covered product/equipment during a representative average use cycle or period of use (for consumer products); and

(2) Will not be unduly burdensome to conduct.

(b) *Increase predictability of the rulemaking timetable.* The Department seeks to make informed, strategic decisions about how to deploy its resources on the range of possible standards and test procedure development activities, and to announce these prioritization decisions so that all interested parties have a common expectation about the timing of different rulemaking activities. Further, DOE will offer the opportunity to provide input on the prioritization of rulemakings through a request for comment as DOE begins preparation of its Regulatory Agenda each spring.

(c) *Eliminate problematic design options early in the process.* The Department seeks to eliminate from consideration, early in the process, any design options that present unacceptable problems with respect to manufacturability, consumer utility, or safety, so that the detailed analysis can focus

only on viable design options. DOE will be able to eliminate from consideration design options if it concludes that manufacture, installation or service of the design will be impractical, or that the design option will have a material adverse impact on the utility of the product, or if the design option will have a material adverse impact on safety or health. DOE will also be able to eliminate from consideration proprietary design options that represent a unique pathway to achieving a given efficiency level. This screening will be done at the outset of a rulemaking.

(d) *Fully consider non-regulatory approaches.* The Department seeks to understand the effects of market forces and voluntary programs on encouraging the purchase of energy efficient products so that the incremental impacts of a new or revised standard can be accurately assessed and the Department can make informed decisions about where standards and voluntary programs can be used most effectively. DOE will continue to be able to support voluntary efforts by manufacturers, retailers, utilities, and others to increase product/equipment efficiency.

(e) *Conduct thorough analysis of impacts.* In addition to understanding the aggregate social and private costs and benefits of standards, the Department seeks to understand the distribution of those costs and benefits among consumers, manufacturers, and others, as well as the uncertainty associated with these analyses of costs and benefits, so that any adverse impacts on subgroups and uncertainty concerning any adverse impacts can be fully considered in selecting a standard. DOE will be able to consider the variability of impacts on significant groups of manufacturers and consumers in addition to aggregate social and private costs and benefits, report the range of uncertainty associated with these impacts, and take into account cumulative impacts of regulation on manufacturers. The Department will also be able to conduct appropriate analyses to assess the impact that new or amended test procedures will have on manufacturers and consumers.

(f) *Use transparent and robust analytical methods.* The Department seeks to use qualitative and quantitative analytical methods that are fully documented for the public and that produce results that can be explained and reproduced, so that the analytical underpinnings for policy decisions on standards are as sound and well-accepted as possible.

(g) *Support efforts to build consensus on standards.* The Department seeks to encourage development of consensus proposals for new or revised standards because standards with such broad-based support are likely to balance effectively the various interests affected by such standards.

2. Scope

The procedures, interpretations, and policies described in this appendix apply to rulemakings concerning new or revised Federal energy conservation standards and test procedures, and related rule documents (*i.e.,* coverage determinations) for consumer products in Part A and commercial and industrial equipment under Part A–1 of the Energy Policy and Conservation Act (EPCA), as amended, except covered ASHRAE equipment in Part A–1 are governed separately under section 9 in this appendix.

3. Application of the Process Rule

(a) This appendix contains procedures, interpretations, and policies that are generally applicable to the development of energy conservation standards and test procedures. The Department may, as necessary, deviate from this appendix to account for the specific circumstances of a particular rulemaking.

(b) This appendix is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity.

4. Setting Priorities for Rulemaking Activity

(a) In establishing its priorities for undertaking energy conservation standards and test procedure rulemakings, DOE will consider the following factors, consistent with applicable legal obligations:

(1) Potential energy savings;

(2) Potential social and private, including environmental or energy security, benefits;

(3) Applicable deadlines for rulemakings;

(4) Incremental DOE resources required to complete the rulemaking process;

(5) Other relevant regulatory actions affecting the products/equipment;

(6) Stakeholder recommendations;

(7) Evidence of energy efficiency gains in the market absent new or revised standards;

(8) Status of required changes to test procedures; and

(9) Other relevant factors.

(b) DOE will offer the opportunity to provide input on prioritization of rulemakings through a request for comment as DOE begins preparation of its Regulatory Agenda each spring.

5. Coverage Determination Rulemakings

DOE has discretion to conduct proceedings to determine whether additional consumer products and commercial/industrial equipment should be covered under EPCA if certain statutory criteria are met. (42 U.S.C. 6292(b) and 42 U.S.C. 6295(l) for consumer products; 42 U.S.C. 6312(b) for commercial/industrial equipment) This section describes the process to be used in establishing coverage for consumer products and commercial/industrial equipment.

(a) *Pre-Notice of Proposed Rulemaking (''NOPR'') Stage.* In determining whether to consider establishing coverage for a consumer product or commercial/industrial equipment, DOE may publish one or more preliminary documents in the **Federal Register** intended to gather information on key issues. Such document(s) will be published in the **Federal Register**, with accompanying documents referenced and posted in the appropriate docket.

(b) *NOPR Stage.* If DOE determines to proceed with a coverage determination process, the Department will publish a notice of proposed determination, providing an opportunity for public comment of not less than 60 days, in which DOE will explain how such products/equipment that it seeks to designate as ''covered'' meet the statutory criteria for coverage and why such coverage is ''necessary or appropriate'' to carry out the purposes of EPCA. In the case of commercial equipment, DOE will follow the same process, except that the Department must demonstrate that coverage of the equipment type is ''necessary'' to carry out the purposes of EPCA.

(c) *Final Rule.* DOE will publish a Final Rule in the **Federal Register** that establishes the scope of coverage for the product/equipment, responds to public comments received on the NOPR, and explains how inclusion of the newly covered product/equipment meets the statutory criteria for coverage and why such coverage is necessary or appropriate to carry out the purposes of EPCA. DOE will finalize coverage for a product/equipment prior to publication of a proposed rule to establish a test procedure.

(d) *Scope of Coverage Revisions.* If, during the substantive rulemaking proceedings to establish test procedures or energy conservation standards after completing a coverage determination, DOE finds it necessary and appropriate to amend the scope of coverage, DOE will propose an amended coverage determination and finalize coverage prior to moving forward with the test procedure or standards rulemaking.

6. Process for Developing Energy Conservation Standards

This section describes the process to be used in developing energy conservation standards for covered products and equipment other than those covered equipment subject to ASHRAE/IES Standard 90.1.

(a) *Pre-NOPR Stage.* (1) *General.* In determining whether to consider establishing or amending any energy conservation standard, DOE will publish one or more preliminary documents in the **Federal Register** intended to gather information on key issues. Such document(s) could take several forms depending upon the specific proceeding, including a framework document, request for information (RFI), notice of data availability (NODA), preliminary analysis, or advance notice of proposed rulemaking (ANOPR). Such document(s) will be published in the **Federal Register**, with any accompanying documents referenced and posted in the appropriate docket.

(2) *Satisfaction of Statutory Criteria.* As part of such pre-NOPR-stage document(s), DOE will solicit submission of comments, data, and information on whether DOE should proceed with the rulemaking, including whether any new or amended rule would satisfy the relevant statutory criteria to be cost-effective, economically justified, technologically feasible, and result in a significant savings of energy. Based on the information received in response to such request and its own analysis, DOE will determine whether to proceed with a rulemaking for a new or amended energy conservation standard. If DOE determines at any point in the pre-NOPR stage that no candidate standard level for a new or amended standard is likely to satisfy all of the applicable statutory criteria (*i.e.,* to be technologically feasible and economically

justified and result in significant energy savings), DOE will announce that conclusion in the **Federal Register** and proceed with notice-and-comment rulemaking that proposes a determination not to adopt new or amended standards. DOE notes that it will, consistent with its statutory obligations, consider both cost effectiveness and economic justification when issuing a determination not to amend a standard. If DOE receives sufficient information suggesting it could justify a new or amended standard or the information received is inconclusive with regard to the statutory criteria, DOE will move forward with the rulemaking to issue or amend an energy conservation standard. In those instances where the available information either suggested that a new or amended energy conservation standard might be justified or in which the information was inconclusive on this point, and DOE undertakes a rulemaking to establish or amend an energy conservation standard, DOE may still ultimately determine that such a standard is not economically justified, technologically feasible or would not result in a significant savings of energy at a later stage of the rulemaking.

(3) *Design options.* (i) *General.* Once the Department has initiated a rulemaking for a specific product/equipment but before publishing a proposed rule to establish or amend standards, DOE will typically identify the product/equipment categories and design options to be analyzed in detail, as well as those design options to be eliminated from further consideration. During the pre-NOPR stage of the rulemaking, interested parties may be consulted to provide information on key issues, including potential design options, through a variety of rulemaking documents.

(ii) *Identification and screening of design options.* During the pre-NOPR phase of the rulemaking process, the Department will typically develop a list of design options for consideration. Initially, the candidate design options will encompass all those technologies considered to be technologically feasible. Following the development of this initial list of design options, DOE will review each design option based on the factors described in paragraph (a)(3)(iii) of this section and the policies stated in section 7 of this Appendix (*i.e.,* Policies on Selection of Standards). The reasons for eliminating or retaining any design option at this stage of the process will be fully documented and published as part of the NOPR and as appropriate for a given rule, in the pre-NOPR document(s). The technologically feasible design options that are not eliminated in this screening analysis will be considered further in the Engineering Analysis described in paragraph (a)(4) of this section.

(iii) *Factors for screening of design options.* The factors for screening design options include:

(A) *Technological feasibility.* Technologies incorporated in commercial products (or equipment) or in working prototypes will be considered technologically feasible.

(B) *Practicability to manufacture, install and service.* If mass production of a technology under consideration for use in commercially-available products (or equipment) and reliable installation and servicing of the technology could be achieved on the scale necessary to serve the relevant market at the time of the effective date of the standard, then that technology will be considered practicable to manufacture, install, and service.

(C) *Adverse Impacts on Product Utility or Product Availability.*

(D) *Adverse Impacts on Health or Safety.*

(E) *Unique-Pathway Proprietary Technologies.* If a design option utilizes proprietary technology that represents a unique pathway to achieving a given efficiency level, that technology will not be considered further.

(4) *Engineering analysis of design options and selection of candidate standard levels.* After design options are identified and screened, DOE will perform the engineering analysis and the benefit/cost analysis and select the candidate standard levels based on these analyses. The results of the analyses will be published in a Technical Support Document (TSD) to accompany the appropriate rulemaking documents.

(i) *Identification of engineering analytical methods and tools.* DOE will select the specific engineering analysis tools (or multiple tools, if necessary, to address uncertainty) to be used in the analysis of the design options identified as a result of the screening analysis.

(ii) *Engineering and life-cycle cost analysis of design options.* DOE and its contractors will perform engineering and life-cycle cost analyses of the design options.

(iii) *Review by stakeholders.* Interested parties will have the opportunity to review the results of the engineering and life-cycle cost analyses. If appropriate, a public workshop will be conducted to review these results. The analyses will be revised as appropriate on the basis of this input.

(iv) *New information relating to the factors used for screening design options.* If further information or analysis leads to a determination that a design option, or a combination of design options, has unacceptable impacts, that design option or combination of design options will not be included in a candidate standard level.

(v) *Selection of candidate standard levels.* Based on the results of the engineering and life-cycle cost analysis of design options and the policies stated in paragraph (a)(3)(iii) of this section, DOE will select the candidate standard levels for further analysis.

(5) *Analysis of impacts and selection of proposed standard level.* If DOE has determined preliminarily that a candidate standard level is likely to produce the maximum improvement in energy efficiency that is both technologically feasible and economically justified and constitutes significant energy savings, economic analyses of the impacts of the candidate standard levels will be conducted. The Department will propose new or amended standards in a subsequent NOPR based on the results of the impact analysis.

(i) *Identification of issues for analysis.* The Department, in consideration of comments received, will identify issues that will be examined in the impacts analysis.

(ii) *Identification of analytical methods and tools.* DOE will select the specific economic analysis tools (or multiple tools, if necessary, to address uncertainty) to be used in the analysis of the candidate standard levels.

(iii) *Analysis of impacts.* DOE will conduct the analysis of the impacts of candidate standard levels.

(iv) *Factors to be considered in selecting a proposed standard.* The factors to be considered in selection of a proposed standard include:

(A) Impacts on manufacturers. The analysis of manufacturer impacts will include: Estimated impacts on cash flow; assessment of impacts on manufacturers of specific categories of products/equipment and small manufacturers; assessment of impacts on manufacturers of multiple product-specific Federal regulatory requirements, including efficiency standards for other products and regulations of other agencies; and impacts on manufacturing capacity, employment, and capital investment.

(B) Private impacts on consumers. The analysis of consumer impacts will include: Estimated private energy savings impacts on consumers based on regional average energy prices and energy usage; assessments of the variability of impacts on subgroups of consumers based on major regional differences in usage or energy prices and significant variations in installation costs or performance; consideration of changes to product utility, changes to purchase rate and/or costs of products, and other impacts of likely concern to all or some consumers, based to the extent practicable on direct input from consumers; estimated life-cycle cost with sensitivity analysis; and consideration of the increased first cost to consumers and the time required for energy cost savings to pay back these first costs.

(C) Impacts on competition, including industry concentration analysis.

(D) Impacts on utilities. The analysis of utility impacts will include estimated marginal impacts on electric and gas utility generation and capacity.

(E) National energy, economic, and employment impacts. The analysis of national energy, economic, and employment impacts will include: Estimated energy savings by fuel type; estimated net present value of benefits to all consumers; sensitivity analyses using high and low discount rates reflecting both private transactions and social discount rates and high and low energy price forecasts; and estimates of the direct and indirect impacts on employment by appliance manufacturers, relevant service industries, energy suppliers, suppliers of complementary and substitution products, and the economy in general.

(F) Impacts on the environment. The analysis of environmental impacts will include estimated impacts on emissions of carbon and relevant criteria pollutants.

(G) Impacts of non-regulatory approaches. The analysis of energy savings and consumer impacts will incorporate an assessment of the impacts of market forces and existing voluntary programs in promoting product/equipment efficiency, usage, and related characteristics in the absence of updated efficiency standards.

(H) New information relating to the factors used for screening design options.

(6) *Public comment and hearing.* The length of the public comment period for pre-NOPR rulemaking documents will be determined on a case-by-case basis and may vary depending upon the circumstances of the particular rulemaking. For pre-NOPR documents, DOE will determine whether a public hearing is appropriate.

(7) *Revisions based on comments.* Based on consideration of the comments received, any necessary changes to the engineering analysis, life-cycle cost analysis, or the candidate standard levels will be made.

(b) *NOPR Stage.* (1) *Documentation of decisions on proposed standard selection.* The Department will publish a NOPR in the **Federal Register** that proposes standard levels and explains the basis for the selection of those proposed levels, and DOE will post on its website a draft TSD documenting the analysis of impacts. The draft TSD will also be posted in the appropriate docket at *https://www.regulations.gov*. As required by 42 U.S.C. 6295(p)(1) of EPCA, the NOPR also will describe the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible and, if the proposed standards would not achieve these levels, the reasons for proposing different standards.

(2) *Public comment and hearing.* There will be not less than 60 days for public comment on the NOPR, with at least one public hearing or workshop. (42 U.S.C. 6295(p)(2) and 42 U.S.C. 6306)

(3) *Revisions to impact analyses and selection of final standard.* Based on the public comments received, DOE will review the proposed standard and impact analyses, and make modifications as necessary. If major changes to the analyses are required at this stage, DOE will publish a Supplemental Notice of Proposed Rulemaking (SNOPR), when required. DOE may also publish a NODA or RFI, where appropriate.

(c) *Final Rule Stage.* The Department will publish a Final Rule in the **Federal Register** that promulgates standard levels, responds to public comments received on the NOPR (and SNOPR if applicable), and explains how the selection of those standards meets the statutory requirement that any new or amended energy conservation standard produces the maximum improvement in energy efficiency that is both technologically feasible and economically justified and constitutes significant energy savings, accompanied by a final TSD.

7. Policies on Selection of Standards

(a) *Purpose.* (1) Section 6 describes the process that will be used to consider new or revised energy efficiency standards and lists a number of factors and analyses that will be considered at specified points in the process. Department policies concerning the selection of new or revised standards, and decisions preliminary thereto, are described in this section. These policies are intended to elaborate on the statutory criteria provided in 42 U.S.C. 6295.

(2) The procedures described in this section are intended to assist the Department in making the determinations required by EPCA and do not preclude DOE's consideration of any other information consistent with the relevant statutory criteria. The Department will consider pertinent information in determining whether a new or revised standard is consistent with the statutory criteria.

(b) *Screening design options.* These factors will be considered as follows in determining whether a design option will receive any further consideration:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in commercially viable, existing prototypes will not be considered further.

(2) *Practicability to manufacture, install and service.* If it is determined that mass production of a technology in commercial products and reliable installation and servicing of the technology could not be achieved on the scale necessary to serve the relevant market at the time of the compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility.* If a technology is determined to have significant adverse impact on the utility of the product/equipment to subgroups of consumers, or result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the U.S. at the time, it will not be considered further.

(4) *Safety of technologies.* If it is determined that a technology will have significant adverse impacts on health or safety, it will not be considered further.

(5) *Unique-pathway proprietary technologies.* If a technology has proprietary protection and represents a unique pathway to achieving a given efficiency level, it will not be considered further, due to the potential for monopolistic concerns.

(c) *Identification of candidate standard levels.* Based on the results of the engineering and cost/benefit analyses of design options, DOE will identify the candidate standard levels for further analysis. Candidate standard levels will be selected as follows:

(1) *Costs and savings of design options.* Design options that have payback periods that exceed the median life of the product or which result in life-cycle cost increases relative to the base case, using typical fuel costs, usage, and private discount rates, will not be used as the basis for candidate standard levels.

(2) *Further information on factors used for screening design options.* If further information or analysis leads to a determination that a design option, or a combination of design options, has unacceptable impacts under the policies stated in this Appendix, that design option or combination of design options will not be included in a candidate standard level.

(3) *Selection of candidate standard levels.* Candidate standard levels, which will be identified in the pre-NOPR documents and on which impact analyses will be conducted, will be based on the remaining design options.

(i) The range of candidate standard levels will typically include:

(A) The most energy-efficient combination of design options;

(B) The combination of design options with the lowest life-cycle cost; and

(C) A combination of design options with a payback period of not more than three years.

(ii) Candidate standard levels that incorporate noteworthy technologies or fill in large gaps between efficiency levels of other candidate standard levels also may be selected.

(d) *Pre-NOPR Stage.* New information provided in public comments on any pre-NOPR documents will be considered to determine whether any changes to the candidate standard levels are needed before proceeding to the analysis of impacts.

(e)(1) *Selection of proposed standard.* Based on the results of the analysis of impacts, DOE will select a standard level to be proposed for public comment in the NOPR. As required under 42 U.S.C. 6295(o)(2)(A), any new or revised standard must be designed to achieve the maximum improvement in energy efficiency that is determined to be both technologically feasible and economically justified.

(2) *Statutory policies.* The fundamental policies concerning the selection of standards include:

(i) A trial standard level will not be proposed or promulgated if the Department determines that it is not both technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. 6295(o)(3)(B)) For a trial standard level to be economically justified, the Secretary must determine that the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the factors listed in 42 U.S.C. 6295(o)(2)(B)(i). A standard level is subject to a rebuttable presumption that it is economically justified if the payback period is three years or less. (42 U.S.C. 6295(o)(2)(B)(iii))

(ii) If the Department determines that interested persons have established by a preponderance of the evidence that a standard level is likely to result in the unavailability in the United States of any covered product/equipment type (or class) with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the U.S. at the time of the determination, then that standard level will not be proposed. (42 U.S.C. 6295(o)(4))

(iii) If the Department determines that a standard level would not result in significant conservation of energy, that standard level will not be proposed. (42 U.S.C. 6295(o)(3)(B))

(f) *Selection of a final standard.* New information provided in the public comments on the NOPR and any analysis by the Department of Justice concerning impacts on competition of the proposed standard will be considered to determine whether issuance of a new or amended energy conservation standard produces the maximum improvement in energy efficiency that is both technologically feasible and economically justified and still constitutes significant energy savings or whether any change to the proposed standard level is needed before proceeding to the final rule. The same

policies used to select the proposed standard level, as described in this section, will be used to guide the selection of the final standard level or a determination that no new or amended standard is justified.

8. Test Procedures

(a) *Pre-NOPR Stage.* (1) *General.* In determining whether to consider establishing or amending any test procedure, DOE will publish one or more preliminary documents in the **Federal Register** (*e.g.,* an RFI or NODA) intended to gather information on key issues.

(2) *Satisfaction of Statutory Criteria.* As part of such document(s), DOE will solicit submission of comments, data, and information on whether DOE should proceed with the rulemaking, including whether: A new test procedure would satisfy the relevant statutory criteria that test procedures be reasonably designed to produce test results which measure energy efficiency, energy use, water use (in the case of showerheads, faucets, water closets and urinals), or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary, and shall not be unduly burdensome to conduct; or an amended test procedure would more fully or accurately comply with the aforementioned statutory criteria. Based on the information received in response to such request and its own analysis, DOE will determine whether to proceed with a rulemaking for a new or amended test procedure.

(3) If DOE determines that a new or amended test procedure would not satisfy the applicable statutory criteria, DOE will engage in notice-and-comment rulemaking to issue a determination that a new or amended test procedure is not warranted.

(4) If DOE receives sufficient information suggesting a new or amended test procedure may satisfy the applicable statutory criteria or the information received is inconclusive with regard to the statutory criteria, DOE will move forward with the rulemaking to issue or amend a test procedure.

(5) In those instances where the available information either suggested that a new or amended test procedure might be warranted or in which the information was inconclusive on this point, and DOE undertakes a rulemaking to establish or amend a test procedure, DOE may still ultimately determine that such a test procedure does not satisfy the applicable statutory criteria at a later stage of the rulemaking.

(6) *Public comment and hearing.* The length of the public comment period for pre-NOPR rulemaking documents will be determined on a case-by-case basis and may vary depending upon the circumstances of the particular rulemaking. For pre-NOPR documents, DOE will determine whether a public hearing is appropriate.

(b) *NOPR Stage.* (1) *Documentation of decisions on proposed test procedure.* The Department will publish a NOPR in the **Federal Register** that proposes a new or amended test procedure and explains how the test procedure satisfies the applicable statutory criteria.

(2) *Public comment and hearing.* There will be not less than 60 days for public comment on the NOPR, with at least one public hearing or workshop. (42 U.S.C. 6295(p)(2) and 42 U.S.C. 6306)

(3) *Revisions to the analyses and establishment of a final test procedure.* Based on the public comments received, DOE will review the proposed test procedure, and make modifications as necessary. As part of this process, DOE may issue an RFI, NODA, SNOPR, or other rulemaking document, as appropriate.

(c) *Final Rule Stage.* The Department will publish a Final Rule in the **Federal Register** that establishes or amends a test procedure, responds to public comments received on the NOPR (and any subsequent rulemaking documents), and explains how the new or amended test procedure meets the applicable statutory requirements.

(d) *Adoption of Industry Test Methods.* DOE will adopt industry test procedure standards as DOE test procedures for covered products and equipment, but only if DOE determines that such procedures would not be unduly burdensome to conduct and would produce test results that reflect the energy efficiency, energy use, water use (as specified in EPCA) or estimated operating costs of that equipment during a representative average use cycle. DOE may also adopt industry test procedure standards with modifications or craft its own procedures as necessary to ensure compatibility with the relevant statutory requirements, as well as DOE's compliance, certification, and enforcement requirements.

(e) *Issuing final test procedure modification.* Test procedure rulemakings establishing methodologies used to evaluate proposed energy conservation standards will be finalized prior to publication of a NOPR proposing new or amended energy conservation standards.

(f) *Effective Date of Test Procedures.* If required only for the evaluation and issuance of updated efficiency standards, use of the modified test procedures typically will not be required until the implementation date of updated standards.

9. ASHRAE Equipment

EPCA provides unique statutory requirements and a specific set of timelines for certain enumerated types of commercial and industrial equipment (generally, commercial water heaters, commercial packaged boilers, commercial air-conditioning and heating equipment, and packaged terminal air conditioners and heat pumps (*i.e.,* ''ASHRAE equipment'')).

(a) *ASHRAE Trigger Rulemakings for Energy Conservation Standards.* Pursuant to EPCA's statutory scheme for covered ASHRAE equipment, DOE is required to consider amending the existing Federal energy conservation standards for ASHRAE equipment when ASHRAE Standard 90.1 is amended with respect to standards or design requirements applicable to such equipment.

(1) Not later than 180 days after the amendment of ASHRAE Standard 90.1, DOE will publish in the **Federal Register** for public comment an analysis of the energy savings potential of amended energy efficiency standards for the affected equipment.

(2) Not later than 18 months after the amendment of ASHRAE Standard 90.1, DOE must adopt amended energy conservation standards at the new efficiency level in ASHRAE Standard 90.1 as the uniform national standard for the affected equipment, unless DOE determines by rule, and supported by clear and convincing evidence, that a more-stringent standard would result in significant additional conservation of energy and is technologically feasible and economically justified. In such case, DOE must adopt the more-stringent standard for the affected equipment not later than 30 months after amendment of ASHRAE Standard 90.1.

(3) Regarding amendments to ASHRAE Standard 90.1 involving energy conservation standards, DOE considers an amendment of a standard level to occur when an updated version of ASHRAE Standard 90.1 publishes (*i.e.,* not at the time that an addendum to ASHRAE Standard 90.1 is released or approved). In addition, DOE considers an amendment of standard levels in ASHRAE Standard 90.1 to be only those changes resulting in an increase in stringency of standard levels relative to the current Federal standards or the adoption of a design requirement.

(b) *ASHRAE Trigger Rulemakings for Test Procedures.* Pursuant to EPCA's statutory scheme for covered ASHRAE equipment, DOE is required to consider amending the existing Federal test procedures for such equipment when ASHRAE Standard 90.1 is amended with respect to test procedures applicable to such equipment.

(1) DOE shall amend the test procedure for ASHRAE equipment, as necessary, to be consistent with the amended ASHRAE Standard 90.1, unless DOE determines by rule, and supported by clear and convincing evidence, that to do so would not meet the requirements in 42 U.S.C. 6314(a)(2)–(3), which generally provide that the test procedure must produce results which reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle and not be unduly burdensome to conduct. If DOE makes such a determination, DOE may establish an amended test procedure for such equipment that meets the requirements in 42 U.S.C. 6314(a)(2)–(3).

(2) With regard to test procedures for ASHRAE equipment, EPCA requires DOE to adopt test procedures consistent with applicable industry test standards. DOE notes that the statutory language ''consistent with'' provides some flexibility in adopting the amended industry test procedure. As EPCA does not require DOE to adopt a test procedure identical to the applicable industry test standard, DOE may make modifications that are consistent with the applicable industry test standard. Further, DOE is not required to adopt or align with sections of the industry test standard that are not necessary for the method of test for metrics included in the DOE test procedure (*e.g.,* sections of the industry test procedure regarding selection of models for testing under an industry certification program, verification of represented values and the associated tolerances, and operational

requirements need not be adopted or aligned with by DOE).

(c) *ASHRAE Lookback Rulemakings.* EPCA also requires that DOE periodically consider amending energy conservation standards and test procedures for ASHRAE equipment.

(1) EPCA requirements for ASHRAE equipment outside of the ASHRAE Standard 90.1 process include:

(i) *Energy Conservation Standards.* Every 6 years, DOE shall conduct an evaluation of each class of covered equipment. DOE shall publish either a notice of determination that standards do not need to be amended (because they would not result in significant additional conservation of energy and/or would not be technologically feasible and/or economically justified) or a notice of proposed rulemaking including new proposed standards (based on the criteria and procedures in 42 U.S.C. 6313(a)(6)(B) and supported by clear and convincing evidence).

(A) If DOE issues a notice of proposed rulemaking, it shall publish a final rule no more than 2 years later.

(B) If DOE determines that a standard does not need to be amended, not later than 3 years after such a determination, DOE must publish either a notice of determination that standards do not need to be amended (because they would not result in significant additional conservation of energy and/or would not be technologically feasible and/or economically justified) or a notice of proposed rulemaking including new proposed standards (based on the criteria and procedures in in 42 U.S.C. 6313(a)(6)(B) and supported by clear and convincing evidence).

(ii) *Test Procedures.* At least once every 7 years, DOE shall conduct an evaluation, and if DOE determines, supported by clear and convincing evidence, that amended test procedures would more accurately or fully comply with the requirements in 42 U.S.C. 6314(a)(2)–(3), it shall prescribe test procedures for the applicable equipment. DOE notes that EPCA requires test procedures that are ''consistent with'' industry test procedures. As noted in paragraph (b)(2) of this section, this affords DOE some flexibility in making modifications to the DOE test procedure that are consistent with the industry test procedure. Otherwise, DOE shall publish a notice of determination not to amend a test procedure.

(2) DOE's 6-year-lookback and 7-year-lookback review requirements, as detailed in this section, are regulatory obligations specific to DOE and not satisfied by any ASHRAE action. Specifically, ASHRAE reviewing and reaffirming (but not amending) a standard or test procedure does not eliminate DOE's separate requirement to review each class of covered equipment.

10. Direct Final Rules

In accordance with 42 U.S.C. 6295(p)(4), on receipt of a joint proposal that is submitted by interested persons that are fairly representative of relevant points of view, DOE may issue a direct final rule (DFR) establishing energy conservation standards for a covered product or equipment if DOE determines the recommended standard is in accordance with 42 U.S.C. 6295(o) or 42 U.S.C. 6313(a)(6)(B) as applicable. To be ''fairly representative of relevant points of view'' the group submitting a joint statement must, where appropriate, include larger concerns and small businesses in the regulated industry/manufacturer community, energy advocates, energy utilities, consumers, and States. However, it will be necessary to evaluate the meaning of ''fairly representative'' on a case-by-case basis, subject to the circumstances of a particular rulemaking, to determine whether fewer or additional parties must be part of a joint statement in order to be ''fairly representative of relevant points of view.''

11. Principles for Distinguishing Between Effective and Compliance Dates

(a) *Dates, generally.* The effective and compliance dates for either DOE test procedures or DOE energy conservation standards are typically not identical, and these terms should not be used interchangeably.

(b) *Effective date.* The effective date is the date a rule is legally operative after being published in the **Federal Register**.

(c) *Compliance date.* (1) For test procedures, the compliance date is the specific date when manufacturers are required to use the new or amended test procedure requirements to make representations concerning the energy efficiency or use of a product, including certification that the covered product/equipment meets an applicable energy conservation standard.

(2) For energy conservation standards, the compliance date is the specific date upon which manufacturers are required to meet the new or amended standards for applicable covered products/equipment that are distributed in interstate commerce.

12. Principles for the Conduct of the Engineering Analysis

(a) The purpose of the engineering analysis is to develop the relationship between efficiency and cost of the subject product/equipment. Another important role of the engineering analysis is to identify the maximum technologically feasible level. The maximum technologically feasible level is one that can be reached through efficiency improvements and/or design options, both commercially feasible and in working prototypes. The Department will consider two elements in the engineering analysis: The selection of efficiency levels to analyze, as discussed in paragraph (b) of this section; and the determination of product cost at each efficiency level, as discussed in paragraph (c) of this section. From the efficiency/cost relationship developed in the engineering analysis, measures such as payback, life-cycle cost, and energy savings can be developed. The Department will identify issues that will be examined in the engineering analysis and the types of specialized expertise that may be required. DOE will select appropriate contractors, subcontractors, and expert consultants, as necessary, to perform the engineering analysis. DOE will minimize uncertainties by using measures such as test data or component or material supplier information where available. Also, the Department will consider data, information, and analyses received from interested parties for use in the analysis wherever feasible.

(b) The Department will typically use one of two approaches to develop energy efficiency levels for the engineering analysis: Relying on observed efficiency levels in the market (*i.e.,* the efficiency-level approach); or determining the incremental efficiency improvements associated with incorporating specific design options to a baseline model (*i.e.,* the design-option approach). The Department will consider the availability of data and analytical tools, the resource needs, and public comments when determining the best approach or combination of approaches for an engineering analysis.

(1) Using the efficiency-level approach, the efficiency levels established for the analysis will be determined based on the market distribution of existing products. This approach typically entails compiling a comprehensive list of products available on the market, such as from DOE's product certification database and conducting DOE energy performance tests to validate the certified ratings.

(2) Using the design option approach, the efficiency levels established for the analysis will be determined through detailed engineering calculations and/or computer simulations of the efficiency improvements from implementing specific design options that have been identified in the technology assessment and screening analysis. The design option approach will typically be used when a comprehensive database of certified models is unavailable. In certain rulemakings, the efficiency-level approach (based on actual products on the market) will be extended using the design option approach to interpolate to define ''gap fill'' levels (to bridge large gaps between other identified efficiency levels) and/or to extrapolate to the ''max-tech'' level (the level that DOE determines is the maximum achievable efficiency level, particularly in cases where the ''max-tech'' level exceeds the maximum efficiency level currently available on the market). The Department will identify, modify, or develop any engineering models necessary to predict the efficiency impact of any one or combination of design options on the product/equipment as measured by the applicable DOE test procedure.

(3) The cost-efficiency curve and a detailed description of any engineering models will be available to stakeholders during the pre-NOPR stage of the rulemaking.

(c) The Department will typically conduct the cost analysis using one or a combination of approaches depending on a suite of factors, including the availability and reliability of public information, characteristics of the subject product/equipment, and the availability and timeliness of purchasing the product/equipment on the market. The cost approaches are summarized as follows:

(1) *Physical teardowns:* Under this approach, the Department will physically dismantle a commercially-available product/equipment model, component-by-component, to develop a detailed bill of materials for the model. The core function of

physical teardowns is to support the costing analysis; however, it serves other purposes as well. The teardown process provides information on the range of design options used to improve energy efficiency and informs the technology assessment. Performance testing and teardowns are used to define the baseline, against which incremental energy savings and incremental costs are compared. Teardowns are also used to identify technology options for consideration in the screening analysis and design paths for the Engineering Analysis.

(2) *Catalog teardowns:* The Department will often complement physical teardowns with catalogue (a.k.a., ''virtual'') teardowns, thereby allowing the analysis to capture a broader range of capacities and other features within a product family. In lieu of physically deconstructing the product/equipment, the Department will identify each component using parts diagrams (available from manufacturer websites or appliance repair websites, for example) to develop the bill of materials for the product/equipment. An analysis comprised of only virtual teardowns is also possible for product categories where features are well-documented.

(3) *Price surveys:* If neither a physical nor catalog teardown is feasible, or if they would be cost-prohibitive or otherwise impractical, the Department will conduct price surveys using publicly-available pricing data published on major online retailer websites and/or by soliciting prices from distributors and other commercial channels.

13. Principles for the Analysis of Impacts on Manufacturers

(a) *Purpose.* The purpose of the manufacturer impact analysis (MIA) is to identify and quantify the impacts of any new or amended energy conservation standards on manufacturers. The MIA will have both quantitative and qualitative aspects, and it will include the analyses of projected industry cash flows, the industry net present value, conversion costs, and direct employment. Additionally, the MIA will seek to describe how new or amended energy conservation standards might affect manufacturing capacity and competition, as well as how standards contribute to overall regulatory burden. Finally, the MIA will seek to identify any disproportionate impacts on manufacturer subgroups, including small business manufacturers. The Department will analyze the impact of standards on manufacturers with substantial input from manufacturers and other interested parties. This section describes the principles that will be used in conducting future manufacturing impact analyses.

(b) *Issue identification.* Prior to publishing a NOPR, the Department will identify issues that will require greater consideration in the detailed manufacturer impact analysis. Possible issues may include identification of specific types or subgroups of manufacturers and concerns over access to technology. Specialized contractor expertise and empirical data requirements, and analytic tools required to perform the manufacturer impact analysis also would be identified at this stage.

(c) *Industry characterization.* Prior to publishing a NOPR, the Department will prepare an industry profile based on the market and technology assessment and other publicly available information. DOE will use public sources of information (*e.g.,* company financial reports) to derive preliminary financial inputs for the industry cash flow analysis. DOE will describe the present and past industry structure and market characteristics.

(d) *Interview Process.* DOE will seek to conduct structured, detailed interviews with manufacturers. During these interviews, DOE will discuss engineering, manufacturing, procurement, and financial topics in order to develop and validate key financial inputs, including product and capital conversion costs, and to gather additional information on the anticipated effects of energy conservation standards on revenues, direct employment, capital assets, industry competition, and subgroup impacts.

(e) *Industry Cash Flow Analysis.* The quantitative part of the MIA will rely primarily on the Government Regulatory Impact Model (''GRIM''), an industry cash flow model with inputs specific to each rulemaking. The Department will develop critical GRIM inputs using a number of sources, including publicly-available data, results of the other rulemaking analyses, and information gathered from industry stakeholders during the course of manufacturer interviews. To capture the uncertainty relating to manufacturer cost impacts and impacts on product/equipment sales, features, and prices following amended standards, the Department will use the GRIM to estimate a range of possible impacts under different scenarios.

(f) *Cost impacts on manufacturers.* The Department will seek input from interested parties on the treatment of cost issues. Manufacturers will be encouraged to offer suggestions and feedback on sources of data and DOE cost estimates. Costing issues to be addressed include:

(1) Product/equipment-specific costs associated with direct material, labor, and factory overhead (based on cost impacts estimated for the engineering analysis);

(2) Product conversion costs, which are investments in research, development, testing, marketing, and other non-capitalized costs necessary to make product designs comply with new or amended energy conservation standards; and

(3) Capital conversion costs, which are investments in property, plants, and equipment necessary to adapt or change production facilities such that new, compliant product designs can be fabricated and assembled.

(g) *Disproportional impacts on manufacturer subgroups.* DOE will evaluate subgroups of manufacturers that may be disproportionately impacted by standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash flow analysis. Such manufacturer subgroups may include small business manufacturers, niche players, and/or manufacturers exhibiting a cost structure that largely differs from the industry average. The subgroup analysis will include qualitative descriptions and, where sufficient non-proprietary data are available, quantitative estimates.

(h) *Impacts on product/equipment sales, features, and prices.* The GRIM estimates manufacturer revenues based on total unit shipment projections and the distribution of those shipments by efficiency level. For this analysis, the GRIM uses the NIA's annual shipment projections derived from the shipments analysis.

(i) *Measures of impact.* The Department will use the GRIM to calculate cash flows using standard accounting principles and changes in industry net present value (INPV) between the no-new-standards case and each standards case. The difference in INPV between the no-new-standards case and a standards case represents the financial impact of the new or amended energy conservation standard on manufacturers. Computations will be performed for the industry as a whole and, as appropriate, for manufacturer subgroups. Impacts to be analyzed include:

(1) Industry net present value and change in INPV relative to the no-new-standards case industry value. The Department will perform sensitivity/scenario analyses for parameters where significant uncertainty was identified and/or for which DOE received significant comment. An uncertainty analysis could include inputs such as production costs, conversion costs, manufacturer mark-ups, and shipment projections.

(2) Industry annual cash flows and percent change relative to the no-new-standards cash flow levels. The Department will analyze the impact of the new or amended standard on industry annual free cash flow as an indicator of potential financial constraints in the industry.

(3) Other measures of impact are described in paragraphs (j) through (m) of this section and will also be evaluated in the MIA.

(j) *Cumulative Impacts of Other Federal Regulatory Actions.*

(1) The Department will recognize and consider the overlapping effects on manufacturers of new or revised DOE standards and other Federal regulatory actions affecting the same products or equipment.

(2) If the Department determines that a proposed standard would impose a significant impact on product or equipment manufacturers within approximately three years of the compliance date of another DOE standard that imposes significant impacts on the same manufacturers (or divisions thereof, as appropriate), the Department will, to the extent possible, evaluate the impact on manufacturers of the proposed standard and assess the joint impacts of both standards on manufacturers as described in paragraph (j)(4) of this section.

(3) If the Department is directed to establish or revise standards for products/equipment that are components of other products/equipment subject to standards, the Department will consider the interaction between such standards in assessing manufacturer impacts of a particular standard as described in paragraph (j)(4) of this section.

(4) The Department will seek to assess regulations that affect the same product and same revenue streams in an appropriately coordinated or integrated analysis. Where

multiple regulations do not affect the same revenue streams but lead to industry constraints due to resources shared (such as capital, engineering time, test lab availability, or limited capacity of shared vendors) across covered products, DOE will describe and consider those industry constraints.

(k) *Competitive Impact Assessment.* EPCA directs the Department to consider any lessening of competition that is likely to result from imposition of standards. It further directs the Attorney General to determine in writing the impacts, if any, of any lessening of competition. To assist the Attorney General in making this determination, DOE will gather information that would help in assessing asymmetrical cost increases to some manufacturers, increased proportion of fixed costs potentially increasing business risks, and potential barriers to market entry (*e.g.,* proprietary technologies).

(l) *Manufacturing Capacity Impact.* Through public comment and during the manufacturer interviews, the Department will seek information to help identify impacts on manufacturing capacity, such as:

(1) Capacity utilization and plant location decisions with and without new or amended standards;

(2) The ability of manufacturers to upgrade or remodel existing facilities to accommodate new or amended standards;

(3) The nature and value of stranded assets, if any, that are a direct result of new or amended standards; and

(4) Estimates for any one-time restructuring and other charges, where applicable.

(m) *Direct Employment Impacts.* To assess how direct employment patterns might be affected by new or amended standards, the Department will solicit industry participant views on changes in employment patterns that may result from increased standard levels. To help bound quantitative estimates of the potential employment impacts, the Department will use the GRIM to estimate the number of direct employees in the no-new-standards case and in each of the standards cases during the analysis period.

(n) *Summary of quantitative and qualitative assessments.* The NOPR will include a summary of the manufacturer impacts detailed in the TSD. In the NOPR, DOE will report the manufacturer impacts for standard levels that are evaluated and discuss quantitative and qualitative impacts by standard level.

14. Principles for the Analysis of Impacts on Consumers

(a) *Early consideration of impacts on consumer utility.* The Department will consider at the earliest stages of the development of a standard whether particular design options will lessen the utility of the covered products/equipment to the consumer. See paragraph (c) of section 6.

(b) *Impacts on product/equipment availability.* The Department will determine, based on consideration of information submitted during the standard development process, whether a proposed standard is likely to result in the unavailability of any covered product/equipment type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products/equipment generally available in the U.S. at the time. DOE will not promulgate a standard if it concludes that it would result in such unavailability.

(c) *Measures of consumer impacts.* In the assessment of consumer impacts of standards, the Department will consider the Life-Cycle Cost and Payback Period to evaluate the savings in operating expenses relative to increases in the installed product cost.

(1) Consumer discount rates. To determine present values of costs and benefits in life-cycle cost analysis for residential consumers, DOE will calculate discount rates as the weighted average real interest rate across consumer debt and equity holdings. For commercial/industrial consumers, DOE will calculate discount rates as the weighted average cost of capital. DOE will use discount rate distributions to capture the diversity of residential and commercial/industrial consumers.

(2) Variation in consumer impacts. The Department will consider impacts on significant segments of consumers in determining standards levels, and will use representative consumer samples where possible to evaluate the potential distribution of impacts of candidate/trial standard levels being evaluated among consumers using the product under consideration for standards. Where LCC savings are positive, the Department will also consider impacts on any significant subgroups of consumers that may be disproportionately impacted by a potential standard level, such as low-income households or small businesses. DOE will consider non-regulatory approaches as discussed in Section 15, taking into account significant impacts on identifiable subgroups.

(3) Sensitivity and scenario analyses. For data or assumptions subject to a higher degree of uncertainty, the Department will also perform sensitivity and scenario analyses when appropriate.

15. Consideration of Non-Regulatory Approaches

The Department recognizes that non-regulatory efforts by manufacturers, utilities, and other interested parties can result in substantial efficiency improvements. The Department intends to consider the likely effects of non-regulatory initiatives relative to standard levels being evaluated. DOE will attempt to base its assessment on the actual impacts of such initiatives to date, but it also will consider information presented regarding the impacts that any existing initiative might have in the future.

16. Cross-Cutting Analytical Assumptions

In selecting values for certain cross-cutting analytical assumptions, DOE expects to rely upon the following sources and general principles.

(a) *Underlying economic assumptions.* The appliance standards analyses will generally use the same economic growth assumptions that underlie the most current *Annual Energy Outlook* (*AEO*) published by the Energy Information Administration (EIA).

(b) *Analytic time length.* The appliance standards analyses will generally consider impacts over the lifetime of products shipped over a 30-year period. As a sensitivity case, the analyses may also use a shorter time period in analyzing the effects of the standard.

(c) *Energy price trends.* Analyses of the impact of appliance standards on users will generally adopt the reference energy price scenario of the EIA's most current *AEO.* The sensitivity of estimated impacts to possible variations in future energy prices are likely to be examined using the EIA's high and low energy price scenarios. The analyses will incorporate regional and/or marginal prices as appropriate and where available.

(d) *Product/equipment-specific energy-efficiency trends, without updated standards.* Product/equipment-specific energy-efficiency trends will be based on the best available historical market data, technology trends, and other product-specific assessments by DOE with input from interested parties.

(e) *Discount rates for national costs and benefits.* DOE uses both 3-percent and 7-percent real discount rates when estimating national impacts. Those discount rates are in accordance with the Office of Management and Budget (OMB)'s guidance to Federal agencies on developing regulatory analyses (OMB Circular A–4 (Sept. 17, 2003) and section E., ''Identifying and Measuring Benefits and Costs,'' therein).

17. Emissions Analysis

(a) *Emissions reductions.* DOE will use best practices at the time to estimate emission reductions of certain greenhouse gases and pollutants likely to result from standard levels being evaluated. To date best practice means the emissions analysis typically includes two components. In the first component, DOE typically develops the power sector emissions analysis—to date best practice includes using a methodology that utilizes DOE's latest *Annual Energy Outlook.* For site combustion of natural gas or petroleum fuels, to date best practice means the combustion emissions are typically estimated using emission intensity factors from the Environmental Protection Agency (EPA). The second component of DOE's emissions analysis typically estimates the effect of standard levels being evaluated on emissions due to ''upstream activities'' in the fuel production chain. These upstream activities include the emissions related to extracting, processing, and transporting fuels to the site of combustion, *e.g.,* as detailed in DOE's Full-Fuel-Cycle Statement of Policy (76 FR 51281 (August 18, 2011)).

(b) *Monetization of emissions reductions.* For estimating the economic value of avoided emissions of carbon dioxide and other greenhouse gases, as well as those of other air pollutants, DOE will follow the best practices at the time, for example, by using accepted benefit-per-ton values from the scientific literature at the time.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0505; Project Identifier 2018–SW–004–AD]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Leonardo S.p.a. Model AB139 and AW139 helicopters. This proposed AD was prompted by reports of spurious in-flight disconnections of the automatic flight control system (AFCS). This proposed AD would require updating certain ''Primus Epic'' system software, as specified in a European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 23, 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 that is proposed for IBR in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view EASA material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of EASA material at the FAA, call (817) 222–5110. The EASA material is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0505.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0505; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the EASA AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Hal Jensen, Aerospace Engineer, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; telephone (202) 267–9167; email *hal.jensen@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–2021–0505; Project Identifier 2018–SW–004–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 Hal Jensen, Aerospace Engineer, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; telephone (202) 267–9167; email *hal.jensen@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0002, dated January 4, 2018 (EASA AD 2018–0002), to correct an unsafe condition for certain Leonardo S.p.a. Model AB139 and AW139 helicopters.

This proposed AD was prompted by reports of spurious in-flight disconnections of the AFCS. The investigation revealed that these AFCS disconnect events relate to un-commanded single channel autopilot disengagement for most of the cases, and to some instances of untimely dual channel autopilot disengagement. The disconnections occurred in random flight conditions and appeared to be temporary disruptions of the AFCS' full availability because all functionalities could be restored by re-engaging the complete system through the AFCS control panel. The FAA is proposing this AD to address spurious degradation or unavailability of the full availability of the AFCS. The unsafe condition, if not addressed, could result in temporary impairment of the automated flight aid for control of the helicopter and increase the flightcrew's workload. See EASA AD 2018–0002 for additional background information.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of these same type designs.

Related Service Information Under 1 CFR Part 51

EASA AD 2018–0002 requires installation of certain ''Primus Epic'' system software, depending on the helicopter configuration. EASA AD 2018–0002 allows installation of ''Primus Epic'' system software on a helicopter after that helicopter has had the software upgrade installed.

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.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2018–0002, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use certain 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 2018–0002 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2018–0002 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2018–0002 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 2018–0002. Service information specified in EASA AD 2018–0002 that is required for compliance with it will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0505 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 128 helicopters of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Software upgrade	24 work-hours × $85 per hour = $2,040	$0	$2,040	$261,120

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Leonardo S.p.a.: Docket No. FAA–2021–0505; Project Identifier 2018–SW–004–AD.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 23, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Leonardo S.p.a. Model AB139 and AW139 helicopters, certificated in any category, identified in paragraphs (c)(1) and (2) of this AD, equipped with ''Primus Epic'' system software release 7.4 (Phase 7 V1), 7.7 (Phase 7 V3) or 7.10 (Phase 7 V4).

(1) Model AB139 and AW19 helicopters having serial number (S/N) 31005, 31006, and S/Ns 31008 through 31157 inclusive; and S/Ns 41001 through 41023 inclusive.

(2) Model AW139 helicopters having S/N 31201 and subsequent, and S/N 41201 and subsequent.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 2200, Auto Flight System.

(e) Unsafe Condition

This AD was prompted by reports of spurious in-flight disconnections of the automatic flight control system (AFCS). The

FAA is issuing this AD to address spurious degradation or unavailability of the full AFCS. The unsafe condition, if not addressed, could result in temporary impairment of the automated flight aid for control of the helicopter and increase the flightcrew's workload.

(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 Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2018–0002, dated January 4, 2018 (EASA AD 2018–0002).

(h) Exceptions to EASA AD 2018–0002

(1) Where EASA AD 2018–0002 refers to flight hours (FH), this AD requires using hours time-in-service.

(2) Where EASA AD 2018–0002 refers to its effective date, this AD requires using the effective date of this AD.

(3) The ''Remarks'' section of EASA AD 2018–0002 does not apply to this AD.

(4) Where the service information referenced in EASA AD 2018–0002 specifies to download an option file from a certain website, that method of installation is not required by this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2018–0002 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(k) Related Information

(1) For EASA AD 2018–0002, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0505.

(2) For more information about this AD, contact Hal Jensen, Aerospace Engineer, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; telephone (202) 267–9167; email *hal.jensen@faa.gov.*

Issued on June 15, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–14401 Filed 7–6–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0497; Project Identifier 2019–SW–043–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Textron Canada Limited Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bell Textron Canada Limited Model 429 helicopters. This proposed AD was prompted by three reports of unexpected forces or uncommanded inputs to the directional (yaw) control system. This proposed AD would require revising the existing Rotorcraft Flight Manual (RFM) for your helicopter. 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 23, 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 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, Canada; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–0272; or at *https://www.bellcustomer.com.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0497; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the Transport Canada AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Mitch Soth, Flight Test Engineer, Southwest Section, Flight Test Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *mitch.soth@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–2021–0497; Project Identifier 2019–SW–043–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 Mitch Soth, Flight Test Engineer, Southwest Section, Flight Test Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *mitch.soth@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada Emergency AD CF–2019–16, dated May 6, 2019 (Transport Canada AD CF–2019–16), to correct an unsafe condition for Bell Helicopter Textron Canada Limited (now Bell Textron Canada Limited) Model 429 helicopters, serial numbers 57001 and subsequent. Transport Canada advises of three reports of unexpected forces or uncommanded inputs to the directional (yaw) control system during ground operations. Investigation revealed that a yaw trim runaway can occur while the automatic pedal trim function is operating. This condition, if not addressed, could result in loss of control of the helicopter. Accordingly, Transport Canada AD CF–2019–16 requires revising Bell RFM BHT–429–FM–1 by incorporating revision 14, dated April 18, 2019.

FAA's Determination

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with Canada, Transport Canada, its technical representative, has notified the FAA of the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of the same type design.

Related Service Information

The FAA reviewed Section 2—Normal Procedures, Section 3—Emergency and Malfunction Procedures, and Section 4—Performance, of Bell RFM BHT–429–FM–1, Revision 14, dated April 18, 2019. This revision of the service information adds a procedure to reduce the risk of trim runaway during start sequence, cautions to reduce the risk of uncommanded control movement during engine start and takeoff and re-setting force trim detent instructions during engine start and takeoff, and an emergency procedure to assist flight crew to recognize trim runaway and response instructions.

Proposed AD Requirements in This NPRM

This proposed AD would require revising the existing RFM for your helicopter by adding procedures in Section 2, Normal Procedures, under 2–4. INTERIOR AND PRESTART CHECK, 2–5. ENGINE START, and 2–8. TAKEOFF; Section 3, Emergency and Malfunction Procedures, under 3–9. AUTOMATIC FLIGHT CONTROL SYSTEM; and Section 4, Performance, under 4–2. POWER ASSURANCE CHECK.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 120 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Revising the existing RFM for your helicopter would take about 0.50 work-hour for an estimated cost of $43 per helicopter and $5,160 for the U.S. fleet.

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, 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:

Bell Textron Canada Limited: Docket No. FAA–2021–0497; Project Identifier 2019–SW–043–AD.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 23, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bell Textron Canada Limited Model 429 helicopters, certificated in any category, serial numbers 57001 and subsequent.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6720, Tail Rotor Control System.

(e) Unsafe Condition

This AD was prompted by three reports of unexpected forces or uncommanded inputs to the directional (yaw) control system. The FAA is issuing this AD to prevent yaw trim runaway. The unsafe condition, if not addressed, could result in loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Within 30 days after the effective date of this AD, revise the existing Rotorcraft Flight Manual for your helicopter as follows:

(i) In Section 2, Normal Procedures, under 2–4. INTERIOR AND PRESTART CHECK, add the following as item 25: ''25. Depress the cyclic force TRIM REL button and collective FORCE REL button (4-axis only) to center actuators and extinguish any active out of detent indications.''

(ii) In Section 2, Normal Procedures, under 2–5. ENGINE START and under 2–8. TAKEOFF, add the following above item 1: ''CAUTION: WHEN MANIPULATING FLIGHT CONTROLS WITH FORCE TRIM SELECTED ON, DO NOT RELEASE AFFECTED FLIGHT CONTROL UNTIL THE OUT OF DETENT INDICATION EXTINGUISHES. THE FLIGHT CONTROLS MAY BE RESET BY DEPRESSING THE CYCLIC FORCE TRIM REL BUTTON AND COLLECTIVE FORCE REL BUTTON (4–AXIS ONLY) UNTIL THE OUT OF DETENT INDICATION EXTINGUISHES.''

(iii) In Section 3, Emergency and Malfunction Procedures, under 3–9. AUTOMATIC FLIGHT CONTROL SYSTEM, add the information in Figure 1 to paragraph (g)(1)(iii) of this AD as item 3–9–D:

3-9-D. TRIM RUNAWAY

• INDICATIONS:

Flight controls — Uncommanded movement.

Flight control forces — High in axis of uncommanded movement, normal in other axes.

Out of detent indication for affected axis

• PROCEDURE:

1. Cyclic force TRIM REL and/or collective FORCE REL button (4-axis only) — Depress until the out of detent indication extinguishes.

2. Flight controls — Do not release flight control if out of detent indication is present.

3. Force TRIM switch — OFF; check TRM OFF illuminates on PFD.

4. If IMC, land as soon as practical. If VMC, continue flight in SCAS.

Figure 1 to paragraph (g)(1)(iii)

(iv) In Section 4, Performance, under 4–2. POWER ASSURANCE CHECK, add the following above the instructions for performing a power assurance check: ''CAUTION: WHEN MANIPULATING FLIGHT CONTROLS WITH FORCE TRIM SELECTED ON, DO NOT RELEASE AFFECTED FLIGHT CONTROL UNTIL THE OUT OF DETENT INDICATION EXTINGUISHES. THE FLIGHT CONTROLS MAY BE RESET BY DEPRESSING THE CYCLIC FORCE TRIM REL BUTTON AND COLLECTIVE FORCE REL BUTTON (4–AXIS ONLY) UNTIL THE OUT OF DETENT INDICATION EXTINGUISHES.''

(2) Using a document with information identical to the information in paragraph (g)(1) of this AD is acceptable for compliance with the actions required by paragraph (g)(1) of this AD.

(3) The actions required by paragraphs (g)(1) and (2) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.9(a)(1) through (4) and § 91.417(a)(2)(v). The record must be maintained as required by § 91.417, § 121.380, or § 135.439.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (i)(1) of this AD. Information may be emailed to: *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.

(i) Related Information

(1) For more information about this AD, contact Mitch Soth, Flight Test Engineer,

Southwest Section, Flight Test Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *mitch.soth@faa.gov.*

(2) The subject of this AD is addressed in Transport Canada Emergency AD CF–2019–16, dated May 6, 2019. You may view the Transport Canada AD on the internet at *https://www.regulations.gov* in Docket No. FAA–2021–0497.

Issued on June 10, 2021.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–14400 Filed 7–6–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–500; Project Identifier 2017–SW–069–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus Helicopters Model EC130B4 and EC130T2 helicopters. This proposed AD was prompted by a report of a jammed pilot collective pitch lever (collective). This proposed AD would require inspecting the collective for proper engagement of the locking pin. 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 23, 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 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–500; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Anthony Kenward, Aviation Safety Engineer, Fort Worth ACO Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5152; email *anthony.kenward@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–2021–500; Project Identifier 2017–SW–069–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 Anthony Kenward, Aviation Safety Engineer, Fort Worth ACO Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5152; email *anthony.kenward@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2017–0062, dated April 11, 2017 (EASA AD 2017–0062), to correct an unsafe condition for Airbus Helicopters Model EC130B4 and EC130T2 helicopters. EASA states that during an autorotation test conducted during an acceptance flight, the pilot felt a jamming sensation when pushing the collective to the low pitch position, and he subsequently was able to free the collective by pulling on it. According to EASA, an analysis determined that the locking tab hook (hook) and the low pitch locking pin (pin) were extremely close, and that a fold in the control lever boot may have become caught between the two components. EASA states that this condition, if not detected and corrected, could result in an untimely locking of the collective and subsequent reduced control of the helicopter.

Accordingly, EASA AD 2017–0062 requires inspecting and adjusting, if necessary, the clearance between the hook and the pin while in the low pitch position.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all

known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of these same type designs.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Airbus Helicopters Alert Service Bulletin ASB No. EC130–67A019, Revision 0, dated February 23, 2016, which specifies inspecting and adjusting the clearance between the hook and pin.

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

Proposed AD Requirements in This NPRM

This proposed AD would require, within 90 hours time-in-service (TIS) after the effective date of the AD, or before the next autorotation training flight, whichever occurs first, removing the protective boot along the collective and measuring the clearance between the hook and pin. If the clearance is less than 5 mm (0.196 in), adjusting the clearance between the hook and the pin to prevent interference would be required. This proposed AD would then require re-installing the protective boot in accordance with the manufacturer's service information.

Differences Between This Proposed AD and the EASA AD

The EASA AD requires compliance within 165 hours TIS or 3 months, whichever occurs first. Since the unsafe condition occurred at a collective position commanded during an autorotation, this proposed AD would require compliance within 90 hours TIS after the effective date of this AD or before the next autorotation training flight, whichever occurs first. Based on the average fleet usage, 90 hours TIS would correspond with the 3-month compliance requirement of the EASA AD.

Costs of Compliance

The FAA estimates that this proposed AD would affect 214 helicopters of U.S. Registry. At an average labor rate of $85 per work-hour, the FAA estimates that operators may incur the following costs in order to comply with this proposed AD. Removing the protective boot would require about 2 work-hours for a cost of $170 per helicopter and a cost of $36,380 for the U.S. fleet. Determining the clearance between the hook and pin would require about 0.5 work-hour, for a cost of $43 per helicopter and a cost of $9,202 for the U.S. fleet. If required, adjusting the clearance would take about 2 work-hours for a cost of $170 per helicopter. Re-installing the protective boot would require about 2 work-hours, for a cost of $170 per helicopter and a cost of $36,380 for the U.S. fleet.

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, I certify this proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters: Docket No. FAA–2021–500; Project Identifier 2017–SW–069–AD.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 23, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Model EC130B4 and Model EC130T2 helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6700, Rotorcraft Flight Control.

(e) Unsafe Condition

This AD was prompted by a report of a jammed pilot collective pitch lever (collective). The FAA is issuing this AD to prevent an untimely locking of the collective and subsequent reduced control of the helicopter.

(f) Compliance

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

(g) Required Actions

Within 90 hours time-in-service after the effective date of this AD or before the next autorotation training flight, whichever occurs first:

(1) For each collective, remove the protective boot along the collective and measure the clearance between the edge of the collective tab hook (a) and the edge of the low pitch locking pin (b) as shown in Figure 1 of Airbus Helicopters Alert Service Bulletin ASB No. EC130–67A019, Revision 0, dated February 23, 2016 (ASB EC130–67A019). If the clearance is less than 5 mm (0.196 in), before further flight:

(i) Adjust the clearance by following the Accomplishment Instructions, paragraph 3.B.3., of ASB EC130–67A019.

(ii) Test the collective for proper engagement of the low pitch locking pin by following the Accomplishment Instructions, paragraph 3.B.4., of ASB EC130–67A019.

(2) Re-install the protective boot on the collective, ensuring that no boot folds have entered the space between the collective tab hook and the low pitch locking pin, by following the Accomplishment Instructions, paragraph 3.B.5., of ASB EC130–67A019.

(h) Special Flight Permits

Special flight permits are prohibited.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *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.

(j) Related Information

(1) For more information about this AD, contact Anthony Kenward, Aviation Safety Engineer, Fort Worth ACO Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5152; email *anthony.kenward@faa.gov*.

(2) For service information identified in this AD, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html*. You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(3) The subject of this AD is addressed in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2017–0062, dated April 11, 2017. You may view the EASA AD at *http://www.regulations.gov* in the AD Docket FAA–2021–500.

Issued on June 10, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–14399 Filed 7–6–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0548; Project Identifier MCAI–2021–00046–T]

RIN 2120–AA64

Airworthiness Directives; ATR–GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all ATR–GIE Avions de Transport Régional Model ATR42–500 and ATR72–212A airplanes. This proposed AD was prompted by reports indicating that certain Thales global positioning system (GPS) satellite based augmentation system (SBAS) receivers provided, under certain conditions, erroneous outputs on aircraft positions. This proposed AD would require replacing affected GPS SBAS receivers with new, improved receivers, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 23, 2021.

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

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material that will be incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0548.

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–2021–0548; 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: Shahram Daneshmandi, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3220; email: *shahram.daneshmandi@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–2021–0548; Project Identifier MCAI–2021–00046–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Shahram Daneshmandi, Aerospace Engineer, Large Aircraft Section, International

Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3220; email: *shahram.daneshmandi@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0013, dated January 13, 2021 (EASA AD 2021–0013) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all ATR–GIE Avions de Transport Régional Model ATR42–500 and ATR72–212A airplanes.

This proposed AD was prompted by reports indicating that Thales GPS SBAS receivers provided, under certain conditions, erroneous outputs on aircraft positions. The manufacturer developed a new, improved receiver which incorporates improved software and ensures correct navigational performance. The FAA is proposing this AD to address erroneous aircraft position outputs from the GPS SBAS receivers, which could result in controlled flight into terrain, and consequent loss of control of the airplane.

Although paragraphs (2) and (3) of EASA AD 2021–0013 require amending the applicable AFM, the FAA has determined that this requirement is not necessary. The FAA received verification from the manufacturer that the unsafe condition in this proposed AD will be addressed by replacing the GPS SBAS receivers with new, improved receivers. However, the GPS procedures added to the AFM as required by AD 2020–08–02, Amendment 39–21108 (85 FR 20586, April 14, 2020) (AD 2020–08–02), must be removed, as specified in paragraph (h)(2) of this proposed AD.

See the MCAI for additional background information.

Related AD

AD 2020–08–02 applies to certain Thales GPS SBAS receivers installed on airplanes (including Model ATR42–500 and ATR72–212A) and helicopters. AD 2020–08–02 requires the installation of a software update to the aircraft navigation database and insertion of a change to the applicable airplane flight manual (AFM). The FAA issued AD 2020–08–02 to address erroneous aircraft position outputs from the affected Thales GPS SBAS receivers, which could result in controlled flight into terrain and loss of the aircraft. AD 2020–08–02 corresponds to EASA AD 2019–0004, dated January 11, 2019. Upon completion of EASA AD 2021–0013 by Model ATR42–500 and ATR72–212A airplanes, all requirements of EASA 2019–0004 are effectively terminated for those airplanes.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0013 describes procedures for replacing certain GPS SBAS receivers with new, improved receivers. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2021–0013 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 ''Difference Between this Proposed AD and the MCAI.'' Accomplishment of the requirements of this AD would terminate all requirements of AD 2020–08–02 for Model ATR42–500 and ATR72–212A airplanes.

Difference Between This Proposed AD and the MCAI

Although certain service information specified in EASA AD 2021–0013 specifies the inclusion of MOD 10046 in the AFM List of Modifications (LOM), this proposed AD does not include this requirement. Instead, after accomplishment of the actions in this proposed AD, operators would be required to remove the AFM revisions for the GPS reset procedures that are required by FAA AD 2020–08–02, because the unsafe condition in this proposed AD will be addressed by the GPS SBAS receiver replacement. This difference has been coordinated with ATR and EASA.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2021–0013 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0013 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2021–0013 that is required for compliance with EASA AD 2021–0013 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0548 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 15 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
2 work-hours × $85 per hour = $170	$0 *	$170	$2,550

* The manufacturer will provide replacement receivers at no cost to the operators. The FAA has received no definitive data on which to base the cost estimates for these parts.

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 (AD):

ATR–GIE Avions de Transport Régional: Docket No. FAA–2021–0548; Project Identifier MCAI–2021–00046–T.

(a) Comments Due Date

The FAA must receive comments by August 23, 2021.

(b) Affected Airworthiness Directives (ADs)

This AD affects AD 2020–08–02, Amendment 39–21108 (85 FR 20586, April 14, 2020) (AD 2020–08–02).

(c) Applicability

This AD applies to all ATR–GIE Avions de Transport Régional Model ATR42–500 and ATR72–212A airplanes, certificated in any category.

(d) Subject

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

(e) Reason

This AD was prompted by reports that Thales global positioning system (GPS) satellite based augmentation system (SBAS) receivers provided, under certain conditions, erroneous outputs on aircraft positions. The FAA is issuing this AD to address the potential for these erroneous outputs, which could result in controlled flight into terrain, and consequent loss of control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in 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 2021–0013, dated January 13, 2021 (EASA AD 2021–0013).

(h) Exceptions to EASA AD 2021–0013

(1) Where EASA AD 2021–0013 refers to its effective date, this AD requires using the effective date of this AD.

(2) The requirements specified in paragraphs (2) and (3) of EASA AD 2021–0013 do not apply to this AD. Instead, the AFM changes required by AD 2020–08–02 must be removed from the existing AFM before further flight after compliance with all other actions required by this AD.

(3) The ''Remarks'' section of EASA AD 2021–0013 does not apply to this AD.

(i) Terminating Action for AD 2020–08–02

Accomplishment of this AD terminates all requirements of AD 2020–08–02 for Model ATR42–500 and ATR72–212A airplanes.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or ATR–GIE Avions de Transport Régional's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

(1) For information about EASA AD 2021–0013, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0548.

(2) For more information about this AD, contact Shahram Daneshmandi, Aerospace

Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3220; email: *shahram.daneshmandi@faa.gov.*

Issued on June 30, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–14360 Filed 7–6–21; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15, 90 and 95

[ET Docket No 19–138; Report No. 3176; FRS 34533]

Petitions for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration.

SUMMARY: Petitions for Reconsideration (Petitions) have been filed in the Commission's rulemaking proceeding by Sean T. Conway, on behalf of 5G Automotive Association, Julian Gehman, on behalf of The Amateur Radio Emergency Data Network, and Hilary Cain, on behalf of The Alliance for Automotive Innovation.

DATES: Oppositions to the Petitions must be filed on or before July 22, 2021. Replies to an opposition must be filed on or before August 2, 2021.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jamie Coleman, Office of Engineering and Technology, Policy and Rules Division, (202) 418–2705 or *jamie.coleman@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3176, released June 16, 2021. The full text of the Petitions can be accessed online via the Commission's Electronic Comment Filing System at: *http://apps.fcc.gov/ecfs/.* The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. 801(a)(1)(A), because no rules are being adopted by the Commission.

Subject: Use of the 5.850–5.925 GHz Band, FCC 20–164, published at 86 FR 23281, May 3, 2021, ET Docket No. 19–138. This document is being published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1) and 1.429(f), (g).

Number of Petitions Filed: 3.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–14494 Filed 7–6–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 21–230; FCC 21–69; FR ID 35413]

Automatic Identification System Channels

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, a Notice of Proposed Rulemaking (*NPRM*) adopted by the Federal Communications Commission (Commission) fulfils the Commission's statutory duty pursuant to Section 8416 of the National Defense Authorization Act for Fiscal Year 2021, which directs the Commission to initiate a rulemaking proceeding by June 30, 2021 to consider whether to authorize devices used to mark fishing equipment for use on Automatic Identification System (AIS) channels. This document seeks comment on the extent to which the 1900–2000 kHz band is used to support fishing operations, the extent of unauthorized deployment of devices used to mark fishing equipment using AIS technology on AIS channels, and whether to authorize devices used to mark fishing equipment for use on current AIS channels. In addition, the NPRM explores whether 160.900 MHz is a viable alternative for devices used to mark fishing equipment. In the event the Commission were to authorize devices used to mark fishing equipment to use AIS channels or 160.900 MHz, the NPRM seeks comment on whether there are technical and operational constraints that could be imposed to maintain maritime safety and protect incumbents. Finally, the NPRM seeks comment on a consumer labeling approach for authorized equipment to provide consumers guidance on whether the equipment being purchased complies with both the Coast Guard's and the Commission's rules.

DATES: Interested parties may filed comments on or before August 6, 2021; and reply comments on or before September 7, 2021.

ADDRESSES: You may submit comments, identified by WT Docket No. 21–230, by any of the following methods:

- *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, DA 20–304 (March 19, 2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

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* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

FOR FURTHER INFORMATION CONTACT: Nellie Foosaner of the Wireless Telecommunications Bureau, Mobility Division, at (202) 418–2925.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*) in WT Docket No. 21–230, FCC 21–69 adopted on June 15, 2021 and released on June 16, 2021. The full text of this document, including all Appendices, is available for public inspection on the Commission's website at *https://docs.fcc.gov/public/attachments/FCC-21-69A1.pdf.*

Congress directed the Commission to ''consider whether imposing requirements with respect to the manner in which devices used to mark fishing equipment are deployed and used would enable them to be authorized to operate in radio frequencies assigned for [AIS] consistent with the core purpose of the [AIS] to prevent maritime accidents.'' The Commission currently authorizes radio buoy operations under a ship station license for commercial fishing operations on the open sea and the Great Lakes in the 1900–2000 kHz band.

Ex Parte Rules

This proceeding shall be treated as 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 Federal 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 § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) of the rules 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.

Synopsis

I. Introduction

1. As required by Section 8416 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, we initiate this rulemaking proceeding to explore whether to authorize devices that can be used to mark fishing equipment for use on Automatic Identification System (AIS) channels without undermining the core purpose of AIS to prevent maritime accidents. AIS is a maritime navigation safety and domain awareness communication system that has been successfully relied upon both domestically and internationally to provide pertinent navigation safety information among vessels, aircraft, and maritime authorities. The Commission's existing rules limit the use of AIS channels to devices needed for safety and do not authorize the use on AIS channels of devices used to mark fishing equipment or the marketing of such devices. This *NPRM* seeks comment on both the issue raised in Section 8416 of the NDAA21 and on the use of alternative spectrum (other than AIS channels) for these types of devices.

II. Background

2. *Automatic Identification System.* Under Commission rules, AIS is defined as a ''maritime navigation safety communications system . . . that provides vessel information, including the vessel's identity, type, position, course, speed, navigational status and other safety-related information automatically to appropriately equipped shore stations, other ships, and aircraft; receives automatically such information from similarly fitted ships; monitors and tracks ships; and exchanges data with shore-based facilities.'' The Commission's rules codify the international standards for AIS to ensure AIS devices meet the requirements of the International Maritime Organization (IMO), which imposes obligations on vessels traveling in international waters. The IMO established those requirements to ''improve the safety of navigation by assisting in the efficient navigation of ships, protection of the environment, and operation of Vessel Traffic Services.'' An AIS device allows users to receive data related to the locations of other vessels in the area, additional objects like navigational aids, and maritime-related messages. The IMO adopted a requirement for AIS to be fitted aboard all ships of 300 gross tonnage or more engaged on international voyages, cargo ships of 500 gross tonnage or more not engaged on international voyages, and all passenger ships carrying more than 12 passengers. The United States Coast Guard (Coast Guard), acting pursuant to statutory directive, expanded the AIS carriage requirement to most commercial vessels in U.S. navigable waters.

3. The Commission has incorporated by reference, in part 80 of its rules, an International Telecommunication Union (ITU) international standard for AIS equipment and several other international standards for AIS, as the basis for certifying compulsory and voluntary AIS equipment. The only AIS equipment types currently authorized under part 80 of the Commission's rules are Class A and B shipborne equipment, AIS Search and Rescue Transponders (AIS–SARTs), and Maritime Survivor Locating Devices (MSLDs). Class A AIS devices are typically used by sea-going vessels to comply with international and Coast Guard carriage requirements, and have a much greater transmit power and provide more information than Class B devices. Class B AIS devices may be used for voluntary carriage by recreational and other non-compulsory vessels and a select segment of mandatory AIS users in lieu of a Class A device. AIS–SARTs are carried on board survival craft for use during a distress situation to assist search and rescue personnel in locating those in distress. An AIS–SART is used to locate a survival craft or distressed vessel by transmitting a unique identification code and GPS coordinates to all AIS-enabled vessels in VHF range. MSLDs are devices intended to aid in locating persons in the water. The Commission has also granted temporary waiver of its rules to permit certification and use of AIS Aid to Navigation (AtoN) stations.

4. In 2006, the Commission implemented the international AIS allocation domestically by designating VHF maritime Channels 87B (161.975 MHz) and 88B (162.025 MHz) for AIS. These channels are denominated AIS 1 and AIS 2, respectively, and are authorized for use only by Class A and B AIS devices, AIS–SARTs, AIS AtoNs, and MSLDs. The Commission does not authorize non-AIS use of the AIS channels or certification of non-AIS VHF radios that include the AIS frequencies.

5. As more vessels become equipped with authorized AIS equipment and usage increases, AIS 1 and 2 have the potential to become overloaded in areas with high vessel traffic. A consequence of overloading is an impact on mariner situational awareness, including reduction in the navigational range of the AIS system, effectively limiting the number of vessels that can be observed

within the system. As discussed below, the ITU has sought to address this problem by defining the types of navigation safety AIS uses that are permitted on AIS 1 and 2, and by recommending the use of 160.900 MHz for non-navigation and non-safety AIS operations on a non-interference basis.

6. *Unauthorized Use of Devices on AIS Channels.* In 2018, the Commission's Enforcement Bureau issued an advisory stating that it had observed a ''proliferation in the use and marketing of noncompliant devices that operate on radio frequencies assigned to Automatic Identification Systems (AIS), which are authorized exclusively for marine navigation safety communications.'' One particular unauthorized operation is the use of AIS frequencies in the marking of fishing equipment, which can ''disrupt important maritime communications, increasing the risk of accidents by creating confusion about whether an AIS signal represents a vessel that must be avoided.'' Such noncompliant AIS devices are often advertised as ''AIS Fishing Net Buoys,'' and the devices can transmit a vessel identification signal without essential navigational safety information. According to the Enforcement Bureau, in addition to being illegal, the use of devices to mark fishing nets on AIS channels ''can have a serious detrimental effect on maritime safety, hampering the situational awareness of maritime operators and endangering ships relying on AIS to avoid collisions and allisions at sea.'' The Enforcement Bureau warned that violations of the Commission's marketing or operating rules would be subject to substantial monetary penalties. As the legal alternative, the advisory pointed to compliant maritime equipment intended for tracking fishing nets that is authorized to operate in the 1900–2000 kHz band.

7. *Statutory Mandate.* Section 8416 of the NDAA21 mandates that we initiate a rulemaking proceeding by June 30, 2021 to consider whether to authorize devices used to mark fishing equipment in radio frequencies assigned for AIS. Congress further instructed the Commission to ''consider whether imposing requirements with respect to the manner in which [AIS] devices are deployed and used would enable the authorization of [devices used to mark fishing equipment] to operate in radio frequencies assigned for [AIS] stations consistent with the core purpose of the [AIS] to prevent maritime accidents.''

III. Discussion

8. Pursuant to Section 8416 of the NDAA21, we seek comment on whether to permit devices capable of marking fishing equipment to operate on channels currently assigned in the United States and internationally for AIS operation, specifically AIS 1 and 2, and on related operational issues. As stated, in the United States, AIS 1 and 2 currently are authorized only for maritime navigation safety purposes, and Congress directed the Commission to ensure that any changes to permitted operations in AIS spectrum are consistent with the core purpose of AIS to prevent maritime accidents.

9. We seek comment below on the current types and usages of such devices. We seek comment on whether such devices could operate on AIS 1 and 2 consistent with the purpose of AIS and, if so, under what conditions. We also seek comment on the costs and benefits of permitting operation of these devices on AIS 1 and 2, including the risks to maritime safety. In addition, we seek comment on the costs and benefits of facilitating use of such devices on alternative spectrum, specifically, by encouraging more robust use of frequencies in the 1900–2000 kHz band (which is currently authorized for radio buoy operations under certain ship station licenses held by commercial fishing vessels) and/or by permitting such use on 160.900 MHz (consistent with ITU recommendations). We further seek comment on how best to categorize devices used to mark fishing equipment and protect incumbents through technical and operational limitations. Finally, we seek comment on a consumer labeling approach to provide consumers guidance on whether the equipment being purchased complies with the Coast Guard's rules and the Commission's rules.

A. Current Environment for Devices Used To Mark Fishing Equipment

10. We seek comment generally on the current usage of spectrum to operate devices that could be used to mark fishing equipment. We consider two general types of fishing equipment; those attached to vessels during fishing activities, such as long-lines, trawl nets or drift nets, and those deployed for later retrieval, such as fixed fishing nets, pots, traps or other fishing equipment. What is the volume of usage of any of these devices that could be used to mark fishing equipment? How many mobile and/or fixed devices are typically used by an individual vessel or fleet? To what extent does usage of these devices vary based on the body of water where deployed? Are there other types of fishing nets that we should consider? We recognize that fishing seasons are time limited and vary by location, and we seek data to determine the most trafficked locations during high fishing season. Approximately how many devices are typically used to mark fishing equipment in a given area during high season? Are the devices used year-round, or only during the fishing season? If they are used year-round, are the full complement of devices always in use, or does the number of devices in use vary based on the time of year? Over how large an area are these devices used? What types of technical developments have occurred to facilitate the use of these devices? Are these devices also used to mark the location of other types of marine equipment? We seek extensive data input into our record in this proceeding as part of our consideration of whether to authorize devices that could be used to mark fishing equipment on AIS 1 and 2.

11. *1900–2000 kHz Operations.* We note that the Commission currently authorizes radio buoy operations under a ship station license for commercial fishing operations on the open sea and the Great Lakes in the 1900–2000 kHz band. Under Commission rules, the output power is limited to 8 watts and the station antenna height is limited to 4.6 meters above sea level for a buoy station, or 6 meters above the mast of the ship for ship installations. We seek comment on the extent to which this band is used in support of fishing operations. We ask that commenters provide specific details regarding use cases to provide a clearer understanding of the scope of the use of the 1900–2000 kHz band in support of fishing operations. What are the advantages and disadvantages of using the 1900–2000 kHz band in support of such operations? How many devices currently used to mark fishing equipment employ this band? What is the anticipated rate of increase in the number of devices used to mark fishing equipment in this band? Is there sufficient equipment available in this band for use in marking devices for fishing operations? Would the current technical limits hinder the use of this band for devices that can be used to mark fishing equipment, or fail to incentivize equipment development? Given the current power limits, what is the estimated number of devices in a given area that this band can support without harmful interference? What advantages or disadvantages are there to using equipment in this band as compared to AIS equipment, specifically as related to any differences in functionality, performance, and cost? We also seek information, especially quantitative estimates, on the economic value of improved safety and more

efficient commercial fishing operations from the use of these radio buoys in the 1900–2000 kHz band.

12. *Unauthorized Use of AIS Channels.* We seek comment on whether entities currently using AIS 1 and 2 for navigation safety and domain awareness communication systems are experiencing problems from unauthorized use of AIS 1 and 2. If so, how and to what extent does such unauthorized use impact legitimate operations on AIS 1 and 2? We seek specific comment on the types and quantity of devices used, or marketed for use, to illegally operate on AIS 1 and 2 to mark fishing equipment. Since the issuance of the 2018 Enforcement Bureau Advisory, is there evidence of the continued proliferation of the unauthorized deployment of devices used to mark fishing equipment using AIS channels 1 and 2, and if so, at what rate? Is any such proliferation largely limited to certain bodies of water? How are such unauthorized uses typically deployed—*i.e.,* at what power levels and antenna heights—and are there differences between fixed deployments and mobile deployments (*e.g.,* trawl use cases)?

13. As noted above, there is a concern that, in some areas, AIS 1 and 2 may become compromised. The Commission's Enforcement Bureau Advisory stated that non-certified devices used to track or mark fishing equipment ''can have a serious detrimental effect on maritime safety, hampering the situational awareness of maritime operators and endangering ships relying on AIS to avoid collisions and allisions at sea.'' Further, an ITU Radiocommunication Bureau Recommendation indicates that, to avoid confusion or an overload of information on the bridge of a vessel, devices that do not enhance the safety of navigation should not be permitted to use designated frequencies AIS 1 and 2. Do commenters agree with the ITU Recommendation? We seek specific comment and data on the extent the use of unauthorized devices is compromising the use of AIS 1 and 2 and any resulting impact on the state of maritime safety.

B. Exploring Additional Spectrum for Devices That Could Be Used To Mark Fishing Equipment

14. *AIS Channels 1 and 2.* Consistent with the Congressional directive in Section 8416 of the NDAA21, we seek specific comment on whether requirements could be imposed to enable authorization of devices that are designed to mark fishing equipment to operate in AIS 1 and 2 consistent with the core purpose of AIS to prevent maritime accidents. How would the introduction of such devices impact the availability and utility of the AIS 1 and 2 channels, especially in light of concerns about potential overloading? Would the authorization of devices used to mark fishing equipment on AIS 1 and 2 result in substantial further channel overloading? If low power/low-latency requirements were utilized for operation of devices used to mark fishing equipment on AIS 1 and 2, would this alleviate concerns regarding channel overloading? Are modifications or retrofits required for existing devices to become compliant to the low-power/low-latency requirements? If so, what is the likely unit cost to make existing devices compliant with the low-power/low-latency requirements? How many existing devices are estimated to be affected by any new requirements? We seek comment on the overall costs and benefits of potentially allowing devices that could be used to mark fishing equipment to operate on AIS 1 and 2, including the risks to maritime safety.

15. We also seek comment on whether we could authorize devices that could be used to mark fishing equipment to operate on AIS 1 and 2 without diminishing navigation safety in domestic and international waters and impeding the efficiency of marine transportation systems. If so, what is the likely cost? If the Commission were to permit such devices to operate on AIS 1 and AIS 2, to what extent would we need to amend our current AIS equipment authorization rules? If the Commission were to permit devices used to mark fishing equipment to operate on AIS 1 and 2, what coordination procedures would be needed between the Commission, the Coast Guard, and others to certify equipment and ensure safe operation? Are there restrictions or requirements the Commission could impose to mitigate against a negative impact on existing uses? For example, should we limit the types of devices used to mark fishing equipment that would be permitted to operate on AIS 1 and 2? Should we authorize devices for operation only in certain areas? If so, is there any practical way to enforce such limitations? Are there any technical parameters or other limits the Commission might impose to ensure that any new uses do not undermine the core purpose of AIS to prevent maritime accidents? We note that, during the pendency of this rulemaking, we will continue to enforce our rules that limit the use of AIS channels to devices needed for safety and that do not authorize use on AIS channels of devices used to mark fishing equipment or the marketing of such devices.

16. Particularly in the maritime context, the Commission considers international ramifications in determining whether its actions are in the public interest. We therefore note that at WRC–19, the ITU updated its *Radio Regulations,* to establish a new class of AIS devices, Group A and Group B autonomous maritime radio devices (AMRD), and state that an AMRD is a ''mobile station operating at sea and transmitting independently of a ship station or a coast station.'' The ITU defined AMRD Group A as devices that ''enhance the safety of navigation.'' In contrast, the ITU defined AMRD Group B as ''[devices] that do not enhance the safety of navigation (AMRD which deliver signals or information which do not concern the navigation of the vessel or do not complement vessel traffic safety in waterways).'' Should we consider a similar categorization of AIS devices? Would this type of categorization be consistent with the core purpose of AIS to prevent maritime accidents? To the extent that the ITU categories might inform our approach in this proceeding, and recognizing that the distinction between devices in AMRD Groups A and B may be somewhat unclear and can vary by use case, we request comment on the types of devices that should be categorized as AMRD Group A verses Group B. Should the two general categories of fishing nets mentioned above (and their associated devices used for marking) be separately considered for AMRD Group A or B? Are there other categories of fishing nets/devices that should also be considered? What are the appropriate factors to consider in categorizing various devices, and should those factors differ depending on the use case? For example, should nets attached to a vessel be considered for AMRD Group A since approaching vessels will need to be aware of their location for navigation safety? Should static nets be considered for Group B due to their static nature, or do they remain a navigation hazard for approaching vessels? We also seek comment on the international ramifications if we were to authorize operation of devices used to mark fishing equipment on AIS 1 and 2, including the ramifications for international technical and intergovernmental organizations. For example, would revisions to existing technical standards, recommendations, or mandates be required at IEC, IMO, ITU or elsewhere?

17. While we are concerned about the proliferation of devices that use AIS 1

and 2 to mark fishing equipment, and their potential overall effect on maritime safety, we also seek comment on any potential safety-related reasons to integrate such devices on AIS 1 and 2, including whether they might enhance the safety of navigation (*e.g.,* by helping ships to avoid collision with fishing nets). Are there use or deployment restrictions on devices intended to mark fishing equipment that we could impose to potentially accommodate the addition of such devices on AIS 1 and 2, while not undermining the core safety purpose of AIS? Would allowing devices that could be used to mark fishing equipment to operate on AIS 1 and 2 help maritime operators and ships relying on AIS to avoid collisions? Do concerns about AIS 1 and 2 overloading or traffic congestion generally vary depending on the type of fishing areas—*e.g.,* fishing areas near ports or fishing lanes versus deep sea fishing areas? What other devices and/or applications are being considered for AMRD Group A and B? If the potential for new types of devices and/or applications for Group A is limited, could this provide an opportunity for devices that could be used to mark fishing equipment to operate as Group A devices on AIS 1 and 2 and not impact the AIS network and its core maritime safety purpose? Could the impact be further reduced if devices that could be used to mark fishing equipment utilized a carrier-sense time-division multiple-access (CSTDMA) system used by Class B AIS transceivers, as opposed to random access time-division multiple access (RATDMA) used by other AIS devices?

18. *Operation on 160.900 MHz by Devices that Could be Used to Mark Fishing Equipment.* In order to assess the relative costs and benefits of permitting the use of AIS 1 and 2 by devices that could be used to mark fishing equipment, we explore whether other frequencies could be allocated to such uses, in particular 160.900 MHz. The ITU, in amending its *Radio Regulations* to permit certain devices categorized as AMRD Group B to use AIS technology, specifically identified 160.900 MHz for purposes other than safety on a non-interference basis to existing primary incumbents. We note, however, that the Commission has issued a substantial number of licenses authorizing primary operations within a 25 kHz bandwidth of 160.900 MHz. Our Universal Licensing System (ULS) reflects 579 incumbent licensees on these channels, mostly railroad entities authorized across the nation, including near port cities, for uses such as dispatch, track maintenance, car maintenance, and safety-related communications. ULS records also reflect three licenses near 160.900 MHz issued to public safety entities for land mobile operation under Part 90 of the Commission's rules, and 44 fixed and mobile Broadcast Auxiliary Remote Pickup under Part 74 of the Commission's rules. Remote pickup channels can be used by a mobile transmitter to relay signals from a remote location back to the studio, or between two points, such as a main studio and an auxiliary studio.

19. We seek comment on whether the Commission should maintain consistency with the international maritime approach regarding devices used to mark fishing equipment and authorize operation of these devices on 160.900 MHz. As stated, we recognize that incumbents currently operate near this frequency and seek comment on the specific level of incumbent deployments near 160.900 MHz, including geographic locations and technical parameters. We also seek comment on whether there are protective measures that could be employed to minimize the potential for harmful interference to incumbents while still accommodating new maritime uses on or near 160.900 MHz. If stakeholders support 160.900 MHz as the appropriate frequency for devices that could be used to mark fishing equipment in lieu of AIS 1 and 2, we seek comment on how the Commission should specifically protect incumbents, including many U.S. rail entities, and any incumbents that might operate near waterways, such as ports. To what extent can the Commission accommodate operation of devices that could be used to mark fishing equipment and incumbents on or near this frequency? We also note that the three public safety incumbent systems near 160.900 MHz are operated by governmental jurisdictions. Should public safety systems be provided the same protection as non-public safety systems operating on or near 160.900 MHz or does their status as public safety entities requiring reliable communications dictate more stringent protective measures? If so, what protective measures are necessary?

20. We recognize that the ITU established power level limits for AMRD Group B operation on 160.900 MHz not to exceed 100 mW and antenna height limits not to exceed 1 m above the surface of the sea. If we were to authorize operation of devices that could be used to mark fishing equipment on 160.900 MHz, we seek comment on whether the ITU established power/height limitations are sufficient to protect U.S. licensed incumbents operating near 160.900 MHz. If not, what alternative technical and operational limitations would be appropriate to mitigate the likelihood of harmful interference to incumbent licensees? Should we consider creating exclusion areas where devices that could be used to mark fishing equipment cannot be deployed if operating on 160.900 MHz? Commenters supporting domestic use of 160.900 MHz for such devices should address these and any other issues, including the existence of appropriate technical and operational standards, necessary for such devices to successfully operate without causing harmful interference to incumbent licensees. If co-existence is not technically feasible, should we consider requiring incumbents to relocate to new spectrum, and if so, what are the available and appropriate spectrum alternatives for incumbents? We also recognize that any new authorized uses of 160.900 MHz may impact existing operations near the Canadian and Mexican borders and therefore seek comment on what measures might be necessary to protect use of the 160.900 MHz spectrum outside of the United States, consistent with applicable treaties or arrangements.

21. *Consumer Labeling.* We seek comment on whether to establish labeling requirements on authorized devices that could be used to mark fishing equipment to provide consumers guidance on whether the equipment being purchased complies with the Coast Guard's rules and the Commission's rules. By requiring labeling on devices approved for use in marking fishing equipment, consumers would be on notice not to purchase devices that do not contain the approved label. For example, if we adopted such an approach, unauthorized devices used in marking fishing equipment that operate on AIS 1 and 2, currently illegally marketed as ''AIS Fishing Net Buoys,'' would not contain the label of approval. We seek comment on requiring consumer labeling for devices that could be used to mark fishing equipment, including the costs and benefits of such an approach.

IV. Procedural Matters

22. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.''

Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning potential rule and policy changes contained in this *NPRM.* The IRFA is set forth in Appendix A.

V. Initial Regulatory Flexibility Analysis

23. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the potential policy and rule changes that the Commission seeks comment on in the *NPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments as specified in the *NPRM.* The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

24. As required by Section 8416 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, the Commission initiated a proceeding to explore whether to authorize devices used to mark fishing equipment for use on Automatic Identification System (AIS) channels. Section 8416 of the NDAA21 mandates that the Commission initiate a proceeding by June 30, 2021 to consider whether to authorize devices use to mark fishing equipment in radio frequencies assigned for AIS. Congress further instructs the Commission to ''consider whether imposing requirements with respect to the manner in which [AIS] devices are deployed and used would enable the authorization of [devices used to mark fishing equipment] to operate in radio frequencies assigned for [AIS] stations consistent with the core purpose of the [AIS] to prevent maritime accidents.''

25. Pursuant to the mandates of Section 8416 of the NDAA21, the *NPRM* raises germane technical, operational and economic issues that could result in rules changes in its request for comments on whether to permit devices that could be used to mark fishing equipment to operate on channels currently assigned for AIS operation in the United States and internationally, specifically AIS channels 1 and 2. The *NPRM* seeks comment on the current types and usages of such devices. The *NPRM* inquires whether requirements could be adopted by the Commission to enable authorization of devices that are designed to mark fishing equipment to operate in AIS 1 and 2 consistent with the core purpose of AIS to prevent maritime accidents and seeks comment on this issue. The Commission also requests input on the overall costs and benefits of potentially allowing devices used to mark fishing equipment to operate on AIS 1 and 2, including the risks to maritime safety. Further, to the extent that the Commission were to permit devices used to mark fishing equipment on AIS 1 and AIS 2, the *NPRM* seeks input on the certification procedures that should be required, and whether, and to what extent the current Commission AIS equipment certification rules would need to be amended. Additionally, the *NPRM* seeks input on whether there are restrictions or requirements such as technical parameters, and use or deployment restrictions on devices intended to mark fishing equipment, that the Commission could impose to mitigate against a negative impact on existing uses without undermining the core safety purpose of AIS technology.

26. As part of the Commission's assessment of the relative costs and benefits of permitting the use of AIS 1 and 2 by devices that could be used to mark fishing equipment, the *NPRM* seeks comment on whether to, in the alternative, authorize devices that could be used to mark fishing equipment for operation on 160.900 MHz pursuant to a relevant International Telecommunications Union (ITU) recommendation. As more vessels become equipped with authorized AIS equipment and as its use increases, AIS channels have the potential to become overloaded in areas with high vessel traffic. In addition to the other impacts, one consequence of overloading is a reduction in the range of the AIS system which reduces situational awareness for mariners. The ITU has sought to address this problem by defining the types of navigation safety AIS uses that are permitted on AIS 1 and 2, and by identifying 160.900 MHz for non-navigation and non-safety AIS uses. In addition to the ITU's recommendation, the *NPRM* seeks comment on how best to categorize devices used to mark fishing equipment. Further, the Commission requests input on the appropriate technical and operational limitations and protective measures that could be adopted to best protect existing incumbents with deployments on the 160.900 MHz frequency from interference while still accommodating new maritime uses.

27. Finally, the *NPRM* inquires whether a consumer labeling requirement should be adopted to provide consumers guidance on whether the equipment being purchased complies with both the Coast Guard's and the Commission's rules. By requiring labeling on devices approved for use in marking fishing equipment, consumers would be on notice not to purchase devices that do not contain the approved label. The Commission requests information on the costs and benefits of imposing such a labeling requirement.

B. Legal Basis

28. The proposed action is authorized pursuant to sections 4(i), 301, 303(r), 308, 309, and 384 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 303(r), 308, 309, and 384, and pursuant to Section 8416 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

29. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

30. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms

employed fewer than 1,000 employees and 12 firms employed of 1000 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of Wireless Telecommunications Carriers (except Satellite) are small entities.

31. *Marine Radio Services.* Small businesses in the aviation and marine radio services use a marine very high frequency (VHF), medium frequency (MF), or high frequency (HF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, an aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission nor the SBA have developed a size standard applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed of 1000 employees or more. Thus under this category and the *Marine Radio Services.* Small businesses in the aviation and marine radio services use a marine very high frequency (VHF), medium frequency (MF), or high frequency (HF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, an aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission nor the SBA have developed a size standard applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed of 1000 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority firms in this industry are small entities.

32. Based on Commission data most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

33. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has established a size standard for this industry of 1,250 employees or less. U.S. Census Bureau data for 2012 show that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. Based on this data, we conclude that a majority of manufacturers in this industry are small.

34. *Private Land Mobile Radio Licensees.* Private land mobile radio (PLMR) systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. Companies of all sizes operating in all U.S. business categories use these radios. Because of the vast array of PLMR users, the Commission has not developed a small business size standard specifically applicable to PLMR users. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications. The appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 shows that there were 967 firms that operate for the entire year. Of this total, 955 firms has employment of 999 or fewer employees and 12 had employment of 1,000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of PLMR licensees are small entities.

35. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.

36. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

37. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with

enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

38. *Broadcast Auxiliary Services (BAS) Remote Pickup (RPU) Licensees (TV Stations).* Only licensees of broadcast stations, broadcast networks, and cable networks can hold RPU licenses. BAS involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit to the studio or from the studio to the transmitter). The Commission nor the SBA has developed a small business size standard for Broadcast Auxiliary Services (BAS) Remote Pickup (RPU) licensees. The closest applicable SBA small business size standard for Remote pickup BAS when used by a TV station is for Television Broadcasting and such a business is small if it has $41.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated for the entire year. Of that number, 656 had annual receipts of $25,000,000 or less, and 25 had annual receipts between $25,000,000 and $49,999,999. Based on this data we estimate that the majority of firms are small entities under the applicable SBA size standard.

39. *Broadcast Auxiliary Services (BAS) Remote Pickup (RPU) Licensees (Radio Stations).* Only licensees of broadcast stations, broadcast networks, and cable networks can hold RPU licenses. BAS involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit to the studio or from the studio to the transmitter). The Commission nor the SBA has developed a small business size standard for Broadcast Auxiliary Services (BAS) Remote Pickup (RPU) licensees. The closest applicable SBA small business size standard for Remote pickup BAS when used by a radio station is for Radio Stations and such a business is small if it has $41.5 million or less in annual receipts. U.S. Census Bureau data for 2012 show that 2,849 firms operated for the entire year. Of that number, 2,806 firms operated with annual receipts of less than $25 million per year and 17 firms operated with annual receipts between $25 million and $49,999,999 million. Therefore, based on the SBA's size standard the majority of firms are small entities.

40. *Broadcast Auxiliary Services (BAS) Remote Pickup (RPU) (Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing).* Only licensees of broadcast stations, broadcast networks, and cable networks can hold RPU licenses. BAS involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit to the studio or from the studio to the transmitter). The Commission nor the SBA has developed a small business size standard for Broadcast Auxiliary Services (BAS) Remote Pickup (RPU) licensees. The closest applicable SBA small business size standard for Remote pickup BAS involving BAS equipment manufacturers is for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing and such a business is small if it has 1,250 employees or less. U.S. Census Bureau data for 2012 show that 841 establishments operated in this industry for the entire year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. Based on this data, we conclude that a majority of manufacturers in this industry are small.

41. *Boat Dealers.* This U.S. industry comprises establishments primarily engaged in (1) retailing new and/or used boats or retailing new boats in combination with activities, such as repair services and selling replacement parts and accessories, and/or (2) retailing new and/or used outboard motors, boat trailers, marine supplies, parts, and accessories. The SBA has established a size standard for this industry, which is having annual receipts of $35 million or less. 2012 U.S. Census Bureau data indicate that 3,338 firms operated in this industry throughout the entire year. Of that number, 3,328 operated with annual receipts of less than $25 million, while 17 firms had annual receipts between $25 million and $49,999,999. Based on this data, we conclude that a majority of the firms in this industry are small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

42. The inquiries raised for comment in the *NPRM* may create new or additional reporting or recordkeeping and/or other compliance obligations on small entities, if adopted. The *NPRM* seeks comment on potentially allowing devices used to mark fishing equipment on to AIS channels 1 and 2 pursuant to a statutory mandate and requests information on potential rule changes that can be made to facilitate this action. Following the Congressional directive in the NDAA21, the Commission is seeking comment on multiple alternatives for devices that could be used to mark fishing equipment that could result in reporting, recordkeeping, and other compliance requirements for small entities. More specifically, in its request for comment, the Commission seeks information on the type of use or deployment restrictions on devices intended to mark fishing equipment it could impose to potentially accommodate the addition of such devices on AIS channels 1 and 2, while not undermining the core safety purpose of AIS technology. The *NPRM* also seeks input on what the certification procedures should be implemented if the Commission decides to allow devices used to mark fishing equipment on AIS channels 1 and 2 and whether to amend the current AIS equipment certification rules.

43. In the alternative, the Commission is seeking comment on whether alternative frequencies could provide a viable option for devices that could be used to mark fishing equipment, in particular 160.900 MHz. If the Commission decides that relocating existing incumbents from the 160.900 MHz band is a feasible course of action, those incumbents may face new requirements. Further, if the Commission adopts rules for devices that could be used to mark fishing equipment to protect incumbents on 160.900 MHz, entities deploying such devices would need to conform to technical and operational standards and requirements. In addition, to the extent the Commission established a consumer labeling requirement pursuant to the inquiry raised in the *NPRM* compliance with a labeling requirement would be applicable to device manufacturers.

44. At this time, the Commission is not currently in a position to determine whether, if adopted, the potential rule changes that could result from questions raised and issues discussed in the *NPRM* will require small entities to hire attorneys, engineers, consultants, or other professionals, and cannot quantify the cost of compliance with any the potential rule changes that may be adopted. In the discussion of these issues relevant to whether to authorize devices used to mark fishing equipment for use on AIS channels or other frequencies, the Commission has sought comments from parties in the

proceeding, including seeking cost and benefit analyses. This information may help the Commission identify and evaluate other relevant matters, including compliance costs and burdens on small entities that may result from the matters explored in the *NPRM.*

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

45. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

46. In the *NPRM,* the Commission seeks to identify the appropriate band for devices that could be used to mark fishing equipment and how to best protect maritime safety and incumbents. The Commission has raised three possible for approaches for consideration. As discussed above, the first approach looks at use of the current 1900–2000 kHz band and whether it remains appropriate for use in support of fishing operations. Pursuant to the NDAA21 statutory mandate, the *NPRM* seeks comment on whether imposing requirements with respect to the manner in which devices that could be used to mark fishing equipment are deployed would enable them to be authorized to operate in radio frequencies assigned for AIS consistent with the core AIS purpose to prevent maritime accidents. In the alternative, the Commission raised for consideration whether alternative frequencies could provide a viable option for devices that could be used to mark fishing equipment, in particular 160.900 MHz. To understand the technical, operational, and economic impact of each of these alternatives the Commission has provided small entities and others the opportunity to provide information, including cost and benefit analyses on issues identified in the *NPRM* as well as information on any other issues relevant to this matter.

47. The Commission expects to consider more fully the economic impact on small entities following its review of comments filed in response to the *NPRM,* including costs and benefits analyses, and this IFRA. The Commission's evaluation of the comments filed in this proceeding will shape the final conclusions it reaches, the final alternatives it considers, and the actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

48. None.

VI. Ordering Clauses

49. Accordingly, *it is ordered,* pursuant to sections 4(i), 301, 303(r), 308, 309, and 384 of the Communications Act of 1934, 47 U.S.C. 154(i), 301, 303(r), 308, 309, and 384, and pursuant to Section 8416 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, that this Notice of Proposed Rulemaking is *hereby adopted.*

50. *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.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2021–14362 Filed 7–6–21; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2020–0057; FF09E22000 FXES11130900000 201]

RIN 1018–BE07

Endangered and Threatened Wildlife and Plants; Reclassification of the Razorback Sucker From Endangered to Threatened With a Section 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to reclassify the razorback sucker (*Xyrauchen texanus*) from an endangered species to a threatened species under the Endangered Species Act of 1973, as amended (Act). The proposed downlisting is based on our evaluation of the best available scientific and commercial information, which indicates that the species' status has improved due to conservation actions and partnerships, and the threats to the razorback sucker identified at the time of listing in 1991 have been eliminated or reduced to the point that the species is no longer currently in danger of extinction throughout all or a significant portion of its range, but it is still likely to become so within the foreseeable future without current active and intensive management. We also propose a rule under section 4(d) of the Act that provides for the conservation of the razorback sucker.

DATES: We will accept comments received or postmarked on or before September 7, 2021. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by August 23, 2021.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R6–ES–2020–0057, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R6–ES–2020–0057; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see *Public Comments,* below, for more information).

Document availability: Supporting documentation used to prepare this proposed rule, including the 5-year review and the species status assessment (SSA) report, are available on the internet at *http://www.regulations.gov* under Docket No. FWS–R6–ES–2020–0057.

FOR FURTHER INFORMATION CONTACT: Tom Chart, Director, U.S. Fish and Wildlife Service, Upper Colorado River Endangered Fish Recovery Program, P.O. Box 25486, DFC, Lakewood, CO 80225; telephone: 303–236–9885. 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 the Act, a species may warrant reclassification from endangered species status to threatened species status if it no longer meets the definition of an endangered species (in danger of extinction). Downlisting a species as a threatened species can only be made by issuing a rulemaking.

What this document does. This document proposes to reclassify the razorback sucker from an endangered species to a threatened species (*i.e.,* to ''downlist'' the species) on the Federal List of Endangered and Threatened Wildlife, with a rule issued under section 4(d) of the Act, based on the species' current status, which has been improved and maintained through implementation of conservation actions such as stocking, flow and habitat management, and invasive species control. This proposed rule and the associated SSA report reassess all available information regarding the status of and threats to the razorback sucker.

The basis for our action. Under the Act, we determine whether a species is an ''endangered species'' or ''threatened species'' based on any of five factors: (A) The present or threatened destruction, modification or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We may reclassify a species if the best available commercial and scientific data indicate the species no longer meets the applicable definition in the Act. For the reasons discussed below, we have determined that the razorback sucker no longer meets the Act's definition of an endangered species, but does meet the Act's definition of a threatened species. The actions of multiple conservation partners over the past 30 years have improved the condition of razorback sucker and reduced threats to the species. However, there is enough risk associated with the species' reliance on management actions and the potential loss of these important management actions such that the species meets the definition of a threatened species.

The status of the razorback sucker has been improved and maintained by a variety of conservation actions such as stocking, flow and habitat management, and invasive species control that benefit the razorback sucker. Conservation programs implemented by many partners improved conditions such that the razorback sucker now has multiple, large, reproducing populations distributed across much of its originally occupied range, with four populations in the upper basin and three populations in the lower basin. In total, conditions have improved, and the species now has sufficient resiliency, redundancy, and representation such that it is not currently at risk of extinction throughout all of its range (*i.e.,* it does not meet the Act's definition of an endangered species). However, recruitment of razorback sucker to the adult life stage remains rare in all but one population, and the species currently depends on management actions in order for populations to be resilient. In the future, management of the species and the conditions of the resources required by the species are likely to change such that the species is likely to become an endangered species in the foreseeable future (*i.e.,* the species meets the Act's definition of a threatened species).

We are proposing to promulgate a section 4(d) rule. We propose to prohibit all intentional take of the razorback sucker and specifically tailor the incidental take exceptions under section 9(a)(1) of the Act as a means to provide protective mechanisms to State, Federal, Tribal, and private partners so that they may continue with certain activities that are not anticipated to cause direct injury or mortality to the razorback sucker and that will facilitate the conservation and recovery of the species.

Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that the species should remain listed as endangered instead of being reclassified as threatened, or we may conclude that the species no longer warrants listing as either an endangered species or a threatened species. We may also make revisions to the 4(d) rule based on public comment. Because we are still accepting, considering, and analyzing additional information, a final decision that falls within any of those categories could be a logical outgrowth of this proposal.

Information Requested

Public Comments

Any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, or other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) Reasons we should or should not reclassify the razorback sucker as a threatened species.

(2) New information on the historical and current status, range, distribution, and population size of the razorback sucker.

(3) New information on the known and potential threats to the razorback sucker, including predatory, nonnative fish.

(4) New information regarding the life history, ecology, and habitat use of the razorback sucker.

(5) Current or planned activities within the geographic range of the razorback sucker that may have adverse or beneficial impacts on the species.

(6) Information on regulations that are necessary and advisable to provide for the conservation of the razorback sucker and that the Service can consider in developing a 4(d) rule for the species. In particular, information concerning the extent to which we should include any of the section 9 prohibitions in the 4(d) rule or whether any other forms of take should be excepted from the prohibitions in the 4(d) rule.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov.*

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service's website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Supporting Documents

A species status assessment (SSA) team prepared an SSA report for the razorback sucker. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our July 1, 1994, peer review policy (59 FR 34270; July 1, 1994), our August 22, 2016, Director's Memo on the Peer Review Process, and the Office of Management and Budget's December 16, 2004, Final Information Quality Bulletin for Peer Review (revised June 2012), we solicited independent scientific reviews of the information contained in the razorback sucker SSA report. We sent the SSA report to six independent peer reviewers and received three responses. Results of this structured peer review process can be found at *https://www.fws.gov/mountain-prairie/science/peerReview.php.* The SSA report was also submitted to our Federal, State, and Tribal partners for scientific review. We received review from 13 partners including States, Federal agencies, private partners and scientific experts. In preparing this proposed rule, we incorporated the results of these reviews, as appropriate, into the final SSA report, which is the foundation for this proposed rule.

Previous Federal Actions

By the middle of the 20th century, the Colorado River ecosystem where the razorback sucker lives had been greatly altered by large dams and smaller agricultural diversions, water depletions for municipal and agricultural uses, and the proliferation of many nonnative fish species. The razorback sucker was first proposed for listing as a threatened species on April 24, 1978 (43 FR 17375); the proposal was subsequently withdrawn on May 27, 1980 (45 FR 35410), after a final rule was not issued within 2 years of the proposed rule to comply with provisions of the Act as amended in 1978 (16 U.S.C. 1531 *et seq.*). Citing a lack of recruitment to reproductive age, dwindling numbers of adults, and occupation of only 25 percent of its historical range, the razorback sucker was proposed to be listed as an endangered species on May 22, 1990 (55 FR 21154). The final rule listing the razorback sucker as an endangered species was published on October 23, 1991 (56 FR 54957). Critical habitat was subsequently designated as 2,776 kilometers (km) (1,725 miles (mi)) of the Colorado River basin on March 21, 1994 (59 FR 13374), which included portions of the Yampa, White, Green, Duchesne, Colorado, Gunnison, San Juan, Verde, Salt and Gila Rivers, and several Colorado River mainstem reservoirs including Lake Mead and Lake Mohave.

We issued the first recovery plan for razorback sucker on December 23, 1998, which identified predation by nonnative fish species and loss of habitat as the primary reasons for the decline of the razorback sucker (Service 1998, entire). The plan was amended and supplemented with recovery goals on August 1, 2002 (Service 2002, entire). The 2002 recovery goals describe two recovery units, the upper and lower basins, which are physically demarcated by Glen Canyon Dam and have unique demographic trends, threats, and management actions.

We completed status reviews (''5-year reviews'') under section 4(c)(2)(A) of the Act for razorback sucker on August 30, 2012, and September 25, 2018 (Service 2012; Service 2018b, entire). Our most recent 5-year review completed on September 25, 2018, recommended the razorback sucker be downlisted (*i.e.,* reclassified from an endangered to a threatened species), which prompted this proposed rule.

Proposed Reclassification Determination

Background

A thorough review of the razorback sucker is presented in the SSA report (Service 2018a, entire), found at *http://www.regulations.gov* under Docket No. FWS–R6–ES–2020–0057, which is briefly summarized here.

Species Description

The razorback sucker is a freshwater fish species endemic to warm-water portions of the Colorado River basin in the southwestern United States, uniquely identified by a bony, dorsal keel (ridge) located behind its head. The species tolerates wide-ranging temperatures, high turbidity and salinity, low dissolved oxygen, and wide-ranging flow conditions. Razorback sucker sexually mature at 3 to 4 years of age, grow up to 1 meter (m) (3 feet (ft)) long, can live for more than 40 years, and spawn multiple times over a lifespan.

Habitat and Range

Razorback sucker are found throughout the Colorado River basin, but are most common in low-velocity habitats such as backwaters, floodplains, flatwater river reaches, and reservoirs. The species' historical range includes most of the Colorado River basin, from Wyoming to the delta in Mexico, including the States of Colorado, Utah, New Mexico, Arizona, Nevada, and California, and Mexican States of Baja and Sonora. Dam construction across the basin dramatically altered flow-regimes and habitat, disconnecting floodplain habitats, and converting long reaches of river to reservoirs. These reservoirs initially supported some of the largest populations of razorback sucker (greater than 70,000 individuals) until nonnative sportfish were introduced and became abundant, at which time recruitment, or the survival of young to become adults, became rare and populations declined.

Recovery Criteria

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Recovery plans must, to the

maximum extent practicable, include ''objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions [of section 4 of the Act], that the species be removed from the list.''

Recovery plans provide a roadmap for us and our partners on methods of enhancing conservation and minimizing threats to listed species, as well as measurable criteria against which to evaluate progress towards recovery and assess the species' likely future condition. However, they are not regulatory documents and do not substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species, or to delist a species is ultimately based on an analysis of the best scientific and commercial data available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all of the criteria in a recovery plan being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently and that the species is robust enough that it no longer meets the definition of an endangered species or a threatened species. In other cases, we may discover new recovery opportunities after having finalized the recovery plan. Parties seeking to conserve the species may use these opportunities instead of methods identified in the recovery plan. Likewise, we may learn new information about the species after we finalize the recovery plan. The new information may change the extent to which existing criteria are appropriate for identifying recovery of the species. The recovery of a species is a dynamic process requiring adaptive management that may, or may not, follow all of the guidance provided in a recovery plan.

We published the first recovery plan for the razorback sucker in 1998, which outlined a suite of recovery actions, including maintaining genetic diversity, reversing the declining population trends in Lake Mohave and the Green River subbasin, protecting and restoring habitat, and augmenting or reestablishing five additional populations of razorback sucker in designated critical habitat (Service 1998, p. vi). In 2002, the razorback sucker recovery goals supplemented and amended the 1998 recovery plan, providing demographic criteria and management actions needed for recovery (Service 2002, entire). When the 2002 recovery goals were published, wild populations were considered to be in serious jeopardy with only small numbers of wild razorback sucker remaining in the Green River, upper Colorado River and San Juan River subbasins, lower Colorado River between Lake Havasu and Davis Dam, reservoirs of Lakes Mead and Mohave, and in small tributaries of the Gila River subbasin (Verde River, Salt River, and Fossil Creek). Furthermore, when the goals were approved, a minimum viable population (MVP) was estimated to be at least 5,800 adults. The recovery goals include the following reclassification criteria (summarized below for brevity):

Downlisting can occur if, over a 5-year period, all of the following criteria are met with genetically and demographically viable, self-sustaining populations:

Criterion 1: The trend in adult point estimates for two populations in the upper basin (Green River subbasin and either the upper Colorado River or San Juan River subbasin) do not decline significantly. Recruitment of naturally produced fish equals or exceeds mean annual adult mortality for each of the populations. Point estimates for each population must equal or exceed 5,800 adults.

Criterion 2: A genetic refuge is maintained in Lake Mohave.

Criterion 3: The trend in adult point estimates for two populations in the lower basin do not decline significantly. Recruitment of naturally produced fish equals or exceeds mean annual adult mortality for each of the populations. Point estimates for each population must equal or exceed 5,800 adults.

Criterion 4: Site-specific management actions are identified, developed, and implemented.

For downlisting criterion 4, the recovery goals described the following management actions needed to support the species (summarized for brevity):

(1) Reestablish populations with hatchery-produced fish.

(2) Identify and maintain genetic variability of razorback sucker in Lake Mohave.

(3) Provide, and legally protect, habitat and flow regimes.

(4) Provide passage over barriers in occupied habitat.

(5) Investigate water temperatures in the Gunnison River.

(6) Minimize entrainment in diversion/out-take structures.

(7) Ensure adequate protection from overutilization.

(8) Ensure adequate protection from diseases and parasites.

(9) Regulate nonnative fish releases and escapement.

(10) Control problematic nonnative fishes as needed.

(11) Minimize the risk of hazardous-materials spills in critical habitat.

(12) Remediate water quality problems.

(13) Minimize the threat of hybridization with white sucker.

(14) Provide for the long-term management and protection of populations and their habitats if the species were delisted.

The recovery goals further describe that delisting can occur if, 3 years after the downlisting criteria are met, the downlisting criteria continue to be met.

The current condition of the razorback sucker partially meets the 2002 recovery criteria. Criterion 1 has been partially met, as the number of adults, whether stocked or wild-produced, present in the basin exceeds the 5,800 benchmark in both the Green and Colorado Rivers. However, the second target that recruitment of naturally produced fish equals or exceeds mean annual adult mortality for each of the populations has not been achieved due to the lack of natural recruitment (survival of wild spawned individuals to the adult life stage) as a result of predation. Not only is Criterion 1 only partially met without natural recruitment, but without ongoing stocking to offset the lack of natural recruitment, the population size would quickly fall below the demographic target for adults and would not be self-sustaining, which would not satisfy the recovery vision of a self-sustaining species. All stages of the life-cycle are routinely observed until the juvenile life stage, signs of which are increasing across the upper basin, but nonnative predators eat the juveniles before they can grow into adults. The juvenile life stage is the only life stage absent on a wide scale. Criterion 2 has been met, as a genetic refuge is maintained in Lake Mohave. Criteria 3 has been partially met, as the lower basin is home to the only naturally recruiting population in Lake Mead, but population levels are low (less than 500 adults). Adult populations of thousands of razorback sucker persist in both Lake Mohave and Lake Havasu (and their associated river reaches), but neither population is naturally recruiting or meets the 5,800-adult threshold. Without continued stocking, these populations would quickly fall below this threshold due to the lack of natural recruitment resulting from the ongoing threat of predation from nonnative predatory fish. Criterion

4 has been partially met, with many of the threats to the species managed or abated. Nonnative fish remain a persistent threat in both basins.

Since 2002, the best available science regarding razorback sucker has increased, including knowledge about the species and its associated threats. Regarding the first and third criteria, we now expect that a 5-year period may not be adequate to consider the demographic variability of razorback sucker populations resulting from substantial environmental variability in the Colorado River ecosystem. Razorback sucker adapted to a highly variable ecosystem with fluctuating levels of drought and flood, and thus populations would likely see both population increases and decreases over that time. The species has a long lifespan to survive periods of poor resource conditions and has high reproductive potential to compensate during periods of suitable resource conditions.

Based on the updated scientific knowledge of razorback sucker, the 2002 recovery goals should be reviewed and updated. Regarding downlisting criterion 3, the minimum viable population (MVP) was established without considering the extent or boundary of each population. For example, Lake Powell was once considered of little ecological value, yet groups of razorback sucker have established residency in both the Colorado and San Juan River inflow areas. Finally, regarding downlisting criterion 4, a number of the management actions have been achieved, such as items (2), (4), (5), and (6); a number of the actions are ongoing and still needed, such as items (1), (3), (9), (10), (13), and (14); and a number of the actions are no longer considered needed for the species, such as items (7), (8), (11), and (12). In addition, the actions outlined in the Lower Colorado River Multi-Species Conservation Program's (LCR;MSCP) workplan do not include control of nonnative species, restoring natural flow variability below dams, or a future absent sustained augmentation (with the exception of the Lake Mead population). As such, the 2018 5-year review of the status of the species recommended revising the 2002 recovery goals to incorporate new information about the species. We expect to revise the recovery plan for razorback sucker when this rulemaking process is complete.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an ''endangered species'' or a ''threatened species.'' The Act defines an endangered species as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether any species is an ''endangered species'' or a ''threatened species'' because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects. We consider these same five factors in reclassifying a species from endangered to threatened (50 CFR 424.11(c)–(e)).

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term foreseeable future extends only so far into the future as we can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be reclassified as a threatened species under the Act. It does, however, provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following

is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at *http://www.regulations.gov* under Docket No. FWS–R6–ES–2020–0057.

To assess razorback sucker viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years); redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events); and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this section, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

Species Needs

Individual razorback sucker need: Complex lotic (rapidly moving freshwater) and lentic (still freshwater) habitats for spawning, rearing, feeding, and sheltering; suitable water temperatures and quality for spawning, egg incubation, larval development, and growth; variable flow regimes in lotic systems to provide access to off-channel wetland habitats; and an adequate and reliable food supply (Service 2018a, pp. 21–24). We briefly summarize each of these needs below.

Habitat—Individual razorback sucker need specific habitat types to breed, feed, and shelter, including rocky substrates, warm shallow waters, and deeper waters (Service 2018a, p. 21). Rocky substrates of boulder, cobble, and clean gravel are used for spawning and subsequent egg development. Larvae and juveniles need nursery habitats, which include persistent, shallow, warm, and sheltered shorelines of backwaters, floodplains, or similar habitat types with cover present (vegetation and turbidity) to avoid predation. Adults also need pockets of deeper water, either in reservoirs, large eddies, or pools with slow velocities.

Water quality and temperature—Razorback sucker tolerate a wide range of water quality conditions, including warm temperatures, low dissolved oxygen, and high levels of turbidity and salinity. The species opportunistically selects appropriate water temperatures for spawning as temperature can affect hatching, growth, and survival of larvae (Service 2018a, p. 69).

Variable flow—Lotic populations in much of the upper basin depend on variable flows in the form of high spring peaks to carry larvae into floodplain wetlands that provide sufficient food and protection from nonnative predators (Service 2018a, p. 22).

Food supply—Razorback sucker are omnivorous (feed on plants and animals), with a diet that is highly dependent on habitat and food availability.

Range and connectivity—Razorback sucker can move long distances through unimpeded river systems, allowing for dispersal into new habitat and selection of appropriate conditions for spawning.

Each population needs resiliency to rebound from disturbance, which is provided by the abundance of individuals and the completion of all life stages, or recruitment. Stocked individuals are long-lived, migrate, and spawn, which routinely produces viable eggs and subsequent larvae. However, natural recruitment, the survival of wild-spawned individuals to the adult life stage, is rare due to predation on juveniles by nonnative fish and reduced nursery habitat availability. Therefore, population resiliency currently depends on management actions, primarily the stocking and reintroduction of hatchery reared individuals. The species also needs multiple populations to provide adequate redundancy against potential catastrophic events and genetic and ecological diversity to maintain the adaptive traits of the species (Service 2018a, pp. 21–24). Before dam construction in the 1960s, there were nine populations of razorback sucker, and the species is currently found in seven populations throughout the Colorado River basin.

Risk Factors

To determine the condition of razorback sucker populations, we evaluated a number of stressors that influence the resiliency of razorback sucker populations, such as river flows, nonnative fish, genetic factors, alterations to habitat, overutilization, parasites, disease, pollutants, and the effects of global climate change (Service 2018a, pp. 27–42). The stressors that most influence the resiliency of razorback sucker populations are reductions in flow regimes, which reduce available habitat and connectivity, and predation by nonnative fish species. The effects of global climate change were not anticipated to affect the species in the near term, but could affect habitat connectivity, flow conditions, and densities of predatory nonnative fish over longer timeframes (Service 2018a, pp. 27–29).

Altered flow regimes reducing access to nursery habitat—Complex backwater and floodplain wetland habitat support the growth of larval and juvenile razorback sucker. Dam installations in the 20th century altered river flow regimes by reducing spring peak flows, which limited access to the floodplain habitat needed by larvae and juveniles. Altered flow regimes also reduced the complexity of in-river habitat by encouraging establishment of nonnative vegetation on previously dynamic sandbars, which prevents the development of backwater pools and reduced in-river vegetative cover used by larvae and juvenile razorback sucker.

Nonnative fish species—Razorback sucker lack competitive and predator defense abilities compared to fish that evolved in more species-rich regions (Martinez *et al.* 2014, p. 1). Predation of young razorback sucker by large, nonnative piscivores (carnivores that eat fish) is a major cause of recruitment failure throughout the basin. Species of particular concern in the upper basin include smallmouth bass (*Micropterus dolomieu*), northern pike (*Esox lucius*), and walleye (*Sander vitreus*) in the Green and Colorado River basins and channel catfish (*Ictalurus punctatus*) in

the San Juan River basin. Smallmouth bass, in particular, are adept at establishing large riverine populations. Species of particular concern in the lower basin include striped bass (*Morone saxatilis*) and flathead catfish (*Pylodictis olivaris*), both of which can consume all life stages of razorback sucker, including adults. Nonnative fishes may also compete with razorback sucker for food and habitat. Additionally, impacts of nonnative fishes can be so considerable that they prohibit use of habitat by razorback sucker.

Climate change—The potential effects of climate change were assessed using the U.S. Bureau of Reclamation's SECURE Water Act Section 9503(c) Report (Reclamation, 2016, entire). The Colorado River basin is expected to have higher temperatures, with seasonal drying, but increases in fall and winter precipitation in some areas (Reclamation 2016, pp. 3–9). In the long term, razorback sucker are likely to benefit from warming conditions with higher growth rates, but may be impacted by lower flow conditions that cannot be mitigated by water management. Warming conditions may also increase nonnative warm-water fishes that prey on razorback sucker. These impacts are more likely to occur in the longer timeframe (*i.e,* greater than 30 years). Climate change is not expected to be a significant stressor in the near term, but the effects could increase in the long term (Service 2018a, pp. 99–103).

Conservation Actions

Ongoing management actions to benefit razorback sucker are primarily undertaken by three expansive, multi-stakeholder management programs: The Upper Colorado River Endangered Fish Recovery Program (Upper Basin Program), established in January 1988 and funded through 2023; the San Juan River Basin Recovery Implementation Program (San Juan Program) established in 1992 and funded through 2023; and the LCR—MSCP, established in 2005 and funded through 2055, as well as a variety of smaller working groups. These conservation programs' goals are to work toward improving population resiliency by augmenting adult populations, providing beneficial flows, creating habitat and reducing nonnative predators and competitors. Our SSA report provides additional information on these conservation programs (Service 2018a, pp. 42–51).

In the upper basin, augmentation occurs from three established broodstocks at three independent hatchery facilities: Southwestern Native Aquatic Resources and Recovery Center (SNARRC), Ouray National Fish Hatchery at Randlett (Randlett), and Ouray National Fish Hatchery–Grand Valley (Grand Valley). Each hatchery maintains its own broodstock according to genetic and management plans (Czapla 1999, entire; Ryden 2005, entire; Integrated Stocking Plan Revision Committee 2015, entire; Wilson 2012, entire) developed by the programs they serve. The Grand Valley and Randlett hatcheries annually spawn, produce, and distribute 6,000 razorback sucker averaging 350 mm or greater into the Colorado and Green River basins respectively. SNARRC produces sufficient larvae for 11,400 razorback sucker that are grown at sister facilities before distribution into the San Juan River Basin. In the lower basin, the established population in Lake Mohave is the broodstock for most stocking efforts as it has been documented as the most genetically diverse population. Commonly referred to as repatriation, wild larvae are collected; reared at Willow Beach National Fish Hatchery, Achii Hanyo Native Fish Rearing Facility, Overton Wildlife Management Area, and the Lake Mead Fish Hatchery; and released into Colorado River reaches managed by LCR–MSCP (LCR–MSCP 2015, pp. 9–12). In addition, a backup broodstock has been developed at SNARRC that provides larvae for rearing at Bubbling Ponds Native Fish Hatchery to avoid the movement of quagga mussels found in Lake Mohave (LCR–MSCP 2015, p. 12) beyond the Colorado River basin. Overall, the LCR–MSCP has committed to stocking or repatriating 660,000 razorback sucker into the Colorado River over 50 years and until 2055. Augmentation, including stocking and repatriation, is the primary tool used to enhance the resiliency of razorback sucker in the lower basin. In the upper basin, stocking is coupled with other management actions that all contribute to population resiliency on the landscape.

Flow recommendations have been developed for most major rivers in the upper basin (Holden 1999, entire; Muth *et al.* 2000, entire; McAda 2003, entire) to support conservation of native fish species, including razorback sucker. Flow recommendations commonly set both peak and base flow recommendations based on the hydrology of the system in a given year based on their effects on native fish species and downstream geomorphology. Most important for razorback sucker in the Green River are spring peaks timed to move wild-produced larvae into warm, food-rich floodplain wetlands that are then managed to exclude nonnative fish.

Successful floodplain management for razorback sucker nursery habitat requires: (a) Flow management that provides floodplain connection when larval razorback sucker are present in the system; (b) floodplains that are retrofitted with water control structures that restrict entry of large-bodied fish and allow managers to fill and drain the habitat at the beginning and end of the growing season, respectively; and (c) a supplemental water source to freshen floodplain water quality through the summer. The Upper Basin Program has developed multiple wetlands that can connect under various flow regimes in the Green River downstream of Flaming Gorge Dam. One wetland, Stewart Lake, has provided the largest naturally produced cohort of wild razorback sucker surviving through their first summer of life to date in the upper basin (Schelley *et al.* 2016, p. 7).

The Upper Basin and San Juan Programs are working to reduce the numbers of nonnative fishes, focusing primarily on smallmouth bass, northern pike, and walleye in the Green and upper Colorado River subbasins and channel catfish in the San Juan. A comprehensive nonnative fish control strategy was developed by the Upper Basin Program encompassing active removal from riverine habitats, escapement prevention from upstream reservoirs, revised stocking guidelines, harvest regulation changes, and outreach messaging (Martinez *et al.* 2014, entire). In-river removal efforts are scientifically evaluated and adjusted as appropriate to increase effectiveness.

In addition, both the Upper Basin and San Juan Programs have installed fish passage facilities to support range expansion of the species and have screened irrigation canals to prevent entrainment. Research, monitoring, and habitat management occur throughout the Colorado River basin.

Current Condition

The SSA assesses eight populations of razorback sucker: Four populations in the upper basin (Green, upper Colorado, and San Juan River subbasins, and Lake Powell) and four in the lower basin (Lake Mead [including upstream mainstem river], Lake Mohave [including upstream mainstem river], the Colorado River between Davis and Parker Dams [Lake Havasu], and the Colorado River mainstem below Parker Dam). Razorback sucker were historically present in the Gila River system, but the system was not evaluated in the SSA because wild razorback sucker were extirpated from

the system and subsequent stocking efforts have ceased without establishing a population. Table 1 summarizes the current condition for each population in terms of four resiliency categories (High, Medium, Low, and Extirpated) which is an average of our evaluation of condition for the population factors of population size, evidence of reproduction, and recruitment that influence the resiliency of each population. Definitions of population factors for each category (High, Medium, Low, and Extirpated) were developed to calibrate our understanding of these factors in terms of resiliency (Service 2018a, p. 54). In general, populations in higher resiliency categories are better able to withstand stochastic events than populations in lower resiliency categories. To calculate an overall score for resiliency for each population, we assigned a 3 for population factors with High condition, 2 for Medium condition, 1 for Low condition, and 0 for Extirpated condition, and then calculated an average (High resiliency 2.26–3; Medium resiliency 1.51–2.25; Low resiliency 0.76–1.5; and Extirpated 0–0.75) (Service 2018a, p. 95). Currently, Lake Mead has High resiliency, the Green River subbasin has Medium resiliency, the Colorado and San Juan river subbasins, Lake Powell, Lake Mohave, and Lake Havasu have Low resiliency, and the Colorado River below Parker dam is currently extirpated (Table 1). Our SSA report provides additional detail regarding our evaluation of current condition (Service 2018a, pp. 52–97).

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Table 1.—Current Condition of Razorback Sucker Populations

		Population Factors			
Basin	**Population Name**	**Estimated Population Size**[a]	**Evidence of Reproduction** (Based on presence of wild larvae)	**Recruitment**[b]	**Resiliency**
Upper Basin	Green River	36,355	Yes	Possible	Medium
	Upper Colorado River	8,058	Yes	No	Low
	San Juan River	4,000–5,000[c]	Yes	Possible	Low
	Lake Powell	San Juan River Inlet: approximately 2,000[d] Colorado River Inlet: 2,184	Yes	Possible	Low
Lower Basin	Lake Mead	360[e]	Yes	Yes	High
	Lake Mohave	3,471[e]	Yes	No	Low
	Lake Havasu	3,803[e]	Yes	No	Low
	Lower Colorado River	169[e]	Low	No	Extirpated
Gila Basin	Gila River	-	No	No	Extirpated

[a] As presented in Service 2018a, entire unless otherwise designated below.

[b] "Possible" indicates that signs of recruitment have been documented to either the young of year or juvenile stage, but are not yet sufficient to imply recruitment on a large scale.

[c] Diver and Wilson, 2018, p. 5.

[d] Pennock, 2019, p. 14.

[e] LCR–MSCP, 2019, p. 48, population estimate in Lake Havasu declined due to a change in methodology.

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Below, we summarize the current condition for each known population of razorback sucker, taking into account the stressors and conservation actions for each population.

The Upper Basin—The four upper basin populations currently have adequate food and unimpeded connectivity, except for a waterfall that blocks upstream movement of razorback sucker from Lake Powell into the San Juan River. In other areas, fish passage structures have been constructed to ensure that there are no other impediments to movement between populations. Populations in the upper basin generally have medium-quality habitat, water temperature, water quality, and variable flow, with the exception of the Green River subbasin, where water temperature and quality and variable flow are in high condition (Service 2018a, p. 85). Since the early 2000s, management of river flows has restored much of the important intra- and inter-annual variability of river flow needed to support razorback sucker. Flows in the Green River are actively managed to benefit razorback sucker by using biologically triggered releases from Flaming Gorge Dam to increase connectivity with off-channel floodplains. Four floodplains are managed in conjunction with these flows on the Green River with plans to create a fifth in the year 2020. Another floodplain wetland is being developed on the Colorado River near Moab, Utah, to provide nursery habitat. Reservoirs in the Aspinall Unit along the Colorado River changed release patterns to provide downstream flows that support razorback sucker. In addition, the Upper Basin Program acquired water stored in reservoirs in the Yampa and Colorado Rivers to enhance flow conditions when needed, such as during low flow periods in summer. In the San Juan River, flow recommendations for Navajo Reservoir support creation and sustained presence of habitat. Therefore, conservation actions have helped restore flow regimes to increase connectivity to floodplain habitats, such that the stressor of altered flow regimes has been reduced in the upper basin populations.

Predation by nonnative fish species remains a significant stressor to razorback sucker in the upper basin, resulting in populations with low overall conditions throughout most of the upper basin. Over 50 nonnative fish species have been introduced into the upper basin, some of which prey on or compete with razorback sucker. Most upper basin populations have substantial levels of predatory nonnative fish species, including channel catfish, smallmouth bass, northern pike, and walleye, which likely prevent recruitment of young razorback sucker to the adult life stage on a large scale. In addition, small-bodied nonnative fish are ubiquitous across the upper basin and likely prey on younger life-stages of razorback sucker. The Upper Basin Program implements nonnative fish management actions, such as removing predatory fish from approximately 966 km (600 mi) of river and screening reservoir outlets to prevent predators from escaping into downstream habitats used by razorback sucker. State partners in the Upper Basin Program no longer stock certain nonnative predators and instead implement harvest regulations that promote the removal of predatory fish throughout the upper basin. The San Juan River subbasin is free from nonnative predators with the exception of channel catfish, which are removed by the San Juan Program.

Upper basin populations of razorback sucker are monitored using mark-recapture population estimation, some with estimates dating back to the late 1980s. Population monitoring in the late 1980s and early 1990s estimated populations of hundreds of individuals in the middle Green River. By 2000, the estimates had declined to approximately 100 wild adults, prompting the development of a stocking program in the upper basin. The most recent population estimates from 2011 to 2013 indicate the Green River subbasin population to be in the tens of thousands of adult razorback sucker that were stocked as a result of management actions (Zelasko *et al.* 2018, pp. 11–13). Although successful reproduction and larval presence is documented annually in the Green River population, there is no natural recruitment due to predation by nonnative predatory fish, so this population is not self-sustaining. Young-of-year life stage (surviving through the first summer of life) has been documented annually since 2013 in managed off-channel wetlands. Captures of wild juveniles have increased in the Green River basin, including the detection of a wild-reared razorback sucker after 3 years in the wild in the spring of 2019 (Upper Colorado River Endangered Fish Recovery Program 2019, p. 4). This detection is the first documentation of a wild-spawned razorback sucker surviving for three years, suggesting that survival of young razorback sucker is increasing in the basin. Additionally, the Upper Basin Program stocks 6,000 adult razorback sucker into the Green River subbasin annually to support the population. However, natural recruitment (survival of wild-spawned individuals to adult life stage) remains rare.

The number of wild razorback sucker in the upper Colorado River subbasin decreased by the 1970s, and the population was functionally extirpated by 2000. The most recent population estimates (2013 to 2015) indicate that the population numbers in the thousands (Elverud 2020, pp. 26,92). The upper Colorado River subbasin population is not self-sustaining, but reproduction and larval presence have been documented. Survival to the juvenile stage is rare, but has been confirmed at low levels. As in the Green River, recruitment to the adult life stage is rare, if present, likely due to persistent predation from nonnative fishes and the lack of nursery habitat. The Upper Basin Program stocks 6,000 adults annually into the upper Colorado River subbasin to support the population. There is one managed floodplain wetland on the Colorado River.

Sampling efforts from 1987 and 1993 failed to collect any razorback sucker in the San Juan River, prompting stocking efforts in the basin. Populations in the San Juan River subbasin have recently been monitored using catch-per-unit effort (CPUE), which saw a significant increase in the population after 2010 (Schleicher 2016, pp. 17–18). Recent population estimates indicate the adult population is relatively stable between 4,000 and 5,000 (Diver and Wilson 2018, p. 5). Successful reproduction and larval presence is documented annually, but recruitment to the juvenile and adult life stages is also rare in the San Juan River subbasin. However, in 2018, more than 200 young-of-year razorback sucker were captured in the river (Upper Basin Program and San Juan Program 2019, p. 10), potentially because of habitat created during higher flow conditions in 2016 and 2017 and a lack of large-bodied predators. In 2019, 45 age-1 razorback sucker were found, documenting survival of some young-of-year through their first winter (Service 2019, p. 1). These two discoveries document the first signs of recruitment in the San Juan River basin. Regardless, the population is not self-sustaining, and 11,400 adult razorback sucker are stocked annually to support the population.

The fourth upper basin population is found in the Colorado and San Juan River inflow areas to Lake Powell. Although this population may functionally be an extension of the other three upper basin populations, its habitat conditions and the methods

used to monitor it are markedly different from the other three populations, which supports its consideration as a fourth population in the upper basin. Little is known about this population, as monitoring has only recently been expanded into its reaches. However, mark-recapture population estimates indicate there are persistent populations in both the San Juan and Colorado River arms, with approximately 2,000 (Pennock 2019, p. 14) and 2,184 (Service 2018a, p. 82) individuals, respectively, primarily comprising stocked adults. Reproduction is occurring annually, and larval razorback sucker have been captured in both inflow areas. Recruitment has yet to be confirmed, but untagged adults have been captured in Lake Powell. Lake Powell also supports populations of nonnative predatory fish species, including smallmouth bass, largemouth bass (*Micropterus salmoides*), striped bass, walleye, channel catfish, black crappie (*Pomoxis nigromaculatus*), and bluegill (*Lepomis macrochirus*), but inflow areas commonly have inflow- or wind-driven turbidity and inundated terrestrial vegetation, which may offer protection for razorback sucker from predation by nonnative fish species (Albrecht *et al.* 2017, pp. 510–511). The Upper Basin and San Juan Programs are continuing to explore the Lake Powell population, which is not actively managed like the other three river populations in the upper basin.

Summary of Current Condition in the Upper Basin—Four populations of razorback sucker occur in the upper basin. The Upper Basin and San Juan Programs' conservation and management actions have maintained and improved resource conditions for three of the four populations in the upper basin over the last 20 years. The SSA assessed the Green River as having medium condition relative to other populations and the three remaining upper basin populations to be in low condition. Populations of stocked adults use fish passage facilities to increase and expand through all available habitat. Successful reproduction, as evidenced by the collection of wild-produced larvae, is common in all populations. Signs of survival to later life stages are increasing, but have not reached levels of self-sustainability. Razorback sucker populations in the upper basin rely on management actions to maintain resiliency.

The Lower Basin—Dams on the mainstem of large rivers that provide water storage and hydropower dramatically altered the aquatic habitat in the lower Colorado River, such that these dams now define the boundaries of the razorback sucker populations in the lower basin. Three of the four lower basin populations generally have high-quality habitat, water quality, and temperature, and adequate food for razorback sucker. The reservoirs provide suitable habitat for razorback sucker, and the largest populations ever documented occurred in these reservoirs after filling. There are few natural barriers to movement within these populations, but connectivity among populations across the dams depends on management actions. Flows are heavily managed in the lower basin, with the dams reducing spring peak flows and providing stable downstream flows year-round, so there are few natural flows. Due to dam management of flows, variable flows are not available in the lower basin, which are essential to connect off-channel floodplains in the upper basin. Despite the presence of nonnative predatory fish, the reservoirs behind the dams provide suitable nursery habitat for juvenile razorback sucker that supports recruitment in Lake Mead.

As in the upper basin, predation of razorback sucker by nonnative fish is a significant stressor in the lower basin that influences the resiliency of the populations. Over 20 nonnative fish species occupy razorback sucker habitat, and all the lower basin mainstem reservoirs have populations of bluegill, striped bass, smallmouth bass, and largemouth bass that are managed as sport fisheries. Both striped bass and flathead catfish easily consume all life stages of razorback sucker, including large adults, so are especially detrimental to population recruitment. Flathead catfish have established populations in Lake Havasu, downstream of Parker Dam and in the Gila River subbasin. These predatory nonnative fish species have largely eliminated recruitment to the adult life stage in all lower basin populations except Lake Mead. The Lake Mead population is the only population that demonstrates sufficient recruitment, to a level that it is self-sustaining that does not require stocking. Managers hypothesize that portions of Lake Mead have physical conditions (vegetative cover and high turbidity) that provide some cover from site-feeding predatory nonnative fishes, and that this cover has led to a low level of recruitment that is sustaining this population at its current population level.

The LCR–MSCP oversees management actions to support razorback sucker in the Colorado River mainstem in the lower basin. Management focuses primarily on capturing and raising wild-produced larvae to an adult size in protected environments for stocking, creating, and managing predator-free off-channel habitats, and monitoring populations. Nonnative fish are not actively controlled in the lower basin, except in the Grand Canyon, where they are managed by the Glen Canyon Dam Adaptive Management Program. Many of the nonnative species are valuable sport fish managed by State wildlife agencies.

LCR–MSCP produces annual mark-recapture population estimates for all razorback sucker populations in its geographic scope. The Lake Mead population, though large during the initial filling of the reservoir, has declined to approximately 300 adults (LCR–MSCP 2019, p. 48). Ten years of population estimates document that the population is stable, but small. Reproduction and natural recruitment have been documented annually since the 1990s in turbid inflow areas, making Lake Mead home to the only self-sustaining razorback sucker population in either basin. Cover, in the form of turbidity and submerged vegetation, may explain why recruitment to the adult life stage occurs in Lake Mead, despite the presence of many nonnative predatory fish species.

Lake Mohave remains an important genetic refuge for razorback sucker, annually providing wild-spawned larvae for reintroduction efforts across the lower basin. Recent genetic studies document the persistence of high levels of genetic diversity in both wild and stocked individuals. The population was documented to exceed 60,000 individuals in the 1980s, but declined to less than 250 wild individuals in 2011. Currently, the population is estimated at several thousand hatchery-raised and stocked adults. Reproduction and larval presence is documented annually. Recruitment to the adult life stage has not been documented in this population, and is unlikely due to high rates of predation. Each year, wild larvae are captured, raised in hatcheries, and reintroduced at sizes larger than can be consumed by most nonnative fish species. Reintroduction occurs annually, but the number of reintroduced adults varies.

Razorback sucker were extirpated from the Colorado River between Davis and Parker Dams, including Lake Havasu. Reintroduction has established a population of approximately 5,000 adults, and the population is maintained through continual stocking. Spawning and larval presence occur annually. Recruitment to the adult life stage has not been documented in this

population and is unlikely due to high rates of predation.

In the Colorado River downstream of Parker Dam, razorback sucker are augmented annually. Survival is low, making population estimation difficult, but the population is currently estimated to be in the hundreds (LCR–MSCP 2019, p. 48). Some reproduction is seen, but at low levels. No evidence of natural recruitment to any life stage has been documented. This population was assessed to be in extirpated condition and, therefore, is not counted in the seven established populations.

Summary of the Lower Basin—There are currently three extant populations of razorback sucker in the lower basin. The LCR–MSCP's conservation and management actions continue to reintroduce razorback sucker and actively develop off-channel habitat. The Lake Mead population is small, persistent, and the only self-sustaining population of the species. The SSA rated the population condition as high relative to other populations. Populations of reintroduced adults in Lake Mohave and Lake Havasu are maintained through stocking. The SSA rated both populations as in low condition. The SSA rated the population below Parker Dam as in extirpated condition, but recent population estimates indicate it may be in the hundreds. Successful reproduction and larval recruitment are common in three of the four populations, with minimal larval production in the population below Parker Dam. Razorback sucker populations in the lower basin rely on management actions to be persistent.

Summary of Current Condition—The razorback sucker has many traits that enable individuals to be resilient in the face of stochasticity, including a long lifespan, high reproductive potential, flexibility in habitat conditions, adaptation to a wide variety of water-quality conditions, flow and thermal regimes, and a variable omnivorous diet. Although individual adult razorback sucker are persistent, seven of the eight populations are maintained through stocking. Overall, there is one population rated in high condition, one in medium condition, five in low condition, and one in extirpated condition. Only one population, the Lake Mead population, exhibits natural recruitment and stability of the population. The overall status of each population depends on ongoing management actions, such as population augmentation and the removal of nonnative predatory fish species, in order to maintain resiliency.

Redundancy for razorback sucker is currently provided by seven established populations. Further, the expansive distribution of each population, with individuals distributed and established in multiple locations across wide areas, also provides redundancy to help reduce risk associated with catastrophic events, such as widespread wildfire and extended drought. Due to this widespread distribution, existing populations are likely to survive localized and even regional catastrophic events. Representation is sufficient in terms of genetic diversity and genetic relatedness, as genetic diversity has been maintained through augmentation. Ecological representation is demonstrated by the species exhibiting a high degree of plasticity by inhabiting both lentic and lotic habitats. However, the lack of natural recruitment may reduce levels of genetic diversity for the species.

Future Condition

We predicted the resiliency, redundancy, and representation of the razorback sucker under five plausible future scenarios, 30 years into the future, based on various levels of active conservation actions. For the purposes of our analysis in the SSA, we also considered a 100 year timeframe to evaluate whether threats could increase or decrease, but the 100-year timeframe was not considered as a foreseeable future for the finding in this proposed rule. The future scenarios we evaluated are summarized below and are discussed in greater detail in the SSA report (Service 2018a, pp. 104–118). The future scenarios range from a reduction in conservation actions to an increase and improvement in the effectiveness of conservation actions. We selected the 30-year timeframe because it accounts for approximately three generations of razorback sucker (time to sexual maturity) and was a timeframe with sufficient certainty to anticipate the effects of stressors.

Scenario 1 of the SSA describes a reduction in recovery and conservation actions for razorback sucker to minimal levels due to funding reductions or the expiration of recovery programs. Scenario 2 of the SSA describes a reduction in the effectiveness of stocking and reintroduction efforts, which is currently a key management tool supporting most populations. Scenarios 3, 4, and 5 of the SSA show continued management actions under various levels of effectiveness. Scenario 3 represents a continuation of current management actions. Scenarios 4 and 5 assume increases in the effectiveness of management actions based on more effective flow and nursery habitat management or the development of novel techniques to control nonnative predators.

Under Scenario 1, conditions would likely severely degrade in 30 years in the upper basin, primarily because of the assumed reduction in conservation activities that would occur in absence of the Upper Basin and San Juan Programs, likely resulting in all four populations reaching an extirpated condition in the foreseeable future. Under Scenario 1, conditions would likely remain constant in the Lower Basin because the LCR;MSCP has committed conservation actions under their consultation requirements under section 7 of the Act and Habitat Conservation Plan until 2055. The most dramatic declines in condition are likely under Scenario 2 under which most populations would decline to an extirpated condition, underscoring the importance of stocking and reintroduction programs to the species across the basin. In scenarios 1 and 2, both resiliency and redundancy are likely to decline in all populations. Scenario 2 predicts a decline in representation because genetics are currently managed and distributed using stocking and reintroduction programs. Scenarios 3, 4, and 5 all predict increasing resource and population conditions because conservation actions are assumed to continue to improve the resiliency of populations, differentiated by the effectiveness of said actions. Scenario 3 predicts restoration of all upper basin populations and the Lake Mohave population to a medium condition based on continued implementation of management actions, which support resiliency, redundancy and representation. Under scenario 3, populations are likely to continue to expand, but resiliency of the species would require ongoing management actions. Scenario 4 predicts an increase in effectiveness of management activities to support wild recruitment, including the management of additional nursery habitat in the upper basin and additional off-channel habitat in the lower basin. Under scenario 4, all populations are predicted to reach high or moderate condition, except for the population below Parker Dam, which would likely remain in low condition. Under scenario 5, which assumes availability of a novel tool to address nonnative fish, most populations would be expected to reach high condition. In scenarios 3, 4, and 5, improvements in the upper basin populations are likely larger than those in the lower basin as

a broader suite of actions are occurring in the upper basin.

The SSA report (Service 2018a, entire) contains a more detailed discussion of our evaluation of the biological status of razorback sucker and the influences that may affect its continued existence. Our evaluations are based upon the best available scientific and commercial data.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Determination of Razorback Sucker Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of ''endangered species'' or ''threatened species.'' The Act defines an endangered species as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether a species meets the definition of ''endangered species'' or ''threatened species'' because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the razorback sucker. Threats to the razorback sucker include changes in flow regime and habitat connectivity (which could be affected by climate change in the long term) (Factor A), and predation and competition with nonnative fish species (Factor C) (Service 2018a, pp. 25–42, 98–105). There is no evidence that overutilization (Factor B) of razorback sucker, disease (Factor C), or other natural and manmade factors affecting the species (Factor E) are occurring. Existing regulatory mechanisms (Factor D) are discussed below. We evaluated each potential stressor, including its source, affected resources, exposure, immediacy, geographic scope, magnitude, and impacts on individuals and populations, and our level of certainty regarding this information, to determine which stressors were likely to be drivers of the species' current condition (Service 2018a, pp. 25–42).

We have also analyzed potential cumulative effects of stressors, such as low river flows and warm water temperatures that may act cumulatively to increase predation by nonnative predators. The SSA framework considers the presence of the factors influencing the species, including threats and conservation efforts and to what degree they collectively influence risk to the entire species at the current time and in the future.

Our analysis found that the primary drivers for the razorback sucker's current and future condition in the wild are lack of access to rearing habitat in the upper basin and persistent populations of predatory nonnative fish species, which, together, prevent natural recruitment from occurring at a population scale in both basins. We summarize these stressors below, with more detail provided in the SSA report (Service 2018a, pp. 27–42).

Access to nursery habitat—The presence and operation of large dams can reduce spring peak flows and inter- and intra-annual flow variability, needed by razorback sucker larvae and juveniles as rearing habitat. Historical dam operations did not always provide river flow conditions that supported razorback sucker, but recent modifications to operations have improved conditions. Current flow recommendations at upper basin dams (including Flaming Gorge [Green River subbasin], the Aspinall Unit [Colorado River subbasin], and Navajo Dam [San Juan River subbasin]) now promote inter- and intra-annual variability. In addition, Flaming Gorge Reservoir operations have incorporated experimental strategies to use spring peak flows to push larval razorback sucker into managed off-channel floodplains. These larval-triggered dam operations have resulted in the first consistent signs of first-year survival in the upper basin. For recruitment to the adult life stage to occur at a significant scale, more managed floodplains may be needed to connect to the river more regularly in the Green River (and potentially in the other) subbasins. Recent high, channel altering flows in the San Juan River, followed by low flows that provided in-river juvenile backwater habitat produced one year-class of naturally recruited juveniles. Similar patterns would need to occur on a more regular basis to produce enough juveniles to replace adults lost through mortality. Future conditions of river flow and temperature are uncertain because conditions are shaped by regional climatic patterns and water availability.

Predation—Predation and competition by nonnative fish species are stressors to razorback sucker in both the upper and lower basins by reducing recruitment to adult life stages. Juvenile razorback sucker are most vulnerable to predation from nonnative fish species during the first few years of life. In the lower basin, populations that co-occur with striped bass and flathead catfish are vulnerable even as adults. Nonnative fish can also compete for resources with all life stages of razorback sucker. The razorback sucker evolved in an environment relatively free of predators and competitors. It is ill-adapted to living with the many nonnative fish that have been introduced into the Colorado River basin because it is a soft-rayed fish with no defense mechanisms for protection from predators.

Predation from nonnative fish species, particularly smallmouth bass in the upper basin, and striped bass and flathead catfish in the lower basin, is actively reducing the viability of razorback sucker. All upper basin razorback sucker populations have established nonnative predator populations; however, predation pressure is considered low in the San Juan River. All lower basin populations are dominated by nonnative predators. Only Lake Mead remains unmanaged and naturally recruiting. Management actions have restored razorback sucker populations to much of their historical habitat and are necessary to continue to support the species.

Regulatory mechanisms—Regulatory mechanisms (Factor D) and other

management efforts benefit the razorback sucker. Most habitat resources affecting razorback sucker, such as river flow regimes, are strictly regulated through Federal, State, and Tribal mechanisms. The razorback sucker is widely distributed across the upper basin, occupying areas surrounded by both private and public land, but many of the essential habitats (*e.g.,* floodplain wetlands and nursery areas) are largely protected by land use management plans or other mechanisms associated with Federal, State, and Tribal land ownership. Releases from large dams, primarily operated by the U.S. Bureau of Reclamation, are now operated to promote river function and connect fish habitat. These revised dam operations have been vetted through the National Environmental Policy Act process and are described in the records of decision (RODs) for Flaming Gorge (U.S. Department of the Interior 2006), the Aspinall Unit (U.S. Department of the Interior 2012), and Navajo dams (U.S. Department of the Interior 2005).

The Upper Basin and San Juan Programs coordinate and implement the majority of management actions for the upper basin populations, while the LCR-MSCP undertakes management actions for the lower Colorado River basin. These programs are considered regulatory mechanisms because they are largely federally funded, are guided by statute, are renewed on a periodic basis by acts of Congress, and provide compliance under the Act for water development projects.

Commitment to management actions for the benefit of razorback sucker is strong among the various partnerships; nevertheless, uncertainty of continued implementation in the upper basin does exist. For example, the cooperative agreement establishing the Upper Basin and San Juan Programs expires in 2023. The partners continue to discuss how the programs will be continued post 2023, with strong agreement that continuation is essential for all parties. Elimination of those two programs would introduce severe uncertainty about continued implementation of important management actions for razorback sucker in the upper basin. In the lower basin, the habitat conservation plan that created the LCR-MSCP is the legally binding mechanism that provides more certainty for razorback sucker conservation actions through 2055.

The Upper Basin and San Juan Programs and LCR-MSCP are key regulatory mechanisms that shape the current and future condition of razorback sucker. The Upper Basin and San Juan Programs implement management actions that benefit all resource needs of the razorback sucker, including flow and habitat management, nonnative fish removal, and stocking of adults. After coordination through the programs, the Service maintains stocking agreements with the states prohibiting the introduction of nonnative species that cause undue harm to endangered species populations. The States of Colorado, Utah, and Wyoming have enacted fishing regulations that encourage anglers to remove nonnative predatory species throughout the upper Colorado River basin. The LCR-MSCP develops off-channel, predator-free habitat and reintroduces adults. Although it is likely that all programs will continue to implement management actions, there is uncertainty regarding the status of the Upper Basin and San Juan Programs over the next 30 years. However, we believe there is strong, broad-based incentive to continue these collaborative programs, because they collectively provide regulatory compliance under the Act for the depletive effects associated with more than 2,500 water projects, which deplete an average of 3.8 million acre-feet per year.

We find that endangered species status is no longer appropriate for the razorback sucker because the species currently demonstrates sufficient individual and population resiliency, redundancy, representation across seven reproducing populations, four in the upper basin and three in the lower basin, supplemented by well-managed captive populations across the range, such that the potential extirpation of multiple populations is not likely to occur now or in the short term. The current resiliency of the relatively small, naturally recruiting Lake Mead population, in conjunction with the resiliency and redundancy afforded by management-based populations across both basins, decreases risk to the species from stochastic and catastrophic events. Wide-ranging adult populations, successful spawning, continued stocking and reintroduction programs, coupled with threat management programs provide resiliency and redundancy, which decrease the risks to the species. The risk of extinction is currently low, due to the presence of one recruiting wild population and six additional populations that are maintained by stocking from well-managed captive populations. Therefore, the species is not currently in danger of extinction. We, therefore, proceed with determining whether razorback sucker is likely to become endangered within the foreseeable future throughout all of its range (*i.e.,* meets the Act's definition of a threatened species).

We find that razorback sucker is likely to become an endangered species throughout all of its range within the foreseeable future. Due to nonnative predators that prevent nearly all natural recruitment of razorback sucker to the adult life stage in most habitats, the condition of the seven populations distributed across the upper and lower basins depends on management actions, such as stocking efforts, which are effective and ongoing. Management actions have ensured that stocked razorback sucker are migrating, spawning, and producing viable larvae in most populations. Signs of recruitment to the juvenile life stage are increasing, but are not yet sufficient for self-sustainability in most populations. Although the current risk of extinction is low, such that the species is not an endangered species, there is enough risk associated with the species' reliance on management actions and the potential loss of these important management actions such that the species is vulnerable. The primary management organization in the lower basin, LCR-MSCP, will continue through the foreseeable future considered in this rule (currently set to expire in 2055) ensuring conservation actions will continue in the lower basin to maintain populations in their current state. Reduction or elimination of ongoing management actions in the upper basin, which could occur after 2023, could slow or reverse the positive trajectory in the upper basin populations. Thus, after assessing the best available information, we determine that the razorback sucker is not currently in danger of extinction, but is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020) (*Center for Biological Diversity*), vacated the aspect of the 2014 Significant Portion of its Range Policy that provided that the Service does not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its

range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Center for Biological Diversity,* we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.,* endangered). In undertaking this analysis for the razorback sucker, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species is endangered.

For the razorback sucker, we considered whether threats are geographically concentrated in any portion of the species' range at a biologically meaningful scale. We examined the following threats: Changes in flow regime and habitat connectivity (which could be affected by climate change in the long term) (Factor A), predation and competition with nonnative fish species (Factor C), overutilization (Factor B) of razorback sucker, disease (Factor C), or other natural and manmade factors affecting the species (Factor E), including cumulative effects. We determined that threats to the razorback sucker include changes in flow regime and habitat connectivity (which could be affected by climate change in the long term) (Factor A), and predation and competition with nonnative fish species (Factor C) (Service 2018a, pp. 25–42, 98–105). There is no evidence that overutilization (Factor B) of razorback sucker, disease (Factor C), or other natural and manmade factors affecting the species (Factor E) are occurring.

In the upper basin, large dams historically changed flow regimes, which altered water temperatures and reduced connectivity and access to rearing habitat needed by the razorback sucker. Currently, flow recommendations in the upper basin are providing access to rearing habitat in the form of off-channel wetlands and floodplains. In the lower basin, large dams created large on-channel reservoirs that supported large populations of wild razorback sucker before the introduction of nonnative fish species. Both the upper and lower basins now support large augmented populations of razorback sucker. Although in the future, regional climatic patterns and water availability could affect the river flows and water temperatures needed by the razorback sucker, flow regimes are currently not a threat to the species and there are no geographically concentrated changes to flow regimes operating at biologically meaningful scales, whether at a population level, across the upper or lower basins, or the species rangewide.

Across the upper and lower basins, the razorback sucker evolved in an environment relatively free of predators and competitors, and as a soft-rayed fish with no defense mechanisms against predation, it is ill-adapted to live with the many nonnative fish that were introduced into the Colorado River basin. By feeding on juvenile razorback sucker, and some adults in the lower basin, predatory, nonnative fish species reduce recruitment of the razorback sucker to adult life stages. Nonnative fish can also compete for resources with all life stages of razorback sucker. As a result, predation and competition by nonnative fish species are threats to the razorback sucker in both the upper and lower basins. All razorback sucker populations in the upper and lower basins have established populations of nonnative predators; however, predation pressure is considered low in the San Juan River in the upper basin, and only Lake Mead in the lower basin remains unmanaged and naturally recruiting. Although nonnative species are different, predation and competition by nonnative fish species occurs across both the upper and lower basins and there are no geographical concentrations of this threat across biologically meaningful scales, either at the population scale, across the upper and lower basins, or the species rangewide.

We found no concentration of threats in any portion of the range of the razorback sucker at a biologically meaningful scale. Thus, there are no portions of the species' range where the species has a different status from its rangewide status. Therefore, no portion of the species' range provides a basis for determining that the species is in danger of extinction in a significant portion of its range, and we determine that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This is consistent with the courts' holdings in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017).

Determination of Status

Our review of the best available scientific and commercial information indicates that the razorback sucker meets the definition of a threatened species. Therefore, we propose to reclassify the razorback sucker as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Proposed Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the ''Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation'' of species listed as threatened. The U.S. Supreme Court has noted that statutory language like ''necessary and advisable'' demonstrates a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592 (1988)). Conservation is defined in the Act to mean ''the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the Act] are no longer necessary.'' Additionally, the second sentence of section 4(d) of the Act states that the Secretary ''may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants.'' Thus, the combination of the two sentences of section 4(d) of the Act provide the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to us when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife, or include a limited taking prohibition (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the

threats a species faces (see *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him with regard to the permitted activities for those species. He may, for example, permit taking, but not importation of such species, or he may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Exercising this authority under section 4(d), we have developed a proposed rule that is designed to address the razorback sucker's specific threats and conservation needs. Although the statute does not require us to make a ''necessary and advisable'' finding with respect to the adoption of specific prohibitions under section 9, we find that this rule as a whole satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the razorback sucker. As discussed in the Summary of Biological Status and Threats section, we have concluded that the razorback sucker is likely to become in danger of extinction within the foreseeable future primarily due to changes to water flow and predatory, nonnative fish species. The provisions of this proposed 4(d) rule would promote the conservation of the razorback sucker by providing continued protection from take and to facilitate the expansion of the species' range by increasing flexibility in management activities. The provisions of this rule are one of many tools that we would use to promote the conservation of the razorback sucker. This proposed 4(d) rule would apply only if and when we make final the reclassification of the razorback sucker as a threatened species.

Provisions of the Proposed 4(d) Rule

This proposed 4(d) rule would provide for the conservation of the razorback sucker by prohibiting the following activities, except as otherwise authorized or permitted: Importing or exporting; possession and other acts with unlawfully taken specimens; delivering, receiving, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; or selling or offering for sale in interstate or foreign commerce. This proposed 4(d) rule includes actions to facilitate conservation and management of razorback sucker where they currently occur, and may occur in the future, by eliminating the Act's take prohibition for certain activities. These activities are intended to encourage support for the conservation of razorback sucker.

Under the Act, ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulation at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Under this proposed 4(d) rule, take will continue to be prohibited, except for the following forms of take that would be excepted under the Act:

- Take resulting from population restoration efforts including captive-breeding, stocking, and reintroduction of individuals;
- Take resulting from display of razorback sucker for educational purposes;
- Take resulting from creating and managing nursery habitat for razorback sucker;
- Take resulting from the removal or suppression of nonnative fish species;
- Take resulting from catch-and-release angling activities associated with razorback sucker in accordance with all applicable laws, including incidental take from nontargeted angling in critical habitat and take from targeted angling for razorback sucker in any newly established areas; and
- Take associated with chemical treatments in support of the recovery of razorback sucker.

Captive-Breeding, Reintroduction, and Stocking

Robust hatchery and reestablishment programs have been developed as a result of catastrophic historical declines in wild populations and are essential management tools used by agencies across the Colorado River basin. Population restoration efforts provide the flexibility to perform supplemental stocking into existing populations or reintroduction of individuals to extirpated areas. Stocking hatchery-reared razorback sucker and reintroducing wild-spawned larvae as adults too large for predation are important management actions supporting the managed viability of the species. Introducing individuals into new areas can provide increased redundancy and decreased risk to catastrophic events by expanding the range of the species. Introducing individuals into wild populations can substitute for resiliency for extant populations by potentially offsetting population declines or increasing genetic diversity. Currently, the genetic diversity of razorback sucker exists in captive broodstock and wild-spawned larvae in Lake Mohave. Broodstock are maintained at multiple locations across the upper and lower basin.

The process of establishing or supplementing broodstock or enhancing populations by reintroducing wild-collected larvae as adults can require take in the form of collection of wild individuals of various life stages. Furthermore, the long-term care and maintenance of broodstock or hatchery stock can result in take, including take related to disease, parasites, genetic assessment, and management of captive populations, and natural mortality of individuals existing in broodstock or refuge populations. The process of culturing and stocking individuals can also result in take via hatchery methods or incidental mortality of stocked individuals.

This proposed 4(d) rule describes captive-breeding, stocking, and reintroduction of razorback sucker excepted from take as any activity undertaken to expand the range of razorback sucker or to supplement existing wild populations. Under this proposed 4(d) rule, take resulting from captive-breeding, stocking, and reintroduction for razorback sucker by qualified personnel would not be prohibited as long as reasonable care is practiced to minimize the effects of such taking. Qualified personnel are full-time fish biologists or aquatic resources managers employed by any of the Colorado River Basin State or Tribal wildlife agencies, the Department of the Interior bureau offices located within the Colorado River basin, or fish biologists or aquatic resource managers employed by a private consulting firm. Reasonable care should include, but is not limited to: (1) Ensuring that the number of individuals removed minimally impacts extant wild populations; (2) acting in accordance with the Service's Policy Regarding Controlled Propagation of Species Listed Under the Endangered Species Act (65 FR 56916, September 20, 2000) and all Federal, State, and Tribal laws and regulations; (3) implementing methods that result in the least harm, injury, or death to razorback sucker as feasible; (4) preserving specific genetic groupings of razorback sucker as defined by the best available science to maintain the genetic diversity of the species; and (5) ensuring no detrimental impacts to existing razorback sucker populations from disease, parasites, or genetic drift. Any stocking of razorback sucker must be approved by the Service.

Exhibitions of Captive-Bred Razorback Sucker

Live fish exhibits provide a unique opportunity for the public to see and interact with rare native species. Exhibits are currently distributed throughout the basin in educational classrooms and public buildings holding hatchery-propagated fish. In cooperation with the Service, an educational message shall be presented with each animal and shall include the following minimal information: Common and scientific names, historical and current distribution, Endangered Species Act listing status, and a brief history of recovery. The long-term care and maintenance of live individuals in exhibits can result in take, including take related to disease, parasites, and natural mortality of individuals existing in captivity. Wild-caught razorback sucker are not permitted to be used for this purpose. Fish used in exhibitions may not be released into natural waterways without written permission from the Service defining time, location, and procedures to be used during release. Any releases must be in compliance with all Federal, State, and Tribal laws and regulations. Reasonable care must be taken to reduce take including, but not limited to: (a) Holding razorback sucker in aquaria of appropriate size for the life stage on exhibit (no less than 10 gallons (37.8 L)); and (b) providing routine care by individuals trained and knowledgeable in fish and aquarium care and the management of parasites and disease.

Creation and Management of Nursery Habitat

Floodplain wetlands and other habitats support growth of larval and juvenile razorback sucker (see Summary of Biological Status and Threats, above). Successful floodplain management for razorback sucker can require: (a) Flow management that provides floodplain connection when larval razorback sucker are present in the system; (b) floodplains that are retrofitted with water control structures that restrict entry of large-bodied fish and allow managers to fill and drain the habitat at the beginning and end of the growing season, respectively; (c) supplemental water to freshen floodplain water quality through the summer; and (d) periodic monitoring of fish communities in the wetland to determine species composition. Take of razorback sucker can occur when the floodplains are drained and razorback sucker are inadvertently left in the floodplain or when water quality or other physical habitat conditions become insufficient to support the species. Incidental take may also occur when individuals of the species are handled, either during population sampling or draining of the wetland.

Currently, management of floodplain wetlands occurs at multiple locations in the Green River basin and in one location along the Colorado River, near Moab, Utah. Creation of floodplain habitat is in development in the San Juan River basin. In the lower basin, razorback sucker are common in off-channel pond habitat. Both the floodplain and pond habitats are constructed and managed to keep large-bodied nonnative predators out. New construction designs or management techniques, as available and feasible, may also need to be implemented in the future.

This proposed 4(d) rule describes creation and management of nursery habitat excepted from take prohibitions as any action with the primary or secondary purpose of enhancing or providing nursery habitat for razorback sucker, and that is approved in writing by the Service for that purpose.

Under this proposed 4(d) rule, take resulting from actions to create or manage nursery habitats to benefit razorback sucker by qualified personnel would not be prohibited as long as reasonable care is practiced to minimize the effects of such taking. Reasonable care may include, but is not limited to: (1) Performance of management treatments at times and locations that reduce the impacts to razorback sucker; (2) compliance with all Federal, State, and Tribal regulations for construction in wetland habitats; (3) attention to water quality conditions while razorback sucker are thought to be present; and (4) performance of robust salvage efforts to remove any razorback sucker before draining occurs. Whenever possible, razorback sucker that are salvaged should be moved to a location that supports recovery of the species.

Nonnative Fish Removal

Control of nonnative fishes is vital for the continued recovery of razorback sucker because predatory, nonnative fishes are a principal threat to razorback sucker (see Summary of Biological Status and Threats, above). The goal of removing nonnative fishes is to reduce predation and competition pressure on razorback sucker to such a level that it results in increasing razorback sucker survival, recruitment, and access to resources. During the course of removing nonnative fishes, take of razorback sucker may occur from incidental captures resulting in capture, handling, injury, or possible mortality. However, nonnative removal activities in razorback sucker habitats are designed to be selective, allowing for the removal of predatory, nonnative fish while razorback sucker are returned safely to the river. Therefore, if nonnative fish removal is performed under deliberate, well-designed programs, the benefits to razorback sucker can greatly outweigh losses.

Currently, active nonnative fish removal is widespread in the upper basin, but is less common in the lower basin. Control of nonnative fishes is conducted by qualified personnel in the upper basin via mechanical removal using boat-mounted electrofishing, nets, and seines, primarily focusing on removal of smallmouth bass, northern pike (*Esox lucius*), and walleye (*Sander vitreus*). Removal of nonnative fishes in the upper basin is performed under strict standardized protocols to limit impacts to razorback sucker. In the lower basin, nonnative fish actions primarily focus on preventing establishment of new species (such as removal of green sunfish below Glen Canyon Dam) and controlling populations of trout in tributary habitats (such as removal of brown trout in Bright Angel Creek). New techniques, as available and feasible, may also need to be implemented in the future.

This proposed 4(d) rule describes nonnative fish removal excepted from take prohibitions as any action with the primary or secondary purpose of mechanically removing nonnative fishes that compete with, predate, or degrade the habitat of razorback sucker, and that is approved in writing by the Service for that purpose. These methods include mechanical removal within occupied razorback sucker habitats, including, but not limited to, electrofishing, seining, netting, and angling, or other ecosystem modifications such as altered flow regimes or habitat modifications. All methods must be conducted by qualified personnel and equipment used in compliance with applicable Federal, State, and Tribal regulations.

Under this proposed 4(d) rule, incidental take resulting from actions implementing nonnative fish control activities to benefit razorback sucker would not be prohibited as long as reasonable care is practiced to minimize the effects of such taking. Reasonable care may include, but is not limited to: (1) Performing removal actions at times and locations that reduce the impacts to razorback sucker; (2) complying with all applicable regulations and following principles of responsible removal; and (3) judiciously using methods and tools to reduce the likelihood that razorback

sucker are captured, injured, or die in the removal process. Whenever possible, razorback sucker that are caught alive as part of nonnative fish removal should be returned to their capture location as quickly as possible.

Catch-and-Release Angling of Razorback Sucker

Recreational angling is an important consideration for management of all fisheries, as recreational angling is the primary mechanism by which the public interacts with fishes. Furthermore, angling regulations are an important communication tool. While the razorback sucker is not currently a species that is prized for its recreational or commercial value, the species is a large-bodied, catchable-sized fish that could offer potential recreational value in certain situations. Conservation value from public support for razorback sucker could arise through newly established fishing locations and public engagement with this species. Furthermore, anglers target species that co-occur with razorback sucker at some locations. As a result, otherwise legal angling activity in razorback sucker habitats could result in the unintentional catch of razorback sucker by the angling public. Catch-and-release angling, both intentional and incidental, can result in take of razorback sucker through handling, injury, and potential mortality. However, the conservation support that angling provides can outweigh losses to razorback sucker, if the angling program is designed appropriately.

Currently, State angling regulations require the release of all incidental catches of razorback sucker and do not allow anglers to target the species. Therefore, current angling regulations for razorback sucker by the States of Arizona, California, Colorado, New Mexico, Nevada, and Utah demonstrate a willingness to enact appropriate regulations for the protection of the razorback sucker. It is important to continue to protect razorback sucker from intentional angling pressure in critical habitat to support recovery of the species. Supporting recreational fishing access to these areas for species other than razorback sucker is an important economic consideration for State and Tribal entities. We propose to allow take of razorback sucker from angling activities that are in accordance with State and Tribal fishing regulations in razorback sucker critical habitat, but that do not target razorback sucker. That is, take associated with incidental catch-and-release of razorback sucker in the core populations would not be prohibited. Reasonable consideration by the States and Tribes for incidental catch of razorback sucker in critical habitat includes: (1) Regulating tactics to minimize potential injury and death to razorback sucker if caught; (2) communicating the potential for catching razorback sucker in these areas; and (3) promoting the importance of the populations across the Colorado River basin.

Outside of critical habitat, we foresee that Federal, State, or Tribal governments may want to establish a new recovery location where razorback sucker could be targeted for catch-and-release angling or a new location without recovery value, where the sole purpose is recreational angling for razorback sucker. Newly established locations could offer a genetic refuge for core populations of razorback sucker, provide a location for hatchery-reared fish (see *Captive-Breeding, Stocking, and Reintroduction,* above), and offer the public a chance to interact with the species in the wild. Therefore, we propose to allow take of razorback sucker from catch-and-release angling activities that target razorback sucker and are in accordance with State and Tribal fishing regulations in areas outside of critical habitat.

Sport fishing for razorback sucker would be allowed only through the 4(d) rule and subsequent State or Tribal regulations created in collaboration with the Service. This rule would allow recreational catch-and-release fishing of razorback sucker in specified waters outside of critical habitat. Management as a recreational species would be conducted after completion of, and consistent with the goals within, a revised recovery plan for the species. The principal effect of this 4(d) rule would be to allow take in accordance with fishing regulations enacted by States or Tribes, in collaboration with the Service.

Recreational opportunities may be developed by the States and Tribes in new waters following careful consideration of the locations and impacts to the species. Reasonable consideration for establishing new recreational locations for razorback sucker include, but are not limited to: (1) Carefully evaluating each water body and determining whether the water body can sustain angling; (2) ensuring the population does not detrimentally impact populations of razorback sucker through such factors as disease or genetic drift; (3) ensuring adequate availability of razorback sucker to support angling; and (4) monitoring to ensure there are no detrimental effects to the population from angling. If monitoring indicates that angling has a negative effect on the conservation of razorback sucker in the opinion of the Service, the fishing regulations must be amended or the fishery could be closed by the appropriate State.

Chemical Treatments Supporting Razorback Sucker

Chemical treatments of water bodies are an important fisheries management tool because they are the principal method used to remove all fishes from a defined area. That is, chemical treatments provide more certainty of complete removal than other methods, such as mechanical removal. Therefore, chemical treatments are used for a variety of restoration and conservation purposes, such as preparing areas for stocking efforts, preventing nonnative fishes from colonizing downstream areas, and resetting locations after failed management efforts. Chemical treatments of water bodies could take razorback sucker if individuals reside in the locations that are treated and cannot be salvaged completely prior to treatment. However, the overall benefit of conservation actions implemented using chemical treatment can outweigh the losses of razorback sucker, if reasonable care and planning are taken prior to treatments.

Chemical piscicides (chemicals that are poisonous to fish) have been used in the upper and lower basin to remove upstream sources of nonnative fishes in support of razorback sucker. For example, Red Fleet Reservoir (Green River, Utah) was treated by the Utah Division of Wildlife Resources to remove walleye that were escaping downstream, and a slough downstream of Glen Canyon Dam (Colorado River, Arizona) was treated by the National Park Service to remove green sunfish. At Red Fleet Reservoir, chemical treatment also provided the Utah Division of Wildlife Resources with the ability to establish a new fish community that supported angling interests and provided greater compatibility with downstream conservation efforts.

Chemical treatments could support a variety of activities to assist in the conservation of razorback sucker, including certain other actions described in this proposed 4(d) rule. For example, chemical treatments could be used prior to introducing razorback sucker through stocking. Nonnative fishes can also be removed using chemical treatments, providing a faster and more complete removal than mechanical removal. Furthermore, chemical treatments offer the ability to fully restore a location after a failed introduction effort. For example, if razorback sucker were stocked into a

new area, but did not successfully establish, landowners may want to restore this location for another purpose.

Chemical treatments would be allowed under this proposed 4(d) rule. Necessary precautions and planning should be applied to avoid impacts to razorback sucker. For example, treatments upstream of occupied razorback sucker habitats should plan for unintended consequences (*e.g.,* dispersal of piscicide beyond treatment boundaries). Chemical treatments that take place in locations where razorback sucker occur, or may occur, must take place only after a robust salvage effort takes place to remove razorback sucker in the area. Any chemical treatment that takes place in an area where razorback sucker may reside would need written approval from the Service, but treatments of unoccupied habitat would not need to be approved. Once the location of a chemical treatment is approved in writing by the Service, the take of razorback sucker by qualified personnel associated with performing a chemical treatment would not be regulated by the Service.

Under this proposed 4(d) rule, take resulting from actions implementing chemical treatments to benefit razorback sucker would not be prohibited as long as reasonable care is practiced to minimize the effects of such taking. Reasonable care may include, but is not limited to: (1) Performance of treatments at times and locations that reduce the impacts to razorback sucker; (2) compliance with all Federal, State, and Tribal regulations for the use of fish toxicants and piscicides; (3) adherence to all protocols to limit the potential for fish toxicants and piscicides travelling beyond treatment boundaries; and (4) performance of robust salvage efforts to remove any razorback sucker in the treatment area. Whenever possible, razorback sucker that are salvaged should be moved to a location that supports recovery of the species.

Reporting and Disposal of Razorback Sucker

Under the proposed 4(d) rule, if razorback sucker are killed during actions described in the 4(d) rule, the Service must be notified of the death and may request to take possession of the animal. Notification should be given to the appropriate Service Regional Law Enforcement Office or associated management office. Information on the offices to contact is set forth under Proposed Regulation Promulgation, below. Law enforcement offices must be notified within 72 hours of the death, unless special conditions warrant an extension. The Service may allow additional reasonable time for reporting if access to these offices is limited due to closure or if the activity was conducted in an area without sufficient communication access.

Permits

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened wildlife as necessary in light of any finalized 4(d) rule. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: Scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

This proposed 4(d) rule would not impact existing or future permits issued by the Service for take of razorback sucker. Any person with a valid permit issued by the Service under § 17.22 or § 17.32 may take razorback sucker, subject to all take limitations and other special terms and conditions of the permit.

The Service recognizes the special and unique relationship with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist the Service in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Service shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, would be able to conduct activities designed to conserve razorback sucker that may result in otherwise prohibited take without additional authorization.

Proposed 4(d) Rule

We have determined that the actions and activities that would be allowed under this proposed 4(d) rule, while they may cause some level of harm to individual razorback sucker, would not negatively affect efforts to conserve and recover razorback sucker, and would facilitate these efforts by increasing educational opportunities and public support for the conservation of razorback sucker and by providing more efficient implementation of recovery actions. This proposed 4(d) rule would not be made final until we have reviewed and fully considered comments from the public and unless and until we make final a rule to reclassify the species as threatened.

Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of the razorback sucker. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between Federal agencies and the Service, where appropriate. We ask the public, particularly State and Tribal agencies and other interested stakeholders that may be affected by the proposed 4(d) rule, to provide comments and suggestions regarding additional guidance and methods that the Service could provide or use, respectively, to streamline the implementation of this proposed 4(d) rule (see Information Requested, above).

Required Determinations

Clarity of This Proposed Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written,

which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act

We determined that we do not need to prepare an environmental assessment or an environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). We also determine that 4(d) rules that accompany regulations adopted pursuant to section 4(a) of the Act are not subject to the National Environmental Policy Act.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), 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 will coordinate with Tribes in the range of the razorback sucker and request their input on this proposed rule.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2020–0057, and upon request from the Upper Colorado River Endangered Fish Recovery Program Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Service's Upper Colorado River Endangered Fish Recovery Program 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.

Proposed Regulation Promulgation

Accordingly, we hereby propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entry for ''Sucker, razorback'' under FISHES on 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
*	*	*	*	*
FISHES				
*	*	*	*	*
Sucker, razorback	*Xyrauchen texanus*	Wherever found	T	56 FR 54957, 10/23/1991; [**FEDERAL REGISTER** CITATION WHEN PUBLISHED AS A FINAL RULE]; 50 CFR 17.44(gg);[4d] 50 CFR 17.95(e).[CH]
*	*	*	*	*

■ 3. Amend § 17.44 by adding paragraph (gg) to read as follows:

§ 17.44 Special rules—fishes.

* * * * *

(gg) Razorback sucker (*Xyrauchen texanus*).

(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the razorback sucker. Except as provided under paragraphs (gg)(2) and (3) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.21(b) for endangered wildlife.

(ii) Take, as set forth at § 17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at § 17.21(f) for endangered wildlife.

(2) *General exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by an existing permit for its duration under § 17.32.

(ii) Conduct activities as authorized by a permit issued prior to [*EFFECTIVE DATE OF THE FINAL RULE*] under § 17.22 for the duration of the permit.

(iii) Take, as set forth at § 17.21(c)(2) through (4) for endangered wildlife.

(iv) Take, as set forth at § 17.31(b).

(v) Possess and engage in other acts with unlawfully take wildlife, as set forth at § 17.21(d)(2) for endangered wildlife.

(3) *Exceptions from prohibitions for specific types of incidental take.* You may take razorback sucker while carrying out the following legally conducted activities in accordance with this paragraph:

(i) *Definitions.* For the purposes of this paragraph (gg)(3):

(A) *Person* means a person as defined by section 3(13) of the Act.

(B) *Qualified person* means a full-time fish biologist or aquatic resources manager employed by any of the Colorado River Basin State or Tribal wildlife agencies or the Department of the Interior bureau offices located within the Colorado River basin, or a fish biologist or aquatic resource manager employed by a private consulting firm, provided the firm has received a scientific collecting permit from the appropriate State or Tribal agency.

(C) *Reasonable care* means limiting the impacts to razorback sucker individuals and populations by complying with all applicable Federal, State, and Tribal regulations for the activity in question; using methods and techniques that result in the least harm, injury, or death, as feasible; undertaking activities at the least impactful times and locations, as feasible; salvaging individuals from treatment areas, as feasible, and returning them to a location that supports recovery of the species; ensuring the number of individuals removed or sampled minimally impacts existing extant wild populations; ensuring no disease or parasites are introduced into existing extant wild populations; and preserving the genetic diversity of extant wild populations.

(ii) *Captive-breeding, reintroduction, and stocking.* A qualified person may take razorback sucker while engaging in captive-propagation, stocking, or reintroduction, provided that reasonable care is practiced to minimize the effects of that taking. All captive-breeding shall be conducted by a qualified person in accordance with Service policies pertaining to the propagation of listed species and all Federal, State, and Tribal laws and regulations. Methods of allowable take include, but are not limited to, removing wild individuals via electrofishing, nets, and seines from the six core populations; managing captive populations, including handling, rearing, and spawning of captive fish; and sacrificing individuals for hatchery management, such as parasite and disease certification.

(iii) *Exhibitions of captive-bred razorback sucker in aquaria for educational purposes.* A person may exhibit live, captive-bred razorback sucker in aquaria for educational purposes. Allowable take includes, but is not limited to, incidental take associated with the care and display of captive-bred razorback sucker in aquaria for educational purposes.

(A) An educational message shall be presented with each animal and shall include the following minimal information: Common and scientific names, historical and current distribution, Endangered Species Act listing status as threatened, and a brief history of recovery.

(B) All exhibitions must be provided routine care and be housed in aquaria of 10 gallons (38 liters) or more.

(C) Captive-bred razorback sucker used in exhibitions may not be released into natural waterways without written permission from the Service, which will define time, location, and procedures to be used during release. Any releases of captive-bred razorback sucker used for educational purposes must be in compliance with all Federal, State, and Tribal laws and regulations.

(iv) *Creation and management of nursery habitats.* A qualified person may take razorback sucker to create or manage nursery habitats to support the growth of larval and juvenile razorback sucker. The Service must approve, in advance and in writing, the development of any nursery habitat with the primary or secondary purpose of conserving razorback sucker. Methods of allowable take include, but are not limited to, draining or drying an occupied floodplain wetland to remove fish or perform habitat maintenance; construction activities to improve or maintain the wetland; and habitat management activities to alter vegetation including but not limited to mechanical, chemical, and burning treatments.

(v) *Nonnative fish removal.* A qualified person may take razorback sucker in order to perform nonnative fish removal for conservation purposes if reasonable care is practiced to minimize effects to razorback sucker. Nonnative fish removal for conservation purposes means any action with the primary or secondary purpose of mechanically removing nonnative fishes that compete with, predate, or degrade the habitat of razorback sucker. The Service and all applicable landowners must approve, in advance and in writing, any nonnative fish removal activities. Methods of allowable take include, but are not limited to, mechanical removal of nonnative fish within occupied razorback sucker habitats, including, but not limited to, electrofishing, seining, netting, and angling and the use of other ecosystem modifications, such as altered flow regimes or habitat modifications, for the purpose of managing nonnative species populations that may impact razorback sucker populations.

(vi) *Catch-and-release angling of razorback sucker.* States and Tribes may enact Federal, State, and Tribal fishing regulations that address catch-and-release angling. In federally designated critical habitat for the razorback sucker, angling activities may include nontargeted (incidental) catch and release of razorback sucker when targeting other species in accordance with Federal, State, and Tribal fishing regulations. In areas outside of federally designated critical habitat for the razorback sucker, angling activities may include targeted catch and release of razorback sucker in accordance with Federal, State, and Tribal fishing regulations.

(A) Angling activities for razorback sucker may cause take via handling, injury, and unintentional death to razorback sucker that are caught via angling.

(B) Reasonable consideration by the Federal, State, and Tribal agencies for incidental catch and release of razorback sucker in critical habitat include regulating tactics to minimize potential injury and death to razorback sucker if caught and communicating the potential for catching razorback sucker in these areas.

(C) Reasonable consideration for establishing new recreational angling locations for razorback sucker includes, but is not limited to, evaluating each water body's ability to support razorback sucker and sustain angling; ensuring the recreational fishing population does not detrimentally impact populations of razorback sucker through such factors as disease or genetic drift; and monitoring to ensure there are no detrimental effects to the razorback sucker population from angling.

(D) The Service and all applicable State, Federal, and Tribal landowners must approve, in advance and in writing, any new recreational fishery for razorback sucker.

(vii) *Chemical treatments to support razorback sucker.* A qualified person may take razorback sucker by performing a chemical treatment in accordance with Federal, State, and Tribal regulations that would support the conservation and recovery of razorback sucker, provided that reasonable care is practiced to minimize

the effects of such taking. For treatments outside of occupied razorback sucker habitat, Service approval is not required, and care should be taken to limit the potential for fish toxicants and piscicides travelling beyond treatment boundaries and impacting razorback sucker. For treatments in known or potentially occupied razorback sucker habitat, the Service must approve any treatment, in advance and in writing.

(viii) *Reporting and disposal requirements.* Any mortality of razorback sucker associated with the actions authorized under the provisions of this paragraph (gg) must be reported to the Service within 72 hours, and specimens may be disposed of only in accordance with directions from the Service. Reports in the upper basin (upstream of Glen Canyon Dam) must be made to the Service's Mountain-Prairie Region Law Enforcement Office, or the Service's Upper Colorado River Endangered Fish Recovery Office. Reports in the lower basin (downstream of Glen Canyon Dam) must be made to the Service's Southwest Region Law Enforcement Office, or the Service's Arizona Fish and Wildlife Conservation Office. Contact information for the Service's regional offices is set forth at 50 CFR 2.2. The Service may allow additional reasonable time for reporting if access to these offices is limited due to office closure or if the activity was conducted in an area without sufficient communication access.

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. 2021–14335 Filed 7–6–21; 8:45 am]

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Notices

Federal Register
Vol. 86, No. 127
Wednesday, July 7, 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–2019–0034]

Oral Rabies Vaccine Program; Availability of a Supplemental Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a supplemental environmental assessment (EA) relative to a 2019 EA of an oral rabies vaccination (ORV) program in Maine, New Hampshire, New York, Ohio, Tennessee, Texas, Vermont, Virginia, and West Virginia. This supplement analyzes the proposed expanded use of ONRAB vaccine-baits throughout the ORV distribution zone in Pennsylvania in cooperation with the U.S. Department of Agriculture's Forest Service. We are making the supplemental EA available to the public for review and comment.

DATES: We will consider all comments that we receive on or before August 6, 2021.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2019–0034 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2019–0034, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

The supplemental environmental assessment and any comments we receive on this docket may be viewed at *www.regulations.gov* or in our reading room, whichis located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

This notice and the supplemental environmental assessment are also posted on the APHIS website at *http://www.aphis.usda.gov/regulations/ws/ws_nepa_environmental_documents.shtml.*

FOR FURTHER INFORMATION CONTACT: Mr. Richard Chipman, Rabies Program Coordinator, Wildlife Services, APHIS, 59 Chenell Drive, Suite 2, Concord, NH 03301; (603) 223–9623. To obtain copies of the supplemental environmental assessment, contact Ms. Beth Kabert, Environmental Coordinator, Wildlife Services, APHIS, 59 Chenell Drive, Suite 2, Concord, NH 03301; (908) 442–6761; email: *beth.e.kabert@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Wildlife Services (WS) program in the Animal and Plant Health Inspection Service (APHIS) cooperates with Federal agencies, State and local governments, and private individuals to research and implement the best methods of managing conflicts between wildlife and human health and safety, agriculture, property, and natural resources. Wildlife-borne diseases that can affect domestic animals and humans are among the types of conflicts that WS addresses. Wildlife is the dominant reservoir of rabies in the United States.

Since 2011, WS has been conducting field trials to study the immunogenicity and safety of an oral rabies vaccine, a human adenovirus type 5 rabies glycoprotein recombinant vaccine called ONRAB. Beginning in 2012, WS expanded field trials into portions of New Hampshire, New York, Ohio, Vermont, and new areas of West Virginia, including National Forest System lands, in order to further assess the immunogenicity of ONRAB in raccoons and skunks for raccoon rabies virus variant.

On July 9, 2019 we published in the **Federal Register** (84 FR 32700–32701, Docket No. APHIS–2019–0034) [1] a notice in which we announced the availability, for public review and comment, of an environmental assessment (EA) analyzing the environmental effects of continuing and expanding the oral rabies vaccine (ORV) program using the ONRAB vaccine in Maine, New Hampshire, New York, Ohio, Tennessee, Texas, Vermont, Virginia, and West Virginia. After soliciting and reviewing comments on the EA, we issued a finding of no significant impact (FONSI) reflecting our determination that the expanded distribution of the ONRAB wildlife rabies vaccine would not have a significant impact on the quality of the human environment.

Based on the ORV program's safe and successful use of the ONRAB rabies vaccine, WS is proposing to further expand ONRAB vaccine distribution to protect human and animal health. ONRAB rabies vaccine has been used experimentally in eastern Ohio as part of an ongoing field evaluation and has successfully reduced the prevalence of the raccoon rabies virus variant in the State. WS has defined a strategic 5-year programmatic goal to eliminate raccoon rabies in Ohio. In order to achieve this goal, better managing the disease in western Pennsylvania is critical. In the Pennsylvania ORV distribution zone, the program currently uses the RABORAL V–RG® rabies wildlife vaccine. However, despite historic and ongoing rabies management using the V–RG® rabies vaccine in Pennsylvania, rabies cases have persisted and contribute to a perpetual source of disease pressure into Ohio.

Accordingly, APHIS has prepared a supplemental EA in which we analyze the potential environmental impacts of expanding the ONRAB ORV program to include the Pennsylvania ORV distribution zone in which the V–RG® vaccine is currently used. The supplemental EA analyzes a number of environmental issues or concerns with the ONRAB vaccine and activities associated with the field trial, such as capture and handling animals for monitoring and surveillance purposes with regard to the proposed action.

[1] The EA, Decision/FONSI, and comments we received may be viewed at *https://www.regulations.gov.* Enter APHIS–2019–0034 in the Search field.

We are making the supplemental EA available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The supplemental EA may be viewed on the *Regulations.gov* website or in our reading room (see **ADDRESSES** above for instructions for accessing *Regulations.gov* and information on the location and hours of the reading room). In addition, paper copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

The supplemental EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 28th day of June 2021.

Michael Watson,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2021–14442 Filed 7–6–21; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2021–0015]

Notice of Request for Revision of an Approved Information Collection: Foodborne Illness Outbreak Investigation Survey for FSIS Public Health Partners

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to revise the approved information collection regarding partner collaboration in response to illness outbreaks associated with FSIS-regulated food products. The Agency has increased the burden estimate by 48 hours due to an increase in the number of respondents and a longer estimated response time. The purpose of this information collection continues to inform FSIS partner outreach efforts to effectively investigate and prevent foodborne illnesses. The approval for this information collection will expire on February 28, 2022.

DATES: Submit comments on or before September 7, 2021.

ADDRESSES: FSIS invites interested persons to submit comments on this **Federal Register** notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to *https://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250–3700.
- *Hand- or Courier-Delivered Submittals:* Deliver to 1400 Independence Avenue SW, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2021–0015. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *https://www.regulations.gov.*

Docket: For access to background documents or comments received, call (202) 205–0495 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Title: Foodborne Illness Outbreak Investigation Survey for FSIS Public Health Partners.

OMB Number: 0583–0175.

Expiration Date of Approval: 2/28/2022.

Type of Request: Revision of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53) as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*) and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS' Office of Public Health Science (OPHS) provides the scientific leadership necessary for the support of science-based food safety programs and policies implemented to reduce foodborne illnesses and deaths associated with FSIS-regulated products. As part of OPHS, the Applied Epidemiology Staff (AES) collaborates with public health partners in local, state, and federal government agencies to detect, respond to, and prevent foodborne illnesses, outbreaks, and food adulteration events. Effective communication between partners facilitates rapid investigation and control measures.

To promote successful partnerships, FSIS administers a series of surveys regarding foodborne illness outbreak investigation to its partners, including employees of state, territorial, and local governments. This will also occur as part of the after-action review process. The results of these surveys will help FSIS prioritize outreach efforts. Surveys are conducted as needed, including as part of foodborne illness outbreak after-action reviews.

Estimate of Burden

ESTIMATED ANNUAL REPORTING BURDEN

Respondents	Number of surveys	Number of respondents per survey	Total annual responses	Participation time per survey in minutes	Total annual time in hours
FSIS partners	20	10	200	20	67

Respondents: FSIS partners, including employees of state, territorial, and local governments.

Estimated Number of Annual Surveys: 20.

Estimated Number of Respondents per Survey: 10.

Estimated Participation Time per Survey in Minutes: 20.

Estimated Total Burden on Respondents: 67 hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; (202) 720–5627.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20253.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *https://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *https://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at How to File a Program Discrimination Complaint and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992.

Submit your completed form or letter to USDA by: (1) Mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; (2) fax: (202) 690–7442; or (3) email: *program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Paul Kiecker,

Administrator.

[FR Doc. 2021–14415 Filed 7–6–21; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child and Adult Care Food Program: National Average Payment Rates, Day Care Home Food Service Payment Rates, and Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes for the Period July 1, 2021 Through June 30, 2022

AGENCY: Food and Nutrition Service, Agriculture (USDA).

ACTION: Notice.

SUMMARY: This notice announces the annual adjustments to the national average payment rates for meals and snacks served in child care centers, outside-school-hours care centers, at-risk afterschool care centers, and adult day care centers; the food service payment rates for meals and snacks served in day care homes; and the administrative reimbursement rates for sponsoring organizations of day care homes, to reflect changes in the Consumer Price Index. Further adjustments are made to these rates to reflect the higher costs of providing meals in Alaska and Hawaii. The adjustments contained in this notice are made on an annual basis each July, as required by the laws and regulations governing the Child and Adult Care Food Program.

DATES: These rates are effective from July 1, 2021 through June 30, 2022.

FOR FURTHER INFORMATION CONTACT: J. Kevin Maskornick, Branch Chief, Program Monitoring and Operational Support Division, (703) 305–2537, Child Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, 1320 Braddock Place, Suite 401, Alexandria, Virginia 22314.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to sections 4, 11, and 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753, 1759a and 1766), section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) and 7 CFR 226.4, 226.12 and 226.13 of the Program regulations, notice is hereby given of the new payment rates for institutions participating in the Child and Adult

Care Food Program (CACFP). As provided for under the law, all rates in the CACFP must be revised annually, on July 1, to reflect changes in the Consumer Price Index (CPI), published by the Bureau of Labor Statistics of the United States Department of Labor, for the most recent 12-month period. These rates are in effect during the period July 1, 2021 through June 30, 2022.

Adjusted Payments

The following national average payment factors and food service payment rates for meals and snacks are in effect from July 1, 2021 through June 30, 2022. All amounts are expressed in dollars or fractions thereof. Due to a higher cost of living, the reimbursements for Alaska and Hawaii are higher than those for all other States. The District of Columbia, Virgin Islands, Puerto Rico, and Guam use the figures specified for the contiguous States. These rates do not include the value of USDA Foods or cash-in-lieu of USDA Foods, which institutions receive as additional assistance for each lunch or supper served to participants under the Program. A notice announcing the value of USDA Foods and cash-in-lieu of USDA Foods is published separately in the **Federal Register**.

Adjustments to the national average payment rates for all meals served under the Child and Adult Care Food Program are rounded down to the nearest whole cent.

National Average Payment Rates for Centers

The changes in the national average payment rates for centers reflect a 4.04 percent increase during the 12-month period from May 2020 to May 2021 (from 291.709 in May 2020, as previously published in the **Federal Register**, to 303.481 in May 2021) in the food away from home series of the CPI for All Urban Consumers.

Payments for breakfasts served are: Contiguous States—paid rate—33 cents (1 cent increase from 2020–2021 annual level), reduced price rate—1 dollar and 67 cents (8 cents increase), free rate—1 dollar and 97 cents (8 cents increase); *Alaska*—paid rate—50 cents (1 cent increase), reduced price rate—2 dollars and 85 cents (12 cents increase), free rate—3 dollars and 15 cents (12 cents increase); *Hawaii*—paid rate—38 cents (1 cent increase), reduced price rate—1 dollar and 99 cents (8 cents increase), free rate—2 dollars and 29 cents (8 cents increase).

Payments for lunch or supper served are: Contiguous States—paid rate—35 cents (2 cents increase from 2020–2021 annual level), reduced price rate—3 dollars and 26 cents (15 cents increase), free rate—3 dollars and 66 cents (15 cents increase); *Alaska*—paid rate—57 cents (3 cents increase), reduced price rate—5 dollars and 54 cents (24 cents increase), free rate—5 dollars and 94 cents (24 cents increase); *Hawaii*—paid rate—41 cents (2 cents increase), reduced price rate—3 dollars and 88 cents (17 cents increase), free rate—4 dollars and 28 cents (17 cents increase).

Payments for snack served are: Contiguous States—paid rate—9 cents (1 cent change from 2020–2021 annual level), reduced price rate—50 cents (2 cents increase), free rate—1 dollar (4 cents increase); *Alaska*—paid rate—14 cents (no change), reduced price rate—81 cents (3 cents increase), free rate—1 dollar and 63 cents (7 cents increase); *Hawaii*—paid rate—10 cents (no change), reduced price rate—58 cents (2 cents increase), free rate—1 dollar and 17 cents (4 cents increase).

Food Service Payment Rates for Day Care Homes

The changes in the food service payment rates for day care homes reflect a 0.67 percent increase during the 12-month period from May 2020 to May 2021 (from 253.827 in May 2020, as previously published in the **Federal Register**, to 255.516 in May 2021) in the food at home series of the CPI for All Urban Consumers.

Payments for breakfast served are: Contiguous States—Tier I—1 dollar and 40 cents (1 cent increase from 2020–2021 annual level) and Tier II—51 cents (1 cent increase); *Alaska*—Tier I—2 dollars and 23 cents (1 cent increase) and Tier II—79 cents (1 cent increase); *Hawaii*—Tier I—1 dollar and 63 cents (1 cent increase) and Tier II—58 cents (no change).

Payments for lunch and supper served are: Contiguous States—Tier I—2 dollars and 63 cents (2 cents increase from 2020–2021 annual level) and Tier II—1 dollar and 59 cents (1 cent increase); *Alaska*—Tier I—4 dollars and 26 cents (2 cents increase) and Tier II—2 dollars and 57 cents (2 cents increase); *Hawaii*—Tier I—3 dollars and 8 cents (2 cents increase) and Tier II—1 dollar and 86 cents (2 cents increase).

Payments for snack served are: Contiguous States—Tier I—78 cents (no change from 2020–2021 annual level) and Tier II—21 cents (no change); *Alaska*—Tier I—1 dollar and 27 cents (1 cent increase) and Tier II—35 cents (no change); *Hawaii*—Tier I—91 cents (no change) and Tier II—25 cents (no change).

Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes

The changes in the administrative reimbursement rates for sponsoring organizations of day care homes reflect a 4.99 percent increase during the 12-month period, May 2020 to May 2021 (from 256.394 in May 2019, as previously published in the **Federal Register**, to 269.195 in May 2021) in the series for all items of the CPI for All Urban Consumers.

Monthly administrative payments to sponsors for each sponsored day care home are: Contiguous States—Initial 50 homes—126 dollars (6 dollars increase from 2020–2021 annual level), next 150 homes—96 dollars (5 dollars increase), next 800 homes—75 dollars (4 dollars increase), each additional home—66 dollars (3 dollars increase); *Alaska*—Initial 50 homes—204 dollars (10 dollars increase), next 150 homes—155 dollars (7 dollars increase), next 800 homes—121 dollars (5 dollars increase), each additional home—107 dollars (5 dollars increase); *Hawaii*—Initial 50 homes—147 dollars (7 dollars increase), next 150 homes—112 dollars (5 dollars increase), next 800 homes—88 dollars (4 dollars increase), each additional home—77 dollars (4 dollars increase).

Payment Chart

The following chart illustrates the national average payment factors and food service payment rates for meals and snacks in effect from July 1, 2021 through June 30, 2022.

CHILD AND ADULT CARE FOOD PROGRAM (CACFP)

[Per meal rates in whole or fractions of U.S. dollars; effective from July 1, 2021–June 30, 2022]

Centers	Breakfast	Lunch and supper [1]	Supplement
CONTIGUOUS STATES:			
PAID	0.33	0.35	0.09
REDUCED PRICE	1.67	3.26	0.05

CHILD AND ADULT CARE FOOD PROGRAM (CACFP)—Continued

[Per meal rates in whole or fractions of U.S. dollars; effective from July 1, 2021–June 30, 2022]

Centers	Breakfast	Lunch and supper [1]	Supplement
FREE	1.97	3.66	1.00
ALASKA:			
PAID	0.50	0.57	0.14
REDUCED PRICE	2.85	5.54	0.81
FREE	3.15	5.94	1.63
HAWAII:			
PAID	0.38	0.41	0.10
REDUCED PRICE	1.99	3.88	0.58
FREE	2.29	4.28	1.17

Day care homes	Breakfast		Lunch and supper		Supplement	
	Tier I	Tier II	Tier I	Tier II	Tier I	Tier II
CONTIGUOUS STATES	1.40	0.51	2.63	1.59	0.78	0.21
ALASKA	2.23	0.79	4.26	2.57	1.27	0.35
HAWAII	1.63	0.58	3.08	1.86	0.91	0.25

Administrative reimbursement rates for sponsoring organizations of day care homes (per home/per month rates in U.S. dollars)	Initial 50	Next 150	Next 800	Each additional
CONTINGUOUS STATES	126	96	75	66
ALASKA	204	155	121	107
HAWAII	147	112	88	77

[1] These rates do not include the value of USDA Foods or cash-in-lieu of USDA Foods which institutions receive as additional assistance for each CACFP lunch or supper served to participants. A notice announcing the value of USDA Foods and cash-in-lieu of USDA Foods is published separately in the **Federal Register**.

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order 12866.

CACFP is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR 415.3–415.6).

This notice imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3518).

Authority: Sections 4(b)(2), 11a, 17(c) and 17(f)(3)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753(b)(2), 1759a, 1766(f)(3)(B)) and section 4(b)(1)(B) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(b)(1)(B)).

Cynthia Long,

Acting Administrator, USDA Food and Nutrition Service.

[FR Doc. 2021–14435 Filed 7–6–21; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–883]

Glycine From India: Preliminary Results of Antidumping Duty Administrative Review; 2018–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily finds that producers or exporters subject to this administrative review made sales of subject merchandise at less than normal value during the period of review October 31, 2018, through May 31, 2020. We invite interested parties to comment on these preliminary results.

DATES: Applicable July 7, 2021.

FOR FURTHER INFORMATION CONTACT: Preston Cox or Yang Jin Chun, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5041 or (202) 482–5760, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 2020, Commerce initiated the administrative review of the antidumping duty order on glycine from India.[1] On March 25, 2021, Commerce extended the time limit for these preliminary results to June 30, 2021, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).[2]

Scope of the Order

The merchandise subject to the order is glycine. For a complete description of the scope of this administrative review, *see* the Preliminary Decision Memorandum.[3]

Methodology

Commerce is conducting this review in accordance with section 751(a)(2) of the Act. Export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 47731, 47734 (August 6, 2020) (*Initiation Notice*).

[2] *See* Memorandum, ''Glycine from India: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated March 25, 2021.

[3] *See* Memorandum, ''Glycine from India: Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review; 2018–2020,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

conclusions, *see* Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/index.html.* A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice.

Rates for Non-Selected Respondents

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for 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. For the respondents that were not selected for individual examination in this administrative review, we have assigned to them the simple average of the margins for Avid Organics Private Limited and Kumar Industries/Rudraa International, consistent with the guidance in section 735(c)(5)(B) of the Act.[4]

Preliminary Results of Review

We preliminarily determine that the following estimated weighted-average dumping margins exist for the period October 31, 2018, through May 31, 2020.

Producer/exporter	Estimated weighted-average dumping margin (percent)
Avid Organics Private Limited	0.00
Kumar Industries/Rudraa International	13.61
Mulji Mehta Enterprises	6.81
Mulji Mehta Pharma	6.81
Paras Intermediates Private Ltd	6.81
Studio Disrupt	6.81

Disclosure and Public Comment

We intend to disclose the calculations performed to parties in this administrative review within five days after public announcement of the preliminary results in accordance with 19 CFR 351.224(b).

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.[5] Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[6] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[7]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[8]

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, no later than 120 days after the date of publication of this notice, unless extended, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the final results, Commerce shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. If the weighted-average dumping margin for Avid Organics Private Limited or Kumar Industries/Rudraa International is not zero or *de minimis* in the final results of this review, we will calculate, for each company, an importer-specific assessment rate 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 such sales in accordance with 19 CFR 351.212(b)(1).[9] If any of these companies' weighted-average dumping margin is zero or *de minimis* in the final results of review, or if an importer-specific assessment rate for one of these companies is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regards to antidumping duties.[10] For entries of subject merchandise during the period of review produced by any of these companies for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries.[11]

Consistent with its recent notice,[12] 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). The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise under review and for future cash deposits of estimated antidumping duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of the notice of final results of administrative review for all shipments of glycine from India 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

[4] *See* Preliminary Decision Memorandum at 9 for more details.

[5] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006, 17007 (March 26, 2020) (''To provide adequate time for release of case briefs via ACCESS, E&C intends to schedule the due date for all rebuttal briefs to be 7 days after case briefs are filed (while these modifications remain in effect).'')

[6] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[7] *See* 19 CFR 351.303 (for general filing requirements).

[8] *See* 19 CFR 351.310(c).

[9] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[10] *Id.* at 8102–03; *see also* 19 CFR 351.106(c)(2).

[11] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[12] *See Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings,* 86 FR 3995 (January 15, 2021).

rate for companies subject to this review will be equal to the company-specific weighted-average dumping margin established in the final results of the review; (2) for merchandise exported by a company not covered in this review but covered in a prior 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 is, 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 be 7.23 percent, the all-others rate established in the less-than-fair-value investigation, adjusted for the export-subsidy rate in the companion countervailing duty investigation.[13] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. 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 to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: June 30, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[13] *See Glycine from India and Japan: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Orders,* 84 FR 29170, 29171 (June 21, 2019).

[FR Doc. 2021–14450 Filed 7–6–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–054]

Certain Aluminum Foil From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Rescission of Review, in Part; 2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that producers and exporters of certain aluminum foil (aluminum foil) from the People's Republic of China (China) received countervailable subsidies during the period of review (POR), January 1, 2019, through December 31, 2019.

DATES: Applicable July 7, 2021.

FOR FURTHER INFORMATION CONTACT: Tyler Weinhold, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1121.

SUPPLEMENTARY INFORMATION:

Background

On April 19, 2018, Commerce published in the **Federal Register** the countervailing duty order on aluminum foil from China.[1] On April 1, 2020, Commerce published in the **Federal Register** a notice inviting interested parties to request a review of the *Order* for the POR. On April 30, 2020, we received timely review requests for 33 companies.[2] On June 8, 2020, Commerce published a notice of initiation of an administrative review of the *Order,* covering the requested companies.[3] On July 21, 2020, Commerce tolled all deadlines in administrative reviews by 60 days, thereby extending the deadline for the preliminary results until March 1, 2021.[4] As explained below, on September 8, 2020, the Aluminum Association Trade Enforcement Working Group (the petitioners) withdrew their review requests with respect to certain companies.[5] On February 26, 2021, Commerce fully extended the deadline for these preliminary results until June 29, 2021.[6]

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[7] A list of topics discussed in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.*

Scope of the Order

The product covered by the *Order* is aluminum foil from China. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(l)(A) of the Tariff Act of 1930, as amended

[1] *See Certain Aluminum Foil from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 83 FR 17360 (April 19, 2018) (*Order*).

[2] *See* Petitioners' Letter ''Countervailing Duty Order on Certain Aluminum Foil from the People's Republic of China—Petitioners' Request for 2019/2020 Administrative Review,'' dated April 30, 2020 (Petitioners' Review Request); Valeo's Letter ''Aluminum Foil from the People's Republic of China: Request for Administrative Review,'' dated April 30, 2020 (Valeo's Review Request); Xiashun's Letter, ''Aluminum Foil from the People's Republic of China: Request for Administrative Review,'' dated April 30, 2020 (Xiashun's Review Request); Dingsheng Companies' Letter, ''Request for Administrative Review of the Countervailing Duty Order on Aluminum Foil from the People's Republic of China (C–570–054),'' dated April 30, 2020 (Dingsheng Companies' Review Request); and Zhongji Companies' Letter, ''Certain Aluminum Foil from the Peoples Republic of China: Request for Second Administrative Review,'' (Zhongji Companies' Review Request).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 35068 (June 8, 2020) (*Initiation Notice*).

[4] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[5] The petitioners withdrew their requests for review of all companies for which they had requested a review, except those companies covered by other parties' review requests. *See* Petitioners' Letter, ''2nd Administrative Review of the Countervailing Duty Order on Certain Aluminum Foil from the People's Republic of China—Petitioners' Withdrawal of Certain Requests for Administrative Reviews,'' dated September 8, 2020 (Petitioner's Withdrawal of Review Requests).

[6] *See* Memorandum, ''Certain Aluminum Foil from the People's Republic of China: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review; 2019,'' dated February 26, 2021.

[7] *See* Preliminary Decision Memorandum.

(the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[8] For a full description of the methodology underlying our conclusions, *see* the accompanying Preliminary Decision Memorandum.

Commerce notes that, in making these findings, it relied, in part, on facts available and, because it finds that the Government of China did not act to the best of its ability to respond to Commerce's requests for certain information, it drew an adverse inference, where appropriate, in selecting from among the facts otherwise available. For further information, *see* the Preliminary Decision Memorandum at ''Use of Facts Otherwise Available and Adverse Inferences.''

Rescission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party or parties that requested a review withdraw the request within 90 days of the publication date of the notice of initiation of the requested review. As noted above the petitioner timely withdrew its requests for review of certain companies. Because no other party requested a review of these companies, and in accordance with 19 CFR 351.213(d)(1), we are rescinding the review with respect to these companies.[9] Therefore, we are rescinding this administrative review with respect to: (1) Baotou Alcha Aluminum Co., Ltd.; (2) Granges Aluminum (Shanghai) Co., Ltd.; (3) Guangxi Baise Xinghe Aluminum Industry Co., Ltd.; (4) Huafon Nikkei Aluminium Corporation; (5) Jiangsu Zhongji Lamination Materials Stock Co., Ltd.; (6) Jiangyin Dolphin Pack Ltd. Co.; (7) Shandong Yuanrui Metal Material Co., Ltd.; (8) Suntown Technology Group Limited; (9) Suzhou Manakin Aluminum Processing Technology Co., Ltd.; (10) Yantai Donghai Aluminum Foil Co., Ltd.; (11) Yantai Jintai International Trade Co., Ltd.; and (12) Zhejiang Zhongiin Aluminum Industry Co., Ltd.[10]

Preliminary Results

Commerce preliminarily determines that, during the POR, the following countervailable subsidy rates exist:

Company	Subsidy rate (percent *ad valorem*)
Alcha International Holdings Limited	23.34
Anhui Maximum Aluminum Industries Company Ltd.; Jiangsu Huafeng Aluminum Industry Co., Ltd.; Jiangsu Zhongji Lamination Materials Co., Ltd.; Jiangsu Zhongji Lamination Materials Co., (HK) Limited; and Shantou Wanshun Package Material Stock Co., Ltd.[11]	23.34
Dingsheng Aluminum Industries (Hong Kong) Trading Co., Ltd.; Hangzhou DingCheng Aluminum Co., Ltd.; Hangzhou Dingsheng Import & Export Co. Ltd.; Hangzhou Dingsheng Industrial Group Co. Ltd.; Hangzhou Five Star Aluminum Co., Ltd.; Hangzhou Teemful Aluminum Co., Ltd.; Jiangsu Dingsheng New Materials Joint Stock Co., Ltd.; Luoyang Longding Aluminium Industries Co., Ltd.; and Walson (HK) Trading Co., Limited.[12]	23.34
Hunan Suntown Marketing Limited	23.34
Jiangsu Alcha Aluminum Co., Ltd	305.07
SNTO International Trade Limited	23.34
Suntown Technology Group Corporation Limited	23.34
Xiamen Xiashun Aluminium Foil Co. Ltd	23.34
Yinbang Clad Material Co., Ltd	23.34

Assessment Rates

Consistent with section 751(a)(2)(C) of the Act, upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue assessment instructions to CBP no earlier than 35 days after 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

[8] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[9] As explained above, the petitioners withdrew their requests for review of all companies for which they had requested a review, except those companies covered by other parties' review requests.

[10] Of the 33 companies for which we initiated a review in the *Initiation Notice,* 16 were subject to the review requests of other interested parties: (1) Alcha International Holdings Limited; (2) Anhui Maximum Aluminium Industries Company Ltd.; (3) Dingsheng Aluminum Industries (Hong Kong) Trading Co. Ltd.; (4) Hangzhou Dingsheng Import & Export Co. Ltd.; (5) Hangzhou Five Star Aluminum Co., Ltd.; (6) Hunan Suntown Marketing Limited; (7) Jiangsu Alcha Aluminum Co., Ltd.; (8) Jiangsu Dingsheng New Materials Joint-Stock Co., Ltd.; (9) Jiangsu Huafeng Aluminum Industry Co., Ltd.; (10) Jiangsu Zhongji Lamination Materials Co., Ltd.; (11) Jiangsu Zhongji Lamination Materials Co., (HK) Limited; (12) Shantou Wanshun Package Material Stock Co., Ltd.; (13) SNTO International Trade Limited; (14) Suntown Technology Group Corporation Limited; (15) Xiamen Xiashun Aluminum Foil Co., Ltd.; and (16) Yinbang Clad Material Co., Ltd. Among the 16 companies included in the petitioners' review request, for which no other interested party requested a review, and for which the petitioners have withdrawn their request, five were found to have been cross-owned in the *Final Determination* with companies subject to this review: (1) Hangzhou DingCheng Aluminum Co., Ltd.; (2) Hangzhou Dingsheng Industrial Group Co. Ltd.; (3) Hangzhou Teemful Aluminum Co., Ltd.; (4) Luoyang Longding Aluminium Industries Co., Ltd.; and (5) Walson (HK) Trading Co., Limited. Because these five companies were previously found to be cross-owned with a company which is subject to this review, we preliminarily intend not to rescind the review with respect to these five companies. *See* Petitioners' Review Request; Dingsheng Companies' Review Request; Valeo's Review Request; Xiashun's Review Request, Zhongji Companies' Review Request; Petitioner's Withdrawal of Review Requests; *Initiation Notice;* and *Order.*

[11] In the first administrative review of the *Order,* Commerce found the following companies to be cross-owned: Anhui Maximum Aluminum Industries Company Ltd.; Jiangsu Huafeng Aluminum Industry Co. Ltd.; Jiangsu Zhongji Lamination Materials Co., Ltd.; Jiangsu Zhongji Lamination Materials Co., (HK) Ltd.; Shantou Wanshun Material Stock Co., Ltd.; and Anhui Maximum Aluminum Industries Company Limited. The subsidy rate applies to all cross-owned companies. *See Certain Aluminum Foil from the People's Republic of China: Final Results of the Countervailing Duty Administrative Review; 2017–2018,* 86 FR 12171 (March 2, 2021).

[12] In the investigation, Commerce found the following companies to be cross-owned: Dingsheng Aluminum Industries (Hong Kong) Trading Co., Ltd.; Hangzhou DingCheng Aluminum Co., Ltd.; Hangzhou Dingsheng Import & Export Co. Ltd.; Hangzhou Dingsheng Industrial Group Co. Ltd.; Hangzhou Five Star Aluminum Co., Ltd.; Hangzhou Teemful Aluminum Co., Ltd.; Jiangsu Dingsheng New Materials Joint-Stock Co., Ltd.; Luoyang Longding Aluminum Co., Ltd.; and Walson (HK) Trading Co., Limited. The subsidy rate applies to all cross-owned companies. *See Order.*

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).

For 12 companies for which this review is rescinded with these preliminary results, Commerce will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2019, through December 31, 2019, in accordance with 19 CFR 351.212(c)(l)(i). Commerce intends to issue appropriate assessment instructions directly to CBP no later than 35 days after publication of this notice in the **Federal Register**.

Cash Deposit Requirements

Pursuant to section 751(a)(1) of the Act, upon issuance of the final results, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties for each of the companies listed above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, except where the rate calculated in the final results is zero or *de minimis,* no cash deposit will be required. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit instructions, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

We will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[13] Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within seven days after the time limit for filing case briefs.[14] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[15] Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until further notice.[16]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice.[17] Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. Issues addressed during the hearing will be limited to those raised in the briefs.[18] If a request for a hearing is made, Commerce will inform parties of the scheduled date of the hearing.[19] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Parties are reminded that all briefs and hearing requests are to be filed electronically using ACCESS and received successfully in their entirety by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after publication of these preliminary results.

Notification to Interested Parties

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213 and 351.221(b)(4).

Dated: June 29, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2021–14446 Filed 7–6–21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–133]

Certain Metal Lockers and Parts Thereof From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that imports of certain metal lockers and parts thereof (metal lockers) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2020, through June 30, 2020.

DATES: Applicable July 7, 2021.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Patrick Barton, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4243 and (202) 482–0012, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 11, 2021, Commerce published its *Preliminary Determination* of sales at LTFV of metal lockers from China.[1] A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[2]

The Issues and Decision Memorandum is a public document and is available electronically via Enforcement and Compliance's

[13] *See* 19 CFR 224(b).

[14] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[15] *See* 19 CFR 351.309(c)(2) and 351.309(d)(2).

[16] *See Temporary Rule.*

[17] *See* 19 CFR 351.310(c).

[18] *See* 19 CFR 351.310(c).

[19] *See* 19 CFR 351.310.

[1] *See Certain Metal Lockers and Parts Thereof from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures,* 86 FR 9051 (February 11, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Certain Metal Lockers and Parts Thereof from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*.

Scope of the Investigation

The products covered by this investigation are metal lockers from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

On February 2, 2021, we issued the Preliminary Scope Decision Memorandum.[3] We received comments from interested parties in regard to the Preliminary Scope Decision Memorandum, which we addressed in the Final Scope Decision Memorandum.[4] Commerce has made no changes to the scope of this investigation since the *Preliminary Determination.*

Analysis of Comments Received

All issues raised in the case briefs and rebuttal briefs submitted by interested parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues raised by parties and responded to by Commerce in the Issues and Decision Memorandum is attached to this notice as Appendix II.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of an on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).[5]

Changes Since the Preliminary Determination

Based on our analysis of the comments received and additional information obtained since our preliminary findings, we made certain changes to the margin calculations for Hangzhou Xline Machinery & Equipment Co., Ltd. (Hangzhou Xline). For a discussion of these changes, *see* the Issues and Decision Memorandum.

Separate Rate Companies

No party commented on our preliminary separate rate determinations with respect to the mandatory respondents and the non-individually examined companies; thus, we find no basis to reconsider our preliminary determinations with respect to separate rate status, and we have continued to grant these companies separate rates in this final determination.

China-Wide Entity Rate and the Use of Adverse Facts Available

Commerce continues to find that the use of facts available is warranted in determining the rate of the China-wide entity, pursuant to sections 776(a)(1) and (a)(2)(A)–(C) of the Act. As discussed in the Issues and Decision Memorandum, Commerce finds that the use of adverse facts available (AFA) is warranted with respect to the China-wide entity because the China-wide entity failed to cooperate by not acting to the best of its ability to comply with our requests for information and, accordingly, we applied adverse inferences in selecting from the facts available, pursuant to section 776(b) of the Act and 19 CFR 351.308(a).

For the final determination, as AFA, we are assigning the China-wide entity the highest calculated petition margin reported in the *Initiation Notice,* 322.25 percent.[6] We corroborated, to the extent practicable, within the meaning of section 776(c) of the Act, the highest petition margin of 322.25 percent.[7] *See* Issues and Decision Memorandum.

Combination Rates

Consistent with the *Preliminary Determination,* Commerce calculated exporter/producer combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[8]

Final Determination

The estimated weighted-average dumping margins are as follows:

Exporter	Producer	Estimated weighted-average dumping margin	Cash deposit rate (adjusted for subsidy offsets) (percent)
Hangzhou Xline Machinery & Equipment Co., Ltd	Hangzhou Jusheng Metal Products Co., Ltd	0.00	0.00
Zhejiang Xingyi Metal Products Co., Ltd./Xingyi Metalworking Technology (Zhejiang) Co., Ltd.	Zhejiang Xingyi Metal Products Co., Ltd./Xingyi Metalworking Technology (Zhejiang) Co., Ltd.	21.25	10.71
Geelong Sales (Macao Commercial Offshore) Limited (a.k.a. Geelong Sales (MCO) Limited, Geelong Sales (Macao Commercial) Limited, and Geelong Sales (MC) Limited).	Zhongshan Geelong Manufacturing Co. Ltd	21.25	10.71

[3] *See* Memorandum, ''Antidumping Duty and Countervailing Duty Investigations of Certain Metal Lockers and Parts Thereof from the People's Republic of China: Preliminary Scope Decision Memorandum,'' dated February 2, 2021 (Preliminary Scope Decision Memorandum).

[4] *See* Memorandum, ''Antidumping Duty and Countervailing Duty Investigations of Certain Metal Lockers and Parts Thereof from the People's Republic of China: Scope Comments Decision Memorandum for the Final Determinations,'' dated concurrently with, and hereby adopted by, this notice (Final Scope Decision Memorandum).

[5] *See* Commerce's Letters, ''Certain Metal Lockers and Parts Thereof from the People's Republic of China: Questionnaire in Lieu of Verification,'' dated April 6, 2021 and April 13, 2021; *see also* Zhejiang Xingyi Metal Products Co., Ltd.'s Letter, ''Certain Metal Lockers and Parts Thereof from China, Case Nos. A–570–133: ZXM Verification Questionnaire Response,'' dated April 14, 2021; Hangzhou Xline Machinery & Equipment Co., Ltd.'s Letter, ''Certain Metal Lockers and Parts Thereof from the People's Republic of China: Submission of Hangzhou Xline's Verification Response,'' dated April 21, 2021; and Commerce's Letter, ''Extension of Deadline to File Zhejiang Xingyi Metal Products Co., Ltd.'s in Lieu of Verification Questionnaire Response,'' dated April 22, 2021.

[6] *See Certain Metal Lockers and Parts Thereof from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 85 FR 47343, 47346 (August 5, 2020) (*Initiation Notice*).

[7] *See Preliminary Determination* PDM at 20–21 (citing *Initiation Notice,* 85 FR at 47346; and Petitioners' Letter, ''Certain Metal Lockers and Parts Thereof from the People's Republic of China—Petitioners' Response to Supplemental Questionnaire Regarding Volume II: Antidumping Duty Petition,'' dated July 16, 2020).

[8] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on Commerce's website at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

Exporter	Producer	Estimated weighted-average dumping margin	Cash deposit rate (adjusted for subsidy offsets) (percent)
Hangzhou Evernew Machinery & Equipment Company Limited.	Zhejiang Yinghong Metalworks Co., Ltd	21.25	10.71
Hangzhou Zhuoxu Trading Co., Ltd	Shanghai Asi Building Materials Co., Ltd	21.25	10.71
Hangzhou Zhuoxu Trading Co., Ltd	Luoyang Mingxiu Office Furniture Co., Ltd	21.25	10.71
Hangzhou Zhuoxu Trading Co., Ltd	Luoyang Wandefu Import and Export Trading Co. Ltd	21.25	10.71
Hangzhou Zhuoxu Trading Co., Ltd	Zhejiang Xingyi Metal Products Co., Ltd	21.25	10.71
Jiaxing Haihong Mechanical and Electrical Technology Co. Ltd.	Zhejiang Steelrix Office Furniture Co., Ltd	21.25	10.71
Kunshan Dongchu Precision Machinery Co., Ltd	Kunshan Dongchu Precision Machinery Co., Ltd	21.25	10.71
Luoyang Hynow Import and Export Co., Ltd	Luoyang Jiudu Golden Cabinet Co., Ltd	21.25	10.71
Luoyang Shidiu Import and Export Co., Ltd	Luoyang Yuabo Office Machinery Co., Ltd	21.25	10.71
Luoyang Steelart Office Furniture Co., Ltd	Luoyang Yongwei Office Furniture Co., Ltd	21.25	10.71
Luoyang Steelart Office Furniture Co., Ltd	Luoyang Zhuofan Steel Product Factory	21.25	10.71
Luoyang Steelart Office Furniture Co., Ltd	Luoyang Flyer Office Furniture Co., Ltd	21.25	10.71
Pinghu Chenda Storage Office Co., Ltd	Pinghu Chenda Storage Office Co., Ltd	21.25	10.71
Tianjin Jia Mei Metal Furniture Ltd	Tianjin Jia Mei Metal Furniture Ltd	21.25	10.71
China-Wide Entity		322.25	311.71

Disclosure

We intend to disclose to interested parties the calculations and analysis performed in this final determination within five days of any public announcement, or, if there is no public announcement in the **Federal Register**, within five days of the date of the publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we intend to instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of metal lockers from China, as described in the appendix to this notice, which were entered, or withdrawn from warehouse, for consumption on or after February 11, 2021, the date of publication of the *Preliminary Determination* of this investigation in the **Federal Register**, with the exception of entries of subject merchandise that were exported by Hangzhou Xline and produced by Hangzhou Jusheng Metal Products Co., Ltd. (Hangzhou Jusheng). With regard to such entries, because we have determined the weighted-average dumping margin to be zero for this producer/exporter combination, we will exclude merchandise exported by Hangzhou Xline and produced by Hangzhou Jusheng from the antidumping duty order, in the event an order is instituted, and we will discontinue the suspension of liquidation and will refund all cash deposits already collected for this producer/exporter combination. Such exclusion will not be applicable to merchandise exported to the United States by any other producer/exporter combinations or by third parties that sourced from the excluded producer/exporter combination.

Furthermore, other than for entries exported by Hangzhou Xline and produced by Hangzhou Jusheng, pursuant to section 735(c)(1)(B)(ii) of the Act, upon the publication of this notice, Commerce intends to instruct CBP to require a cash deposit equal to the weighted-average amount by which the normal value exceeds U.S. price as follows: (1) The cash deposit rate for the exporter/producer combinations listed in the table above will be the rate identified in the table; (2) for all combinations of Chinese exporters/producers of subject merchandise that have not received their own separate rate above, the cash deposit rate will be the cash deposit rate established for the China-wide entity; and (3) for all non-Chinese exporters of subject merchandise which have not received their own separate rate above, the cash deposit rate will be the cash deposit rate applicable to the Chinese exporter/producer combination that supplied that non-Chinese exporter. These suspension of liquidation instructions will remain in effect until further notice.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion countervailing duty (CVD) proceeding when CVD provisional measures are in effect. Accordingly, where Commerce makes an affirmative determination for domestic subsidy pass-through or export subsidies, Commerce offsets the calculated estimated weighted-average dumping margin by the appropriate rates. Commerce continues to find that Zhejiang Xingyi Metal Products Co., Ltd./Xingyi Metalworking Technology (Zhejiang) Co., Ltd. (Zhejiang Xingyi), and all non-individually-examined companies found eligible for a separate rate qualify for a double-remedy adjustment.[9] Further, we have continued to adjust the cash deposit rates for Zhejiang Xingyi, all non-individually-examined separate rate companies, and the China-wide entity for export subsidies in the companion CVD investigation by the appropriate export subsidy rates as indicated in the above chart. However, suspension of liquidation according to provisional measures in the companion CVD case has been discontinued effective April 12, 2021;[10] therefore, we are not instructing CBP to collect cash deposits based upon the adjusted estimated weighted-average dumping margin for those export subsidies and double remedy adjustment at this time.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States

[9] *See Preliminary Determination* PDM at 29–30.

[10] *See* instructions issued to CBP, Message Number 1104402, dated April 14, 2021, publicly available at *https://aceservices.cbp.dhs.gov/adcvdweb/#*.

is materially injured, or threatened with material injury, by reason of imports of metal lockers from China no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that material injury or threat of material injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: June 28, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of the investigation covers certain metal lockers, with or without doors, and parts thereof (metal lockers). The subject metal lockers are secure metal storage devices less than 27 inches wide and less than 27 inches deep, whether floor standing, installed onto a base or wall-mounted. In a multiple locker assembly (whether a welded locker unit, otherwise assembled locker unit or knocked down unit or kit), the width measurement shall be based on the width of an individual locker not the overall unit dimensions. All measurements in this scope are based on actual measurements taken on the outside dimensions of the single-locker unit. The height is the vertical measurement from the bottom to the top of the unit. The width is the horizontal (side to side) measurement of the front of the unit, and the front of the unit is the face with the door or doors or the opening for internal access of the unit if configured without a door. The depth is the measurement from the front to the back of the unit. The subject certain metal lockers typically include the bodies (back, side, shelf, top and bottom panels), door frames with or without doors which can be integrated into the sides or made separately, and doors.

The subject metal lockers typically are made of flat-rolled metal, metal mesh and/or expanded metal, which includes but is not limited to alloy or non-alloy steel (whether or not galvanized or otherwise metallically coated for corrosion resistance), stainless steel, or aluminum, but the doors may also include transparent polycarbonate, Plexiglas or similar transparent material or any combination thereof. Metal mesh refers to both wire mesh and expanded metal mesh. Wire mesh is a wire product in which the horizontal and transverse wires are welded at the cross-section in a grid pattern. Expanded metal mesh is made by slitting and stretching metal sheets to make a screen of diamond or other shaped openings.

Where the product has doors, the doors are typically configured with or for a handle or other device or other means that permit the use of a mechanical or electronic lock or locking mechanism, including, but not limited to: A combination lock, a padlock, a key lock (including cylinder locks) lever or knob lock, electronic key pad, or other electronic or wireless lock. The handle and locking mechanism, if included, need not be integrated into one another. The subject locker may or may not also enter with the lock or locking device included or installed. The doors or body panels may also include vents (including wire mesh or expanded metal mesh vents) or perforations. The bodies, body components and doors are typically powder coated, otherwise painted or epoxy coated or may be unpainted. The subject merchandise includes metal lockers imported either as welded or otherwise assembled units (ready for installation or use) or as knocked down units or kits (requiring assembly prior to installation or use).

The subject lockers may be shipped as individual or multiple locker units preassembled, welded, or combined into banks or tiers for ease of installation or as sets of component parts, bulk packed (*i.e.,* all backs in one package, crate, rack, carton or container and sides in another package, crate, rack, carton or container) or any combination thereof. The knocked down lockers are shipped unassembled requiring a supplier, contractor or end-user to assemble the individual lockers and locker banks prior to installation.

The scope also includes all parts and components of lockers made from flat-rolled metal or expanded metal (*e.g.,* doors, frames, shelves, tops, bottoms, backs, side panels, *etc.*) as well as accessories that are attached to the lockers when installed (including, but not limited to, slope tops, bases, expansion filler panels, dividers, recess trim, decorative end panels, and end caps) that may be imported together with lockers or other locker components or on their own. The particular accessories listed for illustrative purposes are defined as follows:

a. *Slope tops:* Slope tops are slanted metal panels or units that fit on the tops of the lockers and that slope from back to front to prevent the accumulation of dust and debris on top of the locker and to discourage the use of the tops of lockers as storage areas. Slope tops come in various configurations including, but not limited to, unit slope tops (in place of flat tops), slope hoods made of a back, top and end pieces which fit over multiple units and convert flat tops to a sloping tops, and slope top kits that convert flat tops to sloping tops and include tops, backs and ends.

b. *Bases:* Locker bases are panels made from flat-rolled metal that either conceal the legs of the locker unit, or for lockers without legs, provide a toe space in the front of the locker and conceal the flanges for floor anchoring.

c. *Expansion filler panel:* Expansion filler panels or fillers are metal panels that attach to locker units to cover columns, pipes or other obstacles in a row of lockers or fill in gaps between the locker and the wall. Fillers may also include metal panels that are used on the sides or the top of the lockers to fill gaps.

d. *Dividers:* Dividers are metal panels that divide the space within a locker unit into different storage areas.

e. *Recess trim:* Recess trim is a narrow metal trim that bridges the gap between lockers and walls or soffits when lockers are recessed into a wall.

f. *Decorative end panels:* End panels fit onto the exposed ends of locker units to cover holes, bolts, nuts, screws and other fasteners. They typically are painted to match the lockers.

g. *End caps:* End caps fit onto the exposed ends of locker units to cover holes, bolts, nuts, screws and other fasteners.

The scope also includes all hardware for assembly and installation of the lockers and locker banks that are imported with or shipped, invoiced, or sold with the imported locker or locker system except the lock.

Excluded from the scope are wire mesh lockers. Wire mesh lockers are those with each of the following characteristics:

(1) At least three sides, including the door, made from wire mesh;

(2) the width and depth each exceed 25 inches; and

(3) the height exceeds 90 inches.

Also excluded are lockers with bodies made entirely of plastic, wood, or any nonmetallic material.

Also excluded are exchange lockers with multiple individual locking doors mounted on one master locking door to access multiple units. Excluded exchange lockers have multiple individual storage spaces, typically arranged in tiers, with access doors for each of the multiple individual storage space mounted on a single frame that can be swung open to allow access to all of the individual storage spaces at once. For example, uniform or garment exchange lockers are designed for the distinct function of securely and hygienically exchanging clean and soiled uniforms. Thus, excluded exchange lockers are a multi-access point locker whereas covered lockers are a single access point locker for personal storage. The excluded exchange lockers include assembled exchange lockers and those that enter in 'knock down' form in which all of the parts and components to assemble a

completed exchange locker unit are packaged together. Parts for exchange lockers that are imported separately from the exchange lockers in 'knock down' form are not excluded.

Also excluded are metal lockers that are imported with an installed electronic, internet-enabled locking device that permits communication or connection between the locker's locking device and other internet connected devices.

Also excluded are locks and hardware and accessories for assembly and installation of the lockers, locker banks and storage systems that are separately imported in bulk and are not incorporated into a locker, locker system or knocked down kit at the time of importation. Such excluded hardware and accessories include but are not limited to locks and bulk imported rivets, nuts, bolts, hinges, door handles, door/frame latching components, and coat hooks. Accessories of sheet metal, including but not limited to end panels, bases, dividers and sloping tops, are not excluded accessories.

Mobile tool chest attachments that meet the physical description above are covered by the scope of the investigation, unless such attachments are covered by the scope of the orders on certain tool chests and cabinets from China. If the orders on certain tool chests and cabinets from China are revoked, the mobile tool chest attachments from China will be covered by the scope of the investigation.

The scope also excludes metal safes with each of the following characteristics: (1) Pry resistant, concealed hinges; (2) body walls and doors of steel that are at least 17 gauge (0.05625 inch or 1.42874 mm thick); and (3) an integrated locking mechanism that includes at least two round steel bolts 0.75 inch (19 mm) or larger in diameter; or three bolts 0.70 inch (17.78 mm) or more in diameter; or four or more bolts at least 0.60 inch (15.24 mm) or more in diameter, that project from the door into the body or frame of the safe when in the locked position.

The scope also excludes gun safes meeting each of the following requirements:

(1) Shall be able to fully contain firearms and provide for their secure storage.

(2) Shall have a locking system consisting of at minimum a mechanical or electronic combination lock. The mechanical or electronic combination lock utilized by the safe shall have at least 10,000 possible combinations consisting of a minimum three numbers, letters, or symbols. The lock shall be protected by a casehardened (Rc 60+) drill-resistant steel plate, or drill-resistant material of equivalent strength.

(3) Boltwork shall consist of a minimum of three steel locking bolts of at least ½ inch thickness that intrude from the door of the safe into the body of the safe or from the body of the safe into the door of the safe, which are operated by a separate handle and secured by the lock.

(4) The exterior walls shall be constructed of a minimum 12-gauge thick steel for a single-walled safe, or the sum of the steel walls shall add up to at least 0.100 inches for safes with walls made from two pieces of flat-rolled steel.

(5) Doors shall be constructed of a minimum one layer of 7-gauge steel plate reinforced construction or at least two layers of a minimum 12-gauge steel compound construction.

(6) Door hinges shall be protected to prevent the removal of the door. Protective features include, but are not limited to: Hinges not exposed to the outside, interlocking door designs, dead bars, jeweler's lugs and active or inactive locking bolts.

The scope also excludes metal storage devices that (1) have two or more exterior exposed drawers regardless of the height of the unit, or (2) are no more than 30 inches tall and have at least one exterior exposed drawer.

Also excluded from the scope are free standing metal cabinets less than 30 inches tall with a single opening, single door and an installed tabletop.

The scope also excludes metal storage devices less than 27 inches wide and deep that: (1) Have two doors hinged on the right and left side of the door frame respectively covering a single opening and that open from the middle toward the outer frame; or (2) are free standing or wall-mounted, single-opening units 20 inches or less high with a single door.

The subject certain metal lockers are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.20.0078. Parts of subject certain metal lockers are classified under HTS subheading 9403.90.8041. In addition, subject certain metal lockers may also enter under HTS subheading 9403.20.0050. While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2021–14315 Filed 7–6–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–134]

Certain Metal Lockers and Parts Thereof From the People's Republic of China: Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of certain metal lockers and parts thereof (metal lockers) from the People's Republic China (China).

DATES: Applicable July 7, 2021.

FOR FURTHER INFORMATION CONTACT: Alex Cipolla or Charles Doss, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4956 or (202) 482–4474, respectively.

SUPPLEMENTARY INFORMATION:

Background

The petitioners in this investigation are List Industries, Inc., Lyon LLC, Penco Products, Inc., and Tennsco LLC.[1] In addition to the Government of China, the selected mandatory respondent in this investigation is Zhejiang Xingyi Metal Products Co., Ltd. (Zhejiang Xingyi).

On December 14, 2020, Commerce published the *Preliminary Determination* in the **Federal Register**.[2] In the *Preliminary Determination,* in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(b)(4), Commerce aligned the final CVD determination in this investigation with the final antidumping duty (AD) determination in the companion AD investigation of metal lockers from China. On March 4, 2021, Commerce published its

[1] On October 15, 2020, the petitioners notified Commerce that Lyon LLC was withdrawing as a petitioner in this investigation. On November 6, 2020, DeBourgh Manufacturing Co. was listed with List Industries, Inc., Penco Products, Inc., and Tennsco LLC as the petitioners in this investigation.

[2] *See Certain Metal Lockers and Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination,* 85 FR 80771 (December 14, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

amendment of the scope of the *Preliminary Determination*.[3]

A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum which is hereby adopted by this notice.[4] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*.

Period of Investigation

The period of investigation is January 1, 2019, through December 31, 2019.

Scope of the Investigation

The products covered by this investigation are metal lockers from China. For a full description of the scope of this investigation, *see* Appendix I.

Scope Comments

On February 2, 2021, we issued the Preliminary Scope Decision Memorandum.[5] We received comments from interested parties in regards to the Preliminary Scope Decision Memorandum, which we addressed in the Final Scope Decision Memorandum.[6] Commerce has made no changes to the scope of this investigation since the *Preliminary Determination*.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues raised by parties, and to which we responded in the Issues and Decision Memorandum, is attached to this notice at Appendix II.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[7] For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

In making this final determination, Commerce relied, in part, on facts available pursuant to section 776(a) of the Act. Additionally, as discussed in the Issues and Decision Memorandum, because one or more respondents did not act to the best of their ability in responding to our requests for information, we drew adverse inferences, where appropriate, in selecting from among the facts otherwise available, pursuant to section 776(b) of the Act. This includes eight companies that did not respond to Commerce's quantity and value questionnaire; as described in the *Preliminary Determination,*[8] we have applied an adverse inference in selection of facts available for determining the subsidy rates for these companies, pursuant to section 776(d) of the Act. For further information, *see* the section ''Use of Facts Otherwise Available and Adverse Inferences'' in the accompanying Issues and Decision Memorandum.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of an on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act.[9]

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, we made certain changes to Zhejiang Xingi's subsidy rate calculations, the adverse facts available rate assigned to firms that did not respond to Commerce's quantity and value questionnaire, and the all-others rate. For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

In accordance with section 705(c)(1)(B)(i)(I) of the Act, Commerce calculated a countervailable subsidy rate for the individually investigated exporter/producer of the subject merchandise. Section 705(c)(5)(A) of the Act provides that, in the final determination, Commerce shall determine an estimated all-others rate for companies not individually examined. The rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any rates that are zero, *de minimis,* or rates based entirely under section 776 of the Act.

In this investigation, as discussed in the Issues and Decision Memorandum, Commerce calculated an individual estimated countervailable subsidy rate for Zhejiang Xingyi, the only individually examined exporter/producer in this investigation, that was not zero, *de minimis,* or based entirely under section 776 of the Act. As a result, the estimated weighted-average rate calculated for Zhejiang Xingyi is the rate assigned to all other producers and exporters, pursuant to section 705(c)(5)(A)(i) of the Act.

Final Determination

Commerce determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent)
Zhejiang Xingyi Metal Products Co., Ltd	24.66

[3] *See Certain Metal Lockers and Parts Thereof from the People's Republic of China: Amended Preliminary Affirmative Countervailing Duty Determination,* 86 FR 12611 (March 4, 2021).

[4] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination of the Countervailing Duty Investigation of Certain Metal Lockers and Parts Thereof from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[5] *See* Memorandum, ''Antidumping Duty and Countervailing Duty Investigations of Certain Metal Lockers and Parts Thereof from the People's Republic of China: Preliminary Scope Decision Memorandum,'' dated February 2, 2021 (Preliminary Scope Decision Memorandum).

[6] *See* Memorandum, ''Antidumping Duty and Countervailing Duty Investigations of Certain Metal Lockers and Parts Thereof from the People's Republic of China: Final Scope Decision Memorandum,'' dated concurrently with, and hereby adopted by, this notice (Final Scope Decision Memorandum).

[7] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[8] *See Preliminary Determination* PDM at 11–19, section ''Application of AFA: Non-Responsive Companies.''

[9] *See* Commerce's Letter, In Lieu of Verification Questionnaire, dated March 5, 2021.

Company	Subsidy rate (percent)
All Others	24.66
Changshu Taron Machinery Equipment Manufacturing Co., Ltd	131.51
Guangdong Yuhua Building Materials Co., Ltd	131.51
Jiangsu Tongrun Tool Cabinet Co., Ltd	131.51
Luoyang Mas Younger Office Furniture Co./Louyang Mas Younger Export and Import Co	131.51
Luoyang Shidiu Import and Export Co., Ltd	131.51
Suzhou Yuanda Commercial Products Co. Ltd	131.51
Winnsen Industry Co., Ltd	131.51
Xiamen Headleader Technology	131.51

Disclosure

Commerce intends to disclose to interested parties the calculations and analysis performed in this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of the publication of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to section 703(d)(1)(B) and (d)(2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the ''Scope of the Investigation'' section entered, or withdrawn from warehouse, for consumption, effective December 14, 2020, which is the date of publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, effective April 13, 2021, we instructed CBP to discontinue the suspension of liquidation of all entries at that time, but to continue the suspension of liquidation of all entries between December 14, 2020, and April 12, 2021.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order, reinstate the suspension of liquidation and require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above, in accordance with section 706(a) of the Act. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

International Trade Commission Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our affirmative determination that countervailable subsidies are being provided to producers and exporters of metal lockers from China. Because the final determination in this proceeding is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of metal lockers from China no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue a countervailing duty order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act, and 19 CFR 351.210(c).

Dated: June 28, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers certain metal lockers, with or without doors, and parts thereof (metal lockers). The subject metal lockers are secure metal storage devices less than 27 inches wide and less than 27 inches deep, whether floor standing, installed onto a base or wall-mounted. In a multiple locker assembly (whether a welded locker unit, otherwise assembled locker unit or knocked down unit or kit), the width measurement shall be based on the width of an individual locker not the overall unit dimensions. All measurements in this scope are based on actual measurements taken on the outside dimensions of the single-locker unit. The height is the vertical measurement from the bottom to the top of the unit. The width is the horizontal (side to side) measurement of the front of the unit, and the front of the unit is the face with the door or doors or the opening for internal access of the unit if configured without a door. The depth is the measurement from the front to the back of the unit. The subject certain metal lockers typically include the bodies (back, side, shelf, top and bottom panels), door frames with or without doors which can be integrated into the sides or made separately, and doors.

The subject metal lockers typically are made of flat-rolled metal, metal mesh and/or expanded metal, which includes but is not limited to alloy or non-alloy steel (whether or not galvanized or otherwise metallically coated for corrosion resistance), stainless steel, or aluminum, but the doors may also include transparent polycarbonate, Plexiglas or similar transparent material or any combination thereof. Metal mesh refers to both wire mesh and expanded metal mesh. Wire mesh is a wire product in which the horizontal and transverse wires are welded at the cross-section in a grid pattern. Expanded metal mesh is made by slitting and stretching metal sheets to make a screen of diamond or other shaped openings.

Where the product has doors, the doors are typically configured with or for a handle or other device or other means that permit the use of a mechanical or electronic lock or locking mechanism, including, but not limited to: A combination lock, a padlock, a key lock (including cylinder locks) lever or knob lock, electronic key pad, or other

electronic or wireless lock. The handle and locking mechanism, if included, need not be integrated into one another. The subject locker may or may not also enter with the lock or locking device included or installed. The doors or body panels may also include vents (including wire mesh or expanded metal mesh vents) or perforations. The bodies, body components and doors are typically powder coated, otherwise painted or epoxy coated or may be unpainted. The subject merchandise includes metal lockers imported either as welded or otherwise assembled units (ready for installation or use) or as knocked down units or kits (requiring assembly prior to installation or use).

The subject lockers may be shipped as individual or multiple locker units preassembled, welded, or combined into banks or tiers for ease of installation or as sets of component parts, bulk packed (*i.e.,* all backs in one package, crate, rack, carton or container and sides in another package, crate, rack, carton or container) or any combination thereof. The knocked down lockers are shipped unassembled requiring a supplier, contractor or end-user to assemble the individual lockers and locker banks prior to installation.

The scope also includes all parts and components of lockers made from flat-rolled metal or expanded metal (*e.g.,* doors, frames, shelves, tops, bottoms, backs, side panels, *etc.*) as well as accessories that are attached to the lockers when installed (including, but not limited to, slope tops, bases, expansion filler panels, dividers, recess trim, decorative end panels, and end caps) that may be imported together with lockers or other locker components or on their own. The particular accessories listed for illustrative purposes are defined as follows:

a. *Slope tops:* Slope tops are slanted metal panels or units that fit on the tops of the lockers and that slope from back to front to prevent the accumulation of dust and debris on top of the locker and to discourage the use of the tops of lockers as storage areas. Slope tops come in various configurations including, but not limited to, unit slope tops (in place of flat tops), slope hoods made of a back, top and end pieces which fit over multiple units and convert flat tops to a sloping tops, and slope top kits that convert flat tops to sloping tops and include tops, backs and ends.

b. *Bases:* Locker bases are panels made from flat-rolled metal that either conceal the legs of the locker unit, or for lockers without legs, provide a toe space in the front of the locker and conceal the flanges for floor anchoring.

c. *Expansion filler panel:* Expansion filler panels or fillers are metal panels that attach to locker units to cover columns, pipes or other obstacles in a row of lockers or fill in gaps between the locker and the wall. Fillers may also include metal panels that are used on the sides or the top of the lockers to fill gaps.

d. *Dividers:* Dividers are metal panels that divide the space within a locker unit into different storage areas.

e. *Recess trim:* Recess trim is a narrow metal trim that bridges the gap between lockers and walls or soffits when lockers are recessed into a wall.

f. *Decorative end panels:* End panels fit onto the exposed ends of locker units to cover holes, bolts, nuts, screws and other fasteners. They typically are painted to match the lockers.

g. *End caps:* End caps fit onto the exposed ends of locker units to cover holes, bolts, nuts, screws and other fasteners.

The scope also includes all hardware for assembly and installation of the lockers and locker banks that are imported with or shipped, invoiced, or sold with the imported locker or locker system except the lock.

Excluded from the scope are wire mesh lockers. Wire mesh lockers are those with each of the following characteristics:

(1) At least three sides, including the door, made from wire mesh;

(2) the width and depth each exceed 25 inches; and

(3) the height exceeds 90 inches.

Also excluded are lockers with bodies made entirely of plastic, wood, or any nonmetallic material.

Also excluded are exchange lockers with multiple individual locking doors mounted on one master locking door to access multiple units. Excluded exchange lockers have multiple individual storage spaces, typically arranged in tiers, with access doors for each of the multiple individual storage space mounted on a single frame that can be swung open to allow access to all of the individual storage spaces at once. For example, uniform or garment exchange lockers are designed for the distinct function of securely and hygienically exchanging clean and soiled uniforms. Thus, excluded exchange lockers are a multi-access point locker whereas covered lockers are a single access point locker for personal storage. The excluded exchange lockers include assembled exchange lockers and those that enter in 'knock down' form in which all of the parts and components to assemble a completed exchange locker unit are packaged together. Parts for exchange lockers that are imported separately from the exchange lockers in 'knock down' form are not excluded.

Also excluded are metal lockers that are imported with an installed electronic, internet-enabled locking device that permits communication or connection between the locker's locking device and other internet connected devices.

Also excluded are locks and hardware and accessories for assembly and installation of the lockers, locker banks and storage systems that are separately imported in bulk and are not incorporated into a locker, locker system or knocked down kit at the time of importation. Such excluded hardware and accessories include but are not limited to locks and bulk imported rivets, nuts, bolts, hinges, door handles, door/frame latching components, and coat hooks. Accessories of sheet metal, including but not limited to end panels, bases, dividers and sloping tops, are not excluded accessories.

Mobile tool chest attachments that meet the physical description above are covered by the scope of this investigation, unless such attachments are covered by the scope of the orders on certain tool chests and cabinets from China. If the orders on certain tool chests and cabinets from China are revoked, the mobile tool chest attachments from China will be covered by the scope of this investigation.

The scope also excludes metal safes with each of the following characteristics: (1) Pry resistant, concealed hinges; (2) body walls and doors of steel that are at least 17 gauge (0.05625 inch or 1.42874 mm thick); and (3) an integrated locking mechanism that includes at least two round steel bolts 0.75 inch (19 mm) or larger in diameter; or three bolts 0.70 inch (17.78 mm) or more in diameter; or four or more bolts at least 0.60 inch (15.24 mm) or more in diameter, that project from the door into the body or frame of the safe when in the locked position.

The scope also excludes gun safes meeting each of the following requirements:

(1) Shall be able to fully contain firearms and provide for their secure storage.

(2) Shall have a locking system consisting of at minimum a mechanical or electronic combination lock. The mechanical or electronic combination lock utilized by the safe shall have at least 10,000 possible combinations consisting of a minimum three numbers, letters, or symbols. The lock shall be protected by a casehardened (Rc 60+) drill-resistant steel plate, or drill-resistant material of equivalent strength.

(3) Boltwork shall consist of a minimum of three steel locking bolts of at least ½ inch thickness that intrude from the door of the safe into the body of the safe or from the body of the safe into the door of the safe, which are operated by a separate handle and secured by the lock.

(4) The exterior walls shall be constructed of a minimum 12-gauge thick steel for a single-walled safe, or the sum of the steel walls shall add up to at least 0.100 inches for safes with walls made from two pieces of flat-rolled steel.

(5) Doors shall be constructed of a minimum one layer of 7-gauge steel plate reinforced construction or at least two layers of a minimum 12-gauge steel compound construction.

(6) Door hinges shall be protected to prevent the removal of the door. Protective features include, but are not limited to: Hinges not exposed to the outside, interlocking door designs, dead bars, jeweler's lugs and active or inactive locking bolts.

The scope also excludes metal storage devices that (1) have two or more exterior exposed drawers regardless of the height of the unit, or (2) are no more than 30 inches tall and have at least one exterior exposed drawer.

Also excluded from the scope are free standing metal cabinets less than 30 inches tall with a single opening, single door and an installed tabletop.

The scope also excludes metal storage devices less than 27 inches wide and deep that (1) have two doors hinged on the right and left side of the door frame respectively covering a single opening and that open from the middle toward the outer frame; or (2) are free standing or wall-mounted, single-opening units 20 inches or less high with a single door.

The subject certain metal lockers are classified under Harmonized Tariff Schedule

of the United States (HTSUS) subheading 9403.20.0078. Parts of subject certain metal lockers are classified under HTS subheading 9403.90.8041. In addition, subject certain metal lockers may also enter under HTS subheading 9403.20.0050. While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2021–14316 Filed 7–6–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–815]

Finished Carbon Steel Flanges From Spain: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that producers or exporters of finished carbon steel flanges (flanges) from Spain subject to this review made sales of subject merchandise at less than normal value during the period of review (POR) June 1, 2019, through May 31, 2020. We invite interested parties to comment on these preliminary results.

DATES: Applicable July 7, 2021.

FOR FURTHER INFORMATION CONTACT: Marc Castillo or Mark Flessner, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0519 or (202) 482–6312, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 14, 2017, we published in the **Federal Register** an antidumping duty (AD) order on flanges from Spain.[1] On June 2, 2020, Commerce published a notice of opportunity to request an administrative review of the *Order*.[2] Based on timely requests for administrative review, we initiated an administrative review of eight companies: (1) Aleaciones De Metales Sinterizados S.A.; (2) Central Y Almacenes; (3) Farina Group Spain; (4) Friedrich Geldbach Gmbh; (5) Grupo Cunado; (6) Transglory S.A.; (7) Tubacero, S.L.; and (8) ULMA Forja, S.Coop (ULMA).[3] On September 24, 2020, we identified ULMA as the sole mandatory respondent in this review.[4]

On February 11, 2021, and May 27, 2021, we extended the deadline for the preliminary results, by a total of 120 days.[5] The deadline for the preliminary results of this administrative review is now June 30, 2021.

For a complete description of the events that followed the initiation of this administrative review, *see* the Preliminary Decision Memorandum.[6] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/.*

Scope of the Order

The scope of the *Order* covers finished carbon steel flanges. Finished carbon steel flanges are currently classified under subheadings 7307.91.5010 and 7307.91.5050 of the Harmonized Tariff Schedule of the United States (HTSUS). They may also be entered under HTSUS subheadings 7307.91.5030 and 7307.91.5070. The HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope is dispositive.

A full description of the scope of the *Order* is contained in the Preliminary Decision Memorandum.

Methodology

Commerce conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum.

Preliminary Results of Administrative Review

We preliminarily determine that the following weighted-average dumping margins exist for the period June 1, 2019, through May 31, 2020:

Exporter or manufacturer	Weighted-average dumping margin (percent)
ULMA Forja, S.Coop	6.43
Aleaciones De Metales Sinterizados S.A	6.43
Central Y Almacenes	6.43
Farina Group Spain	6.43
Friedrich Geldbach Gmbh	6.43
Grupo Cunado	6.43
Transglory S.A	6.43
Tubacero, S.L	6.43

Non-Individually Examined Companies

For the weighted-average dumping margin for non-selected respondents in an administrative review, generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. 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

[1] *See Finished Carbon Steel Flanges from Spain: Antidumping Duty Order,* 82 FR 27229 (June 14, 2017) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 85 FR 33628 (June 2, 2020).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 47731 (August 6, 2020).

[4] *See* Memorandum, ''Identification of Mandatory Respondent for the 2019–2020 Administrative Review of the Antidumping Duty Order on Finished Carbon Steel Flanges from Spain,'' dated September 24, 2020.

[5] *See* Memorandum, ''Finished Carbon Steel Flanges from Spain: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review, 2019–2020,'' dated February 11, 2021; *see also* Memorandum, ''Finished Carbon Steel Flanges from Spain: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review, 2019–2020,'' dated May 27, 2021.

[6] *See* Memorandum, ''Finished Carbon Steel Flanges from Spain: Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review; 2019–2020,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.'' We preliminarily calculated a weighted-average dumping margin for ULMA that was not zero, *de minimis,* or based on facts available. Accordingly, we have preliminarily applied the weighted-average dumping margin calculated for ULMA as the weighted-average dumping margin for the non-individually examined companies.

Disclosure and Public Comment

We intend to disclose the calculations performed for these preliminary results to the parties within five days after public announcement of the preliminary results in accordance with 19 CFR 351.224(b).

Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[7] Rebuttal briefs may be filed no later than seven days after case briefs are due and may respond only to arguments raised in the case briefs.[8] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[9] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[10]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs.

An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[11]

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results of review, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rate

Upon issuing the final results, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[12] If a respondent's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, we intend to calculate 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 the importer's sales in accordance with 19 CFR 351.212(b)(1). If the respondent's weighted-average dumping margin is zero or *de minimis* in the final results, or if an importer-specific assessment rate is zero or *de minimis,* then we will instruct CBP to liquidate the appropriate entries without regards to antidumping duties.

Consistent with its recent notice,[13] Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise under review and for future deposits of estimated duties, where applicable.

For entries of subject merchandise during the POR produced by ULMA for which it did not know 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.[14]

Cash Deposit Requirements

The following deposit requirements for estimated antidumping duties will be effective upon publication of the notice of final results of this review for all shipments of flanges from Spain 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 rate for the companies under review, will be equal to the company-specific weighted-average dumping margin established in the final results of the review (except, if the rate is zero or *de minimis,* no cash deposit will be required); (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 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 is, the cash deposit rate will be the rate established in a prior competed 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 18.81 percent,[15] the all-others rate established in the less-than-fair-value investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as a 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). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

Commerce is issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(4).

[7] *See* 19 CFR 351.309(c)(ii).

[8] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[9] *See* 19 CFR 351.309(c)(2) and (d)(2).

[10] *See Temporary Rule.*

[11] *See* 19 CFR 351.310(c).

[12] *See* 19 CFR 351.212(b)(1).

[13] *See Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings,* 86 FR 3995 (January 15, 2021).

[14] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[15] *See Order,* 82 FR at 27229.

Dated: June 30, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2021–14447 Filed 7–6–21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–053]

Certain Aluminum Foil From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Antidumping Duty Administrative Review, and Preliminary Determination of No Shipments; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily finds that exporters of certain aluminum foil (aluminum foil) from the People's Republic of China (China) sold subject merchandise in the United States at prices below normal value during the period of review (POR) April 1, 2019, through March 31, 2020. Additionally, Commerce is rescinding this review with respect to multiple companies. Interested parties are invited to comment on these preliminary results of this review.

DATES: Applicable July 7, 2021.

FOR FURTHER INFORMATION CONTACT: Chelsey Simonovich or Michael J. Heaney, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1979, or (202) 482–4475, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 8, 2020, Commerce initiated an administrative review of the antidumping duty order on aluminum foil from China,[1] in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). On July 21, 2020, Commerce tolled the deadlines for issuing its preliminary results by 60 days.[2] On February 26, 2021, pursuant to section 751(a)(3)(A) of the Act, Commerce extended the deadline for the preliminary results of this review by 120 days, until June 29, 2021.[3]

The administrative review covers two mandatory respondents: (1) Jiangsu Zhongji Lamination Materials Co., (HK) Ltd.; Jiangsu Zhongji Lamination Materials Stock Co., Ltd.; Jiangsu Zhongji Lamination Materials Co., Ltd.; and Jiangsu Huafeng Aluminum Industry Co., Ltd (collectively, Zhongji);[4] and (2) Jiangsu Alcha Aluminum Co., Ltd. (Jiangsu Alcha). The administrative review also covers 14 other companies that were not selected for individual examination. For details regarding the events that occurred subsequent to the initiation of the review, *see* the Preliminary Decision Memorandum.[5] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix I to this notice.

The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be found at *https://enforcement.trade.gov/frn/.*

Scope of the Order

The merchandise covered by the *Order* is aluminum foil from China. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.[6]

Preliminary Determination of No Shipments

Jiangsu Dingsheng New Materials Joint Stock Co., Ltd.; Hangzhou Teemful Aluminum Co., Ltd.; and Hangzhou Five Star Aluminum Co., Ltd. reported that they did not have any exports of subject merchandise during the POR.[7] To date, we have found no evidence calling into question the no-shipment claims made by these companies; therefore, we preliminarily find that these companies had no shipments of subject merchandise to the United States during the POR. For additional information regarding these preliminary determinations, *see* the Preliminary Decision Memorandum.

Partial Rescission of Administrative Review

Section 351.213(d)(1) of Commerce's regulations provides that Commerce will rescind an administrative review, in whole or in part, if all parties that requested a review withdraw their requests for review within 90 days of the publication date of the notice of initiation of the requested review. All parties timely withdrew their requests for administrative review of the following companies: (1) Baotou Alcha Aluminum Co., Ltd.; (2) Granges Aluminum (Shanghai) Co., Ltd.; (3) Guangxi Baise Xinghe Aluminum Industry Co., Ltd.; (4) Hangzhou DingCheng Aluminum Co., Ltd.; (5) Hangzhou Dingsheng Industrial Group Co. Ltd.; (6) Hangzhou Teemful Aluminum Co., Ltd.; (7) Huafon Nikkei Aluminium Corporation; (8) Jiangyin Dolphin Pack Ltd. Co.; (9) Luoyang Longding Aluminium Industries Co.,

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 34708 (June 8, 2020); *see also Certain Aluminum Foil from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order:* 83 FR 17362 (April 19, 2018) (*Order*).

[2] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[3] *See* Memorandum, ''Aluminum Foil from the People's Republic of China: Extension of Time Limit Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated February 26, 2021.

[4] Consistent with the methodology employed in the less-than-fair-value (LTFV) investigation, we have continued to collapse Jiangsu Zhongji Lamination Materials Co., (HK) Ltd. (Zhongji HK), and Jiangsu Zhongji Lamination Materials Co., Ltd. (Jiangsu Zhongji), (collectively, Zhongji) and to treat these companies as a single entity. *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Accompanying Preliminary Decision Memorandum,* 82 FR 50858 (November 2, 2017), and accompanying Preliminary Decision Memorandum at 16–18, unchanged in *Certain Aluminum Foil From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 83 FR 9282 (March 5, 2018). We find that record evidence supports treating each of these entities as a collapsed entity in this review. *See* Memorandum, ''Zhongji Analysis for the Preliminary Results,'' dated June 29, 2021.

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Certain Aluminum Foil from the People's Republic of China; 2018–2019,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] *See* Preliminary Decision Memorandum at 2.

[7] *See* Letter from Jiangsu Dingsheng New Materials Joint Stock Co., Ltd ''No Shipment Letter for Jiangsu Dingsheng in the Administrative Review of Aluminum Foil from the People's Republic of China,'' dated July 8, 2020 Letter from Hangzhou Five Star, ''No Shipment Letter for Hangzhou Five Star in the Administrative Review of the Antidumping Duty Order on Aluminum Foil from the People's Republic of China,'' dated July 8, 2020; Letter from Hangzhou Teemful, ''No Shipment Letter for Hangzhou Teemful in the Administrative Review of the Antidumping Duty Order on Aluminum Foil from the People's Republic of China,'' dated July 8, 2020.

Ltd.; (10) Shandong Yuanrui Metal Material Co., Ltd.; (11) Shantou Wanshun Package Material Stock Co., Ltd.; (12) Suntown Technology Group Corporation Limited; (13) Suzhou Manakin Aluminum Processing Technology Co., Ltd.; (14) Walson (HK) Trading Co., Limited; (15) Yantai Donghai Aluminum Foil Co., Ltd.; (16) Yantai Jintai International Trade Co., Ltd.; and (17) Zhejiang Zhongjin Aluminum Industry Co., Ltd.[8] Therefore, we are rescinding this review with respect to these companies, in accordance with 19 CFR 351.213(d)(1). For additional information regarding the rescission of Commerce's administrative reviews, *see* the Preliminary Decision Memorandum.

Separate Rates

We have preliminarily determined that information placed on the record by the following companies demonstrates that these entities are eligible for a separate rate: (1) Zhongji; (2) Alcha International Holdings Limited; (3) Dingsheng Aluminum Industries (Hong Kong) Trading Co.; (4) Hangzhou Dingsheng Import & Export Co., Ltd.; (5) Hunan Suntown Marketing Limited; (6) Shanghai Huafon Aluminum Corporation; (7) Suntown Technology Group Limited; (8) Xiamen Xiashun Aluminum Foil Co., Ltd, and (9) Yinbang Clad Materials Co., Ltd. (Yinbang Clad).[9]

We have also preliminarily determined that Jiangsu Alcha and SNTO International Group Limited (SNTO) have not demonstrated their eligibility for a separate rate because SNTO did not file a separate application or certification with Commerce, and because Jiangsu Alcha failed to respond to our standard NME antidumping questionnaire. Therefore, we are treating these companies as part of the China-wide entity. Because no party requested a review of the China-wide entity in this review, it is not under review and the entity's rate (*i.e.,* 105.80 percent) is not subject to change.[10]

For additional information regarding Commerce's preliminary separate rates determinations, *see* the Preliminary Decision Memorandum.

Dumping Margins for Separate Rate Companies

The statute and Commerce's regulations do not address what rate to apply to respondents 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 an investigation, for guidance when calculating the rate for non-selected respondents that are not examined individually in an administrative review. Section 735(c)(5)(A) of the Act states that the all-others rate should be calculated by averaging the weighted-average dumping margins for individually examined respondents, excluding rates that are zero, *de minimis,* or based entirely on facts available. Where the rates for the individually examined companies are all zero, *de minimis,* or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use ''any reasonable method'' to establish the all-others rate. In this review, we calculated a rate for Zhongji that is not zero, *de minimis,* or based entirely on facts available. Therefore, we have assigned this rate to the companies not selected for individual examination but that are eligible for a separate rate.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(B) of the Act. We calculated export prices in accordance with section 772 of the Act. Because Commerce has determined that China is a non-market economy country,[11] within the meaning of section 771(18) of the Act, Commerce calculated normal value in accordance with section 773(c) of the Act.

For a full description of the methodology underlying the preliminary results of this review, *see* the Preliminary Decision Memorandum.

Preliminary Results of the Review

Commerce preliminarily determines that the following weighted-average dumping margins exist for the period April 1, 2019 through March 31, 2020:

Exporter	Weighted-average dumping margin (percent)
Jiangsu Zhongji Lamination Materials Co., (HK) Ltd./Jiangsu Zhongji Lamination Materials Stock Co., Ltd./Jiangsu Zhongji Lamination Materials Co., Ltd./Jiangsu Huafeng Aluminum Industry Co., Ltd	118.99
Alcha International Holdings Limited	118.99
Dingsheng Aluminum Industries Hong Kong Trading Co	118.99
Hangzhou Dingsheng Import & Export Co., Ltd	118.99
Hunan Suntown Marketing Limited	118.99
Shanghai Huafon Aluminum Corporation	118.99
Suntown Technology Group Limited	118.99
Xiamen Xiashun Aluminum Foil Co., Ltd	118.99
Yinbang Clad Materials Co., Ltd	118.99
China-Wide Entity[12]	105.80

[8] *See* Petitioner's Letter, ''2nd Administrative Review of the Antidumping Duty Order on Certain Aluminum Foil from the People's Republic of China—Petitioner Partial Withdrawal of Review Requests'' dated September 8, 2020.

[9] *See* Preliminary Decision Memorandum at 7–10.

[10] *See Order,* 83 FR at 17363.

[11] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination,* 82 FR 50858, 50861 (November 2, 2017) (citing Memorandum, ''China's Status as a Non-Market Economy,'' dated October 26, 2017), unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 83 FR 9282 (March 5, 2018).

[12] As noted above, the China-Wide Entity is not subject to this review. However, in this review we have preliminarily determined that the following companies under review are now part of the China-Wide Entity: Jiangsu Alcha; SNTO International Group Limited.

Disclosure and Public Comment

Commerce intends to disclose to parties to the proceeding the calculations performed for these preliminary results of review within five days of the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review in the **Federal Register**.[13] Rebuttal briefs may be filed no later than seven days after case briefs are due and may respond only to arguments raised in the case briefs.[14] A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to Commerce. The summary should be limited to five pages total, including footnotes.[15]

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice in the **Federal Register**.[16] Requests should contain the party's name, address, and telephone number, the number of individuals from the requesting party's firm that will attend the hearing, and a list of the issues the party intends to discuss at the hearing. Oral arguments at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.[17] Parties should confirm by telephone the date and time of the hearing two days before the scheduled date of the hearing.

All submissions, with limited exceptions, must be filed electronically using ACCESS.[18] An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time (ET) on the due date.[19] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information until further notice.[20] Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results of review in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of review, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[21] Commerce intends to issue assessment instructions to CBP no earlier than 35 days after 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).

For each individually examined respondent in this review whose weighted-average dumping margin in the final results of review is not zero or *de minimis* (*i.e.,* less than 0.5 percent), Commerce intends to calculate importer/customer-specific assessment rates, in accordance with 19 CFR 351.212(b)(1).[22] Where the respondent reported reliable entered values, Commerce intends to calculate importer/customer-specific *ad valorem* assessment rates by aggregating the amount of dumping calculated for all U.S. sales to the importer/customer and dividing this amount by the total entered value of the merchandise sold to the importer/customer.[23] Where the respondent did not report entered values, Commerce will calculate importer/customer-specific assessment rates by dividing the amount of dumping for reviewed sales to the importer/customer by the total quantity of those sales. Commerce will calculate an estimated *ad valorem* importer/customer-specific assessment rate to determine whether the per-unit assessment rate is *de minimis;* however, Commerce will use the per-unit assessment rate where entered values were not reported.[24] Where an importer/customer-specific *ad valorem* assessment rate is not zero or *de minimis,* Commerce will instruct CBP to collect the appropriate duties at the time of liquidation. Where either the respondent's weighted average dumping margin is zero or *de minimis,* or an importer/customer-specific *ad valorem* assessment rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[25]

For the respondents that were not selected for individual examination in this administrative review, but which qualified for a separate rate, the assessment rate will be based on the weighted-average dumping margin(s) assigned to the respondent(s), as appropriate, in the final results of this review.[26]

Pursuant to Commerce's refinement to its practice, for sales that were not reported in the U.S. sales database submitted by an exporter individually examined during this review, Commerce will instruct CBP to liquidate the entry of such merchandise at the dumping margin for the China-wide entity.[27] Additionally, where Commerce determines that an exporter under review had no shipments of subject merchandise to the United States during the POR, any suspended entries of subject merchandise that entered under that exporter's CBP case number during the POR will be liquidated at the dumping margin for the China-wide entity.

In accordance with section 751(a)(2)(C) of the Act, 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 antidumping duties, where applicable.

Cash Deposit Requirements

Commerce will instruct CBP to require a cash deposit for antidumping duties equal to the weighted-average amount by which the normal value

[13] *See* 19 CFR 351.309(c)(ii).

[14] *See* 19 CFR 351.309(d).

[15] *See* 19 CFR 351.309(c)(2), (d)(2).

[16] *See* 19 CFR 351.310(c).

[17] *See* 19 CFR 351.310(d).

[18] *See* generally 19 CFR 351.303.

[19] *See* 19 CFR 351.303 (for general filing requirements); *see also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[20] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 29615 (May 18, 2020); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[21] *See* 19 CFR 351.212(b)(1).

[22] *See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[23] *See* 19 CFR 351.212(b)(1).

[24] *Id.*

[25] *See Final Modification,* 77 FR at 8103.

[26] *See Drawn Stainless Steel Sinks from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments: 2014–2015,* 81 FR 29528 (May 12, 2016), and accompanying IDM at 10–11, unchanged in *Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments; 2014–2015,* 81 FR 54042 (August 15, 2016).

[27] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), for a full discussion of this practice.

exceeds U.S. price. The following cash deposit requirements will be effective for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register**, as provided by section 751(a)(2)(C) of the Act: (1) For the exporters listed in the table above, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review for the exporter (except, if the dumping margin is *de minimis* (*i.e.,* less than 0.5 percent), then the cash deposit rate will be zero for that exporter); (2) for previously investigated or reviewed Chinese and non-Chinese exporters that are not listed in the table above but that have separate rates, the cash deposit rate will continue to be the exporter-specific rate established in the most recently completed segment of this proceeding; (3) for all Chinese exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity (*i.e.,* 105.80 percent) [28] and (4) for all non-Chinese exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the China exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties and/or countervailing duties has occurred, and the subsequent assessment of double antidumping duties and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

[28] *See Order,* 83 FR at 17363.

Dated: June 29, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2021–14445 Filed 7–6–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Establishment of a Team Under the National Construction Safety Team Act

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The Director of the National Institute of Standards and Technology (NIST), United States Department of Commerce, announces the establishment of a National Construction Safety Team pursuant to the National Construction Safety Team Act. The Team was established to study the collapse of the Champlain Towers South Condominium in Surfside, FL that occurred on June 24, 2021.

DATES: The National Construction Safety Team was established on June 30, 2021.

ADDRESSES: Dr. Joannie Chin, Engineering Laboratory, National Institute of Standards and Technology, Mail Stop 8600, Gaithersburg, MD 20899–8600, telephone number (301) 975–6815. Members of the public are encouraged to submit to the Team non-privileged evidence that is relevant to the subject matter of the NIST investigation described in this notice. Such evidence may be submitted to the address contained in this section. Confidential information will only be accepted pursuant to an appropriate nondisclosure agreement.

FOR FURTHER INFORMATION CONTACT: Dr. Joannie Chin, Engineering Laboratory, National Institute of Standards and Technology, Mail Stop 8600, Gaithersburg, MD 20899–8600, telephone number (301) 975–6815.

SUPPLEMENTARY INFORMATION:

Background: The National Construction Safety Team Act (''Act''), Public Law 107–231, codified at 15 U.S.C. 7301 *et seq.,* was enacted to provide for the establishment of investigative teams (''Teams'') to assess building performance and emergency response and evacuation procedures in the wake of any building failure that has resulted in substantial loss of life or that posed significant potential of substantial loss of life. The purpose of investigations by Teams is to improve the safety and structural integrity of buildings in the United States. As stated in the statute, a Team shall (1) establish the likely technical cause or causes of the building failure; (2) evaluate the technical aspects of evacuation and emergency response procedures; (3) recommend, as necessary, specific improvements to building standards, codes, and practices based on the findings made pursuant to (1) and (2); and (4) recommend any research and other appropriate actions needed to improve the structural safety of buildings, and improve evacuation and emergency response procedures, based on the findings of the investigation. In addition, NIST has promulgated regulations implementing the Act. The regulations are found at 15 CFR part 270.

NIST sent a preliminary reconnaissance team to collect information and data related to the collapse of the Champlain Towers South Condominium in Surfside, FL that occurred on June 24, 2021. Based on the recommendations of the preliminary reconnaissance team and evaluation of the criteria listed in the regulations implementing the Act, specifically in 15 CFR 270.102, on June 30, 2021, the Director of the National Institute of Standards and Technology (NIST), United States Department of Commerce, established a Team to study the collapse of the Champlain Towers South Condominium in Surfside, FL. The Team may include members who are Federal employees and members who are not Federal employees. Team members who are Federal employees are governed by the Federal conflict of interest laws. Team members who are not Federal employees will be Federal government contractors, and conflicts of interest related to their service on the Team will be governed by FAR Subpart 9.5, Organizational and Consultant Conflicts of Interest, which will be incorporated by reference into all such contracts.

Members of the public are encouraged to submit to the Team non-privileged data and artifacts that are relevant to the subject matter of the NIST investigation described in this notice. Such data and artifacts may be submitted to the address contained in the **ADDRESSES** section of this notice. Confidential information will only be accepted pursuant to an appropriate nondisclosure agreement.

Authority: 15 U.S.C. 7301 *et seq.,* 15 CFR part 270.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2021–14392 Filed 7–6–21; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB200]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Elkhorn Slough Tidal Marsh Restoration, Phase II in Monterey County, California

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

ACTION: Notice; issuance of Renewal incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued a Renewal incidental harassment authorization (IHA) to California Department of Fish and Wildlife (CDFW) to incidentally harass, by Level B harassment only, marine mammals incidental to construction activities associated with the second phase of the Elkhorn Slough Tidal Marsh Restoration Project in Monterey County, California.

DATES: This Renewal IHA is valid from the date of issuance through May 31, 2022.

FOR FURTHER INFORMATION CONTACT: Kim Corcoran, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application, Renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed incidental take authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). Monitoring and reporting of such takings are also required. The meaning of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency's regulations at 50 CFR 216.103.

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a Renewal for this activity, and requested public comment on a potential Renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the ''Detailed Description of Specified Activities'' section of the initial IHA issuance notice is planned or (2) the activities as described in the ''Detailed Description of Specified Activities'' section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a Renewal would allow for completion of the activities beyond that described in the **DATES** section of the initial IHA issuance, provided all of the following conditions are met:

(1) A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).

(2) The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).
- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

(3) Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed Renewal. A description of the Renewal process may be found on our website at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.*

History of Request

On March 13, 2020, NMFS issued an IHA to CDFW to take marine mammals incidental to construction activities associated with the second phase of the tidal marsh restoration project in Elkhorn Slough, California (85 FR 14640; March 13, 2020), effective from June 1, 2020 through May 31, 2021. On May 11, 2021, NMFS received an application for the Renewal of that

initial IHA. As described in the application for Renewal, the activities for which incidental take is requested consist of activities that are covered by the initial authorization but will not be completed prior to its expiration. As required, the applicant also provided a preliminary monitoring report (available at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-tidal-marsh-restoration-project-elkhorn-slough-phase-ii-2020*) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted. The notice of the proposed Renewal incidental harassment authorization was published on June 8, 2021 (86 FR 30412).

Description of the Specified Activities and Anticipated Impacts

CDFW is unable to complete all of the planned work under the initial 2020 IHA for Phase II of the Elkhorn Slough Tidal Marsh Restoration Project. The initial IHA planned to restore 58 acres of saltmarsh habitat in two areas, Minhoto-Hester Restoration Area (subareas M4a–b, M5, and M6) and the Seal Bend Restoration Area (S1–S4) (Figure 1). To date, the majority of earthwork at the Minhoto-Hester Restoration Area has been completed, including earthwork in subareas M4a–b and M5, however outstanding work in subareas M5 and M6 was not completed before the May 31, 2021 IHA expiration date. Therefore, CDFW has requested a Renewal IHA to authorize the take of marine mammals for a subset of the initially planned work that has not been completed which will include the outstanding work in subareas M5 and M6. A separate IHA application will be submitted by CDFW for the work at the Seal Bend Restoration Area which has not been initiated to date, and is expected to start later in the year. Of note, the work in the Minhoto-Hester Restoration Area has taken more days to conduct than initially expected, but the completion of work in that Area is still expected to occur within the total number of workdays contemplated in the initial IHA.

Anticipated impacts would include only Level B harassment of marine mammals (though fewer, since the duration of the proposed activity is shorter). CDFW's request is for one stock of pinniped by Level B harassment: Harbor seal (*Phoca vitulina richardii*). Monitoring results from the 2020 restoration activities indicate that observed exposures above Level B harassment thresholds were well below the amount authorized in associated with the amount of work conducted to date (see monitoring report in renewal request letter). Thus, the subset of Level B harassment take remaining from that authorized under the 2020 IHA will be sufficient to cover the remaining 2021 restoration work at the Minhoto-Hester Restoration Area.

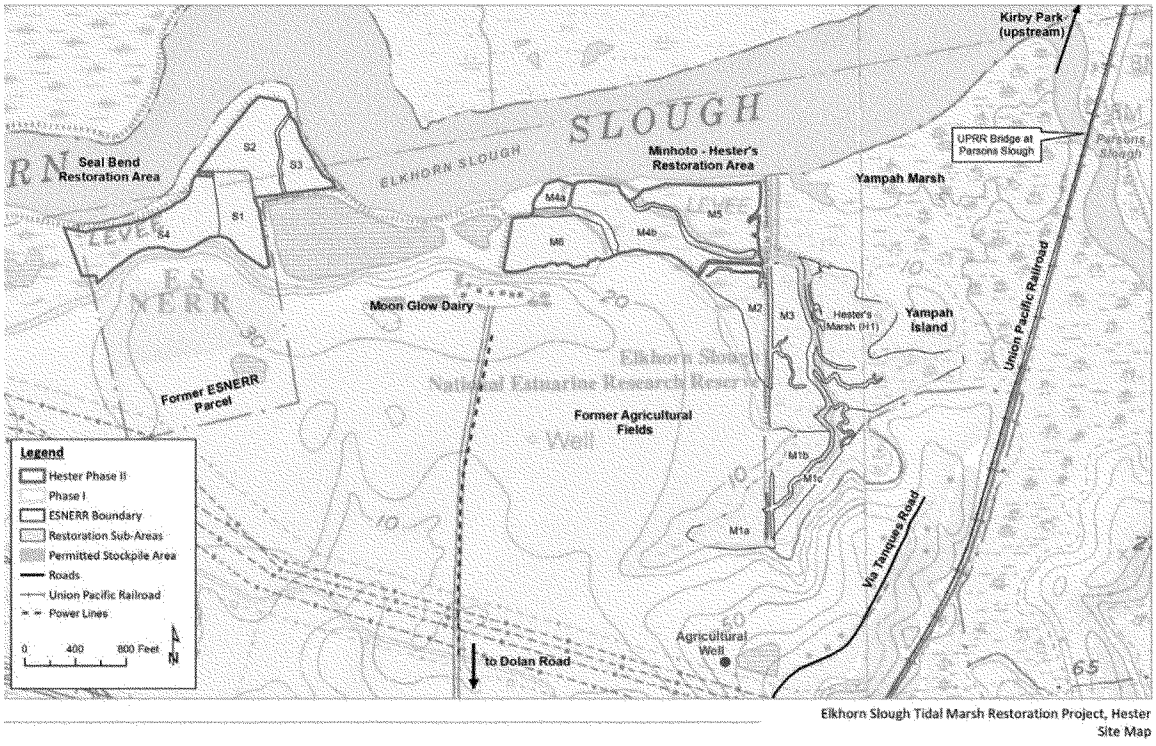

Figure 1 – Overview of Elkhorn Slough Tidal Marsh Restoration Project

Detailed Description of the Activity

A detailed description of the construction activities for which take is authorized here may be found in the notices of the proposed and final IHAs for the initial authorization. This Renewal is identical to that of the 2020 IHA, in that it is comprised of a subset of the work that was covered in the initial IHA. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices. The Renewal would be effective until May 31, 2022 and does not authorize activities related to restoration work in the Seal Bend Restoration Area as a subsequent IHA application will be submitted by CDFW for such activities at a later date.

The mitigation and monitoring will be identical to that of the 2020 IHA. A detailed description of the restoration

activities for which take is proposed may be found in the notices of the proposed (84 FR 72308; December 31, 2019) and the final IHAs (85 FR 14640; March 13, 2020) for the 2020 authorization. All documented associated with the 2020 IHA (*i.e.,* the IHA application, proposed IHA, final IHA, public comments, monitoring reports, etc.) can be found on NMFS's website, *https://www.fisheries.noaa.gov/action/incidental-take-authorization-tidal-marsh-restoration-project-elkhorn-slough-phase-ii-2020.*

Description of Marine Mammals

A description of the marine mammals in the area of the activities for take is authorized here, including information on abundance, status, distribution, and hearing, may be found in the notices of the proposed and final IHAs for the initial authorization. NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the ''Description of the Marine Mammals in the Area of Specified Activities'' contained in the supporting documents for the initial IHA.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is authorized here may be found in the notices of the proposed and final IHAs for the initial authorization. NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, other scientific literature, and the public comments, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the notices of the proposed and final IHAs for the initial authorization. Specifically, the source levels, days of operation, and marine mammal occurrence data applicable to this authorization remain unchanged from the previously issued IHA. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the initial IHA, as do the number of takes, which are indicated below in Table 1.

TABLE 1—CALCULATED TAKE AND PERCENTAGE OF STOCK EXPOSED

Species	Authorized take		Percent population [4]
	Level B	Level A	
Pacific Harbor Seal	417 [1] max seals/day (9 percent [2]) (62 days [3]) = 2327	0	1.3

[1] Maximum number of seals observed/day between January 2018 and April 2019 by Reserve Otter Monitoring Project.
[2] Percent Take from Phase I.
[3] Number of construction days remaining in Minhoto-Hester Restoration Area.
[4] Data from U.S. Pacific Marine Mammal Stock Assessments: 2015 (Carretta *et al.,* 2015).

All estimates are considered conservative. Construction activities will occur in sections. Noise from construction activities in more southern sections may thus cause fewer disturbances to seals given their distance from seal haul outs (approximately 100 m and greater). There are unlikely to be 417 animals in the project area on any given day. Not all seals that previously used the haul outs within the footprint of the construction are expected use the haul outs just outside the project based on observations from Phase I of the project. Some seals may seek alternative haul out habitat in other parts of Elkhorn Slough.

Description of Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA, and the discussion of the least practicable adverse impact included in that document and in the notice of proposed IHA remains accurate. The following measures are included in this Renewal:

Timing Restrictions—All work must be conducted during daylight hours when visual monitoring of marine mammals can be implemented. If environmental conditions deteriorate such that marine mammals within the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), construction must be delayed until the protected species observer (PSO) is confident marine mammals within the shutdown zone could be detected.

Visual Monitoring—Required monitoring must be conducted by dedicated, trained, NMFS-approved PSO(s). PSOs shall establish a Level B harassment zone within 300 m of all construction activities. When construction activities occur either, (1) in water or (2); within the boundaries of the two tidal restoration areas, Minhoto-Hester and Seal Bend identified in Figure 1, monitoring must occur every other day when work is occurring.

When construction activities occur near the ''borrow'' areas where marsh fill material is gathered, monitoring must occur every fifth day when work is occurring, unless the borrow area is more than 300 m from any area where marine mammals have been observed. Occurrence of marine mammals within the Level B harassment zone must be communicated to the construction lead to prepare for the potential shutdown when required.

Pre-Construction Clearance and Ramp-Up—A 30-minute pre-clearance observation period must occur prior to the start of ramp-up and construction activities. CDFW must adhere to the following pre-clearance and ramp-up requirements: (i) Construction activities must not be initiated if any marine mammal is within 10 m of planned operations. If a marine mammal is observed within 10 m of planned operations during the 30-minute pre-clearance period, ramp-up must not begin until the animal(s) has been observed exiting the zones or until an additional time period has elapsed with no further sightings (15 minutes for small odontocetes and pinnipeds and 30 minutes for all other species), (ii) The construction contractor must begin construction activities gradually each day (*e.g.,* ramp up by moving around the project area and starting equipment sequentially).

Shutdown Requirements—For heavy machinery work, if a marine mammal comes within 10 m of such operations, operations must cease and vessels shall

reduce speed to the minimum level required to maintain steerage and safe working conditions.

Pupping Season—Construction activities may not be initiated: (1) Within 300 m of a mom/pup pair that is hauled out, or (2) within 100 m of a mom/pup pair in the water. If there is a gap in construction activities of more than an hour or if construction moves to a different area, this initiation protocol must again be implemented. During site containment activities that are underway, heavy machinery must not approach closer than 100 m of where mothers and pups are actively hauled out. If a pup less than one week old (neonate) comes within 20 m of where heavy machinery is working, construction activities in that area must be shutdown or delayed until the pup has left the area. In the event that a pup less than one week old remains within those 20 m, NMFS will be consulted to determine the appropriate course of action.

Activities must cease if a marine mammal species for which take was not authorized, or a species for which authorization was granted but the authorized number of takes have been met, is observed by PSOs approaching or within the Level B harassment zone. Activities must not resume until the animal is confirmed to have left the area.

Construction Activities—A NMFS approved PSO must conduct biological resources awareness training for construction personnel. The awareness training will be provided to brief construction personnel on identification of marine mammals (including neonates) and the need to avoid and minimize impacts to marine mammals. If new construction personnel are added to the project, the contractor shall ensure that the personnel receive the mandatory training before starting work.

Construction activities must not be initiated if any marine mammal is within 10 m of planned operations. If a marine mammal is observed within 10 m of planned operations during the 30-minute pre-clearance period, ramp-up must not begin until the animal(s) has been observed exiting the zones or until an additional time period has elapsed with no further sightings (15 minutes for small odontocetes and pinnipeds and 30 minutes for all other species). Furthermore, the PSO will have the authority to stop project activities if marine mammals approach or enter the Level B Harassment Zone and/or at any time for the safety of any marine mammals. Work will commence only with approval of the PSO to ensure that no marine mammals are present in the Level B Harassment Zone.

Ramp Up—To reduce the risk of potentially startling marine mammals with a sudden intensive sound, the construction contractor must begin construction activities gradually each day by moving around the project area and starting machinery one at a time.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has determined that the authorized mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

PSOs—PSOs shall be used to detect, document, and minimize impacts to marine mammals, as well as, communicate with and instruct relevant construction crew with regard to the presence of marine mammals and mitigation requirements. Independent PSOs (*i.e.,* not construction personnel) who have no other assigned tasks during monitoring periods must be used. Biological monitoring will begin 30 minutes before work begins and will continue until 30 minutes after work is completed each day.

PSOs will be placed at the best vantage point(s) practicable to monitor for marine mammals within the Level B harassment zone, defined above. If multiple construction activities occur simultaneously, enough PSOs must be on duty to monitor all Level B Harassment zones.

Qualifications for PSOs for visual monitoring include:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of harbor seals on land or in the water with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target.
- Successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences and a minimum of 30 semester hours or equivalent in the biological sciences and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver must include written justification. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored marine mammal surveys; or (3) previous work experience as a PSO; the PSO should demonstrate good standing and consistently good performance of PSO duties.
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience).
- Experience or training in the field identification of marine mammals, including the identification of behaviors.
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations.
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when construction activities were conducted; dates and times when construction activities were suspended to avoid potential incidental injury from construction sound or visual disturbance of marine mammals

observed; and marine mammal behavior.

- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.
- PSOs must be provided with the equipment necessary to effectively monitor for marine mammals in order to record species, the distance from species' location to the construction activities, behaviors, and responses to construction activities.
- The PSO must also conduct biological resources awareness training for construction personnel. The awareness training will be provided to brief construction personnel on identification of marine mammals (including neonates) and the need to avoid and minimize impacts to marine mammals. If new construction personnel are added to the project, the contractor shall ensure that the personnel receive the mandatory training before starting work.

Monitoring requirements also include:

Pre-Activity Monitoring—Pre and post construction daily censuses—A census of marine mammals in the project area and the area surrounding the project must be conducted 30 minutes prior to the beginning of construction on monitoring days, and again 30 minutes after the completion of construction activities. The following data will be collected:

- Environmental conditions (weather condition, tidal conditions, visibility, cloud cover, air temperature and wind speed);
- Numbers of each marine mammal species spotted;
- Location of each species spotted, including distance from construction activity;
- Status (in water or hauled out); and
- Behavior.

Hourly Counts—Conduct hourly counts of animals hauled out and in the water within, at least, the Level B harassment zone.

Data collected must include:

- Numbers of each species;
- Location, including whether inside the Level B harassment zone; whether hauled out or in the water; and distance from construction activities (+/− 10 m);
- Time;
- Tidal conditions;
- Time construction activities start and end;
- Primary construction activities occurring during the past hour;
- Any noise or visual disturbance;
- Number of mom/pup pairs and neonates observed; and
- Notable behaviors, including foraging, grooming, resting, aggression, mating activity, and others.

Notes should include any of the following information to the extent it is feasible to record:

- Age-class;
- Sex;
- Unusual activity or signs of stress; and
- Any other information worth noting.

Construction Related Reactions—Record reaction observed in relation to construction activities including:

- Tally of each reaction;
- Time of reaction;
- Concurrent construction activity;
- The assumed cause (whether related to construction activities or not) shall be noted;
- Disturbance must be recorded according to NMFS' three-point pinniped disturbance scale (see Table 2);
- Location of animal during initial reaction and distance from the noted disturbance;
- Activity before and after disturbance; and
- Status (in water or hauled out) before and after disturbance.

TABLE 2—PINNIPED BEHAVIORAL DISTURBANCE CODE REACTIONS

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.
2	Movement	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
3	Flush	All retreats (flushes) to the water.

Reporting

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of pile driving and removal activities, or 60 days prior to a requested date of issuance of any future IHAs for projects at the same location, whichever comes first. The report must include full documentation of methods, results, and interpretation pertaining to all monitoring. It shall also include marine mammal observations pre-activity, during-activity, and post-activity of construction, and shall also provide descriptions of any behavioral responses by marine mammals due to disturbance from construction activities and a complete description of total take estimate based on the number of marine mammals observed during the course of construction. The report must include an extrapolation of the estimated takes by Level B harassment based on the number of observed disturbances within the Level B harassment zone and the percentage of time the Level B harassment zone was not monitored; *i.e.,* 50 percent of time for the two restoration areas and 80 percent of the time for the borrow and other areas. If comments are received from the NMFS Office of Protected Resources on the draft report, a final report shall be submitted to NMFS within 30 days thereafter following resolution of comments on the draft report from NMFS. If no comments are received from NMFS, the draft report will be considered to be the final report. This report must contain the informational elements described above.

Comments and Responses

A notice of NMFS' proposal to issue a Renewal IHA to CDFW was published in the **Federal Register** on June 8, 2021 (86 FR 30412). That notice either described, or referenced descriptions of, the CDFW's activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, estimated amount and manner of take, and proposed mitigation, monitoring and reporting measures. NMFS received no public comments.

Determinations

NMFS has determined that the action under this Renewal includes a subset of activities that are identical to the previous IHA. NMFS found that the previous IHA would have a negligible impact and that authorized take would be small relative to the population size. No changes in marine mammal information, potential effects, estimated take, abundance estimates and the mitigation and monitoring have occurred. Therefore, NMFS has concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) CDFW's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA); 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must evaluate our proposed action (*i.e.,* the promulgation of regulations and subsequent issuance of incidental take authorization) and alternatives with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the proposed action qualifies to be categorically excluded from further NEPA review.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity in the Elkhorn Slough Reserve. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Renewal

NMFS has issued a Renewal IHA to CDFW for the take of harbor seals incidental to the continuation of Phase II of the Elkhorn Slough Tidal Marsh Restoration Project in Minhoto-Bay Area located in Monterey County, CA from the date of issuance until May 31, 2021.

Dated: June 30, 2021.

Angela Somma,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–14380 Filed 7–6–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB154]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Cost Recovery Program

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

ACTION: Notification of fee percentage.

SUMMARY: NMFS publishes notification of a 1.09 percent fee for cost recovery under the Bering Sea and Aleutian Islands Crab Rationalization Program. This action is intended to provide holders of crab allocations with the 2021/2022 crab fishing year fee percentage so they can calculate the required cost recovery fee payment, which must be submitted by July 31, 2022.

DATES: The Crab Rationalization Program Registered Crab Receiver permit holder is responsible for submitting the fee liability payment to NMFS by July 31, 2022.

FOR FURTHER INFORMATION CONTACT: Abby Jahn, (907) 586–7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS Alaska Region administers the Bering Sea and Aleutian Islands Crab Rationalization Program (Program) in the North Pacific. Fishing under the Program began on August 15, 2005. Regulations implementing the Program can be found at 50 CFR part 680.

The Program is a limited access privilege program authorized by section 313(j) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Program includes a cost recovery provision to collect fees to recover the actual costs directly related to the management, data collection, and enforcement of the Program. The Program is consistent with the cost recovery provisions included under section 304(d)(2)(A) of the Magnuson-Stevens Act. NMFS developed the cost recovery regulations to conform to statutory requirements and to reimburse the agency for the actual costs directly related to the management, data collection, and enforcement of the Program. The cost recovery provision allows collection of 133 percent of the actual management, data collection, and enforcement costs up to 3 percent of the ex-vessel value of crab harvested under the Program. The Program provides that a proportional share of fees charged be forwarded to the State of Alaska for reimbursement of its share of management and data collection costs for the Program.

A crab allocation holder generally incurs a cost recovery fee liability for every pound of crab landed. Catcher vessel and processor quota shareholders split the cost recovery fees equally with each paying half, while catcher/processor quota shareholders pay the full fee percentage for crab processed at sea. The crab allocations subject to cost recovery include Individual Fishing Quota, Crew Individual Fishing Quota, Individual Processing Quota, Community Development Quota, and the Adak community allocation. The Registered Crab Receiver (RCR) permit holder must collect the fee liability from the crab allocation holder who is landing crab. Additionally, the RCR permit holder must collect their own fee liability for all crab delivered to the RCR. The RCR permit holder is responsible for submitting this payment to NMFS on or before July 31, in the year following the crab fishing year in which landings of crab were made.

The dollar amount of the fee due is determined by multiplying the fee percentage (not to exceed 3 percent) by

the ex-vessel value of crab debited from the allocation. Program details may be found in the implementing regulations at 50 CFR 680.44.

Fee Percentage

Each year, NMFS calculates and publishes in the **Federal Register** the fee percentage according to the factors and methodology described at § 680.44(c)(2). The formula for determining the fee percentage is the ''direct program costs'' divided by ''value of the fishery,'' where ''direct program costs'' are the direct program costs for the Program for the previous fiscal year, and ''value of the fishery'' is the ex-vessel value of the catch subject to the crab cost recovery fee liability for the current year. Fee collections for any given year may be less than or greater than the actual costs and fishery value for that year, as regulations establish the fee percentage in the first quarter of the crab fishing year based on the fishery value and costs in the prior year.

According to the fee percentage formula described above, the estimated percentage of costs to value for the 2020/2021 fishery was 1.09 percent. Therefore, the fee percentage will be 1.09 percent for the 2021/2022 crab fishing year. The fee percentage decreased by approximately 17 percent from the 2020/2021 crab fishing year fee percentage of 1.31 percent (85 FR 41566, July 10, 2020). Direct program costs for managing the fishery decreased by approximately 9 percent from 2020/2021 to 2021/2022, while fishery value increased by approximately 10 percent, resulting in the decreased fee percentage. Similar to previous years, the largest direct program costs were incurred by the NOAA Office of Law Enforcement and the Alaska Department of Fish and Game, respectively.

Authority: 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

Dated: July 1, 2021.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2021–14443 Filed 7–6–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of a Draft Environmental Impact Statement for the Proposed Lake Ontario National Marine Sanctuary; Announcement of Public Meetings; Request for Public Comments

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of availability and public meetings; Request for public comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) has prepared a draft environmental impact statement (DEIS) that considers three alternatives for the proposed designation of a national marine sanctuary to manage a nationally significant collection of shipwrecks and other underwater cultural resources in New York's eastern Lake Ontario and the Thousand Islands region of the St. Lawrence River. NOAA also prepared a draft management plan that describes the proposed goals, objectives, and strategies for managing the proposed sanctuary. NOAA is soliciting public comment on the DEIS and draft management plan.

DATES: NOAA will consider all comments received by September 10, 2021. NOAA will conduct public meetings on the following dates:

(1) *Date:* August 18, 2021, *Location:* Lake Ontario Event and Conference Center, *Address:* 26 East First Street, Oswego, NY 13126, *Time:* 6:30 p.m. to 8:30 p.m. EDT. A virtual meeting platform may substitute if public safety concerns remain to prevent the spread of COVID–19.

(2) *Date:* August 19, 2021, *Location:* Clayton Opera House, *Address:* 405 Riverside Drive, Clayton, NY 13624, *Time:* 6:30 p.m. to 8:30 p.m. EDT. A virtual meeting platform may substitute if public safety concerns remain to prevent the spread of COVID–19.

(3) *Date:* August 24, 2021, *Location:* virtual meeting, *Time:* 2:30 p.m. to 4:00 p.m. EDT

(4) *Date:* August 26, 2021, *Location:* virtual meeting, *Time:* 6:30 p.m. to 8:00 p.m. EDT

ADDRESSES: Comments may be submitted by the following method:

Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and search for ''NOAA–NOS–2021–0050'', and click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

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

Copies of the DEIS can be downloaded or viewed on the internet at *www.regulations.gov* (search for docket NOAA–NOS–2021–0050) or at *http://sanctuaries.noaa.gov/lake-ontario/*. Copies can also be obtained by contacting Ellen Brody (in the **FOR FURTHER INFORMATION CONTACT** section of this notice).

FOR FURTHER INFORMATION CONTACT: Ellen Brody, Great Lakes Regional Coordinator, address: 4840 South State Road, Ann Arbor, MI 48108–9719; phone: 734–741–2270; email: *ellen.brody@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1431 *et seq.*) authorizes the Secretary of Commerce (Secretary), through NOAA, to designate and protect as national marine sanctuaries areas of the marine environment that are of special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities. Day-to-day management of national marine sanctuaries has been delegated by the Secretary to NOAA's Office of National Marine Sanctuaries (ONMS). The primary objective of the NMSA is to protect the sanctuary system's biological and cultural resources, such as coral reefs, marine animals, historic shipwrecks, other historic structures, and archaeological sites.

In the DEIS, NOAA's proposed action is to designate a national marine sanctuary in New York's eastern Lake Ontario and the Thousand Islands region of the St. Lawrence River to manage a nationally significant collection of shipwrecks and other

underwater cultural resources. This area would include up to 1,786 square miles of lake waters and bottomlands adjacent to Jefferson, Wayne, Oswego, Cayuga, and St. Lawrence counties in the state of New York. The proposed area contains 64 known shipwrecks and one aircraft representing events spanning more than 200 years of our nation's history. Based on historical records, an additional 20 shipwrecks and three aircraft may be located there. NOAA proposes to designate the area as a national marine sanctuary to protect these significant underwater cultural resources through a regulatory and non-regulatory framework; document, further locate, and monitor these resources; provide interpretation of their cultural, historical, and educational value to the public; promote responsible use of these resources for their recreational value; and promote recreation, tourism, and economic development opportunities in the region. NOAA would co-manage the sanctuary with the state of New York.

On January 17, 2017, pursuant to section 304 of the NMSA and the sanctuary nomination process (79 FR 33851), leaders of four counties (Oswego, Jefferson, Cayuga, and Wayne) and the City of Oswego, with support from Governor Andrew Cuomo, submitted a nomination asking NOAA to consider designating a national marine sanctuary in eastern Lake Ontario waters to protect, and increase awareness of, a nationally significant collection of shipwrecks. NOAA accepted the nomination March 21, 2017 and initiated the sanctuary designation process by issuing a Notice of Intent on April 17, 2019 to conduct scoping and prepare a DEIS (84 FR 16004). Scoping included a 105-day public period during which NOAA solicited public comments related to the scale and scope of the proposed sanctuary. In addition, NOAA hosted four public meetings in June 2019 and accepted comments through a web-based portal and by traditional mail until July 31, 2019. During the scoping period, 82 individuals provided written input. About 165 people attended the four scoping meetings, with 28 people providing oral comments. In February 2020, NOAA established a Sanctuary Advisory Council to bring members of the local community together to provide advice to NOAA and serve as a liaison with the nominating community throughout the designation process.

II. NOAA's Proposed Action

In accordance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.*) and the NMSA (16 U.S.C. 1434), NOAA has prepared a DEIS that considers three alternatives for the proposed national marine sanctuary. This DEIS analyzes and summarizes the environmental consequences of the proposed action and alternatives. The alternatives include proposed sanctuary boundaries, proposed regulatory concepts, and a draft sanctuary management plan to support the management and protection of sanctuary resources. NOAA has not selected a preferred alternative. In accordance with section 304(a) of the NMSA, the DEIS also serves as a resource assessment that documents present and potential uses of the area. The draft management plan outlines a series of goals and strategies in the areas of research and monitoring, education and outreach, tourism and economic development, sanctuary resource protection, and sanctuary operations.

NOAA is seeking public comment on the DEIS and draft management plan, which are available at *https://sanctuaries.noaa.gov/lake-ontario* or may be obtained by contacting the individual listed under the heading **FOR FURTHER INFORMATION CONTACT**. While members of the public can comment on any aspect of the DEIS and draft management plan, NOAA requests specific comment on: Whether NOAA should move forward with the No Action Alternative, Alternative 1, or Alternative 2 for the rest of the designation process; the regulatory concepts NOAA proposes to use to create regulations for the sanctuary in the next phase of the process; the proposed goals, strategies, and activities for managing the sanctuary that are outlined in the draft management plan; and ideas for a sanctuary name that reflects the special significance of the area.

In addition, as part of its compliance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470f), and its implementing regulations (36 CFR 800), NOAA is seeking public comment under 800.14(b)(2)(ii) of the National Historic Preservation Act to inform its development of a Programmatic Agreement with the state of New York to provide a process for consideration of future undertakings that may result from management of the proposed sanctuary, associated field operations, and other routine activities, if the sanctuary is designated. Following public comment on the DEIS and draft management plan, NOAA will prepare and release for public comment draft regulations for the proposed sanctuary. At that time, a detailed discussion of the regulatory text will be included in the notice of proposed rulemaking and published in the **Federal Register** for public comment.

Authority: 16 U.S.C. 1431 *et seq.*

Rebecca R. Holyoke,

Acting Director, Office of National Marine Sanctuaries.

[FR Doc. 2021–14221 Filed 7–6–21; 8:45 am]

BILLING CODE 3510–NK–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application Package for Applicant Operational and Financial Management Survey

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Corporation for National and Community Service (operating as AmeriCorps) has submitted a public information collection request (ICR) entitled Applicant Operational and Financial Management Survey for review and approval in accordance with the Paperwork Reduction Act.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by August 6, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of this ICR, with applicable supporting documentation, may be obtained by calling AmeriCorps, Linda Southcott, at 202–606–6638 or by email to *lsouthcott@cns.gov.*

SUPPLEMENTARY INFORMATION: *OMB is particularly interested in comments which:*

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of AmeriCorps, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions;

- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on April 1, 2021 at 86:17140. This comment period ended June 1, 2021. No public comments were received from this Notice.

Title of Collection: Applicant Operational and Financial Management Survey.

OMB Control Number: 3045–0102. Type of Review: Renewal.

Respondents/Affected Public: Businesses and Organizations and State, Local or Tribal Governments.

Total Estimated Number of Annual Responses: 1,500.

Total Estimated Number of Annual Burden Hours: 3,000.

Abstract: This survey is intended to collect information about the capacity of applicants to manage federal grant funds. Per 2 CFR 200.205, AmeriCorps must evaluate the degree of risk posed by an applicant. Information from the survey will be used to assess an organization's operational and financial management capabilities prior to receiving a federal award and may also be used to support future monitoring activities, should the applicant receive federal funds from AmeriCorps. AmeriCorps seeks to renew the current information collection. The information collection will otherwise be used in the same manner as the existing application. The currently approved information collection expired on May 30, 2021 and AmeriCorps seeks to continue using the currently approved information collection until the revised information collection is approved by OMB.

Dated: June 30, 2021.

Linda Southcott,

Director, Office of Monitoring.

[FR Doc. 2021–14363 Filed 7–6–21; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2021–OS–0059]

Proposed Collection; Comment Request

AGENCY: The Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 7, 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: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Ms. Angela Duncan at the Department of Defense, Washington Headquarters Services, ATTN: Executive Services Directorate, Directives Division, 4800 Mark Center Drive, Suite 03F09–09, Alexandria, VA 22350–3100 or call 571–372–7574.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Service Academy Gender Relations Survey; OMB Control Number 0704–SAGR.

Needs and Uses: The legal requirements for the Service Academy Gender Relations (SAGR) surveys can be found in the following:

- 10 U.S.C. 4361, as amended by John Warner National Defense Authorization Act for Fiscal Year 2007, Sec. 532.
- 10 U.S.C. 481.
- Department of Defense Instruction (DoDI) 6495.02 and 6495.03.

These legal requirements mandate that the SAGR solicit information relating to sexual assault, sexual harassment, and gender discrimination in the MSAs, as well as the climate at the MSAs and social perspectives. MSAs include the U.S. Military Academy (USMA), the U.S. Naval Academy (USNA), and U.S. Air Force Academy (USAFA). The requirements state that the assessment cycle consists of surveys and focus groups during alternate years. They also give the Department authority to conduct such surveys under the guidance of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)). The U.S. Coast Guard Academy (USCGA), the only Federal Military Academy within the Department of Homeland Security (DHS), is not required to participate in the assessments codified by U.S.C. Section 10. However, USCGA officials requested the Coast Guard be included, beginning in 2008, in order to evaluate and improve their programs addressing sexual assault and sexual harassment. Similarly, the U.S. Merchant Marine Academy (USMMA), under the Department of Transportation (DOT), requested their inclusion beginning in 2012. USCGA and USMMA will continue to participate in the assessments. Surveys of USCGA and USMMA are not covered under this DoD licensure and will not be mentioned further. The Office of People Analytics (OPA) administers both web-based and paper-and-pen surveys to support the personnel information needs of the USD(P&R). The SAGR survey expands a series of surveys that began in 2004 with the DoD Inspector General's first survey, subsequently transferred to OPA. OPA conducted the SAGR survey at the MSAs in 2005, 2006, 2008, 2010, 2012,

2014, 2016, and 2018. The 2020 administration of the survey was postponed due to the COVID–19 pandemic. The 2022 survey would be the ninth iteration of the SAGR survey. The first focus group assessment was conducted in 2007, with subsequent focus groups in 2009, 2011, 2013, 2015, 2017, 2019, and 2021. Information from the SAGR surveys will be used by 4 DoD policy offices, the Military Departments, the MSAS, and Congress for program evaluation and, specifically, to assess and improve policies, programs, practices, and training related to gender relations at the MSAs. OPA will provide reports to DoD policy offices, each Military Department, the MSAs, the Joint Chiefs of Staff (JCS), and Congress.

Affected Public: Individuals or households.

Annual Burden Hours: 5,000 hours.

Number of Respondents: 10,000.

Responses per Respondent: 1.

Annual Responses: 10,000.

Average Burden per Response: 30 minutes.

Frequency: Biennially.

The target population of the 2022 SAGR will consist of all students at the Military Service Academies (MSAs): U.S. Military Academy (USMA), U.S. Naval Academy (USNA), and U.S. Air Force Academy (USAFA), including the Preparatory Schools. Excluded are Service Academy Students who are (1) non-citizens and (2) are visiting from another MSA. Students under 18 years of age are also excluded. Working with the MSAs, we estimate the approximate numbers of cadets and midshipmen to be 14,200. The survey will be administered to all cadets/midshipmen (*i.e.,* a census). Based on the 2018 SAGR survey that had a 73% response rate, we estimate a 70% response rate. To achieve sufficient statistical analytical power, we will include a census of the population of interest in the study to achieve sufficient coverage. Each Academy notifies students about the survey with an electronic message explaining the overall survey process and providing them instructions on how to select a session for administration of the survey. OPA staff is on location during the survey week to brief students and administer the survey in person using a paper survey. Sessions are typically scheduled from 0700 through 1500 and follow the Academy's class periods. Attendance is checked when a student arrives for their session (attendance is only for purposes of following up and not for identifying survey responses by individuals). Academy officials follow up with students who do not appear at their designated session and reschedule accordingly. OPA staff provides an overview briefing on the purpose for the survey. Students are advised they may leave at any time after the briefing if they choose not to complete the survey. Data will be weighted, using an industry standard process, to reflect each Academy's population as of the time of the survey. Weighting produces survey estimates of population totals, proportions, and means (as well as other statistics) that are representative of their respective populations. OPA creates variance strata so precision measures can be associated with each estimate. We produce precision measures for reporting categories using 95% confidence intervals with the goal of achieving a precision of 5% or less (*e.g.* 80% (+/−5%) of cadets/midshipmen are satisfied with their training).

Dated: June 29, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–14455 Filed 7–6–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2021–OS–0017]

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 6, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Federal Write-In Absentee Ballot (FWAB); SF 186; OMB Control Number 0704–0502.

Type of Request: Regular.

Number of Respondents: 1,200,000.

Responses per Respondent: 1.

Annual Responses: 1,200,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 300,000 hours.

Needs and Uses: The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 52 U.S.C. 203, requires the Presidential designee (Secretary of Defense) to prescribe an official backup ballot for use by the States to permit absent uniformed services voters and overseas voters to participate in general, special, primary, and runoff elections for Federal office. The collected information will be used by State and local election officials to process uniformed service members, spouses, and overseas citizens who submit their information to register to vote or receive an absentee ballot.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: June 29, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–14431 Filed 7–6–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2021–OS–0058]

Proposed Collection; Comment Request

AGENCY: The Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 7, 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: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Ms. Angela Duncan at the Department of Defense, Washington Headquarters Services, ATTN: Executive Services Directorate, Directives Division, 4800 Mark Center Drive, Suite 03F09–09, Alexandria, VA 22350–3100 or call 571–372–7574.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: National Security Education Program (Service Agreement Report for Scholarship and Fellowship Awards); DD Form 2752, DD Form 2753; OMB Control Number 0704–0368.

Needs and Uses: The David L. Boren National Security Education Act (NSEA), Title VIII of Public Law 102–183, Sec. 802(b), as amended, directs the Secretary of Defense to carry out a program to award undergraduate scholarships and graduate fellowships, as well as grants to U.S. institutions of higher education. Accordingly, the National Security Education Program (NSEP) was established. Both DD Form 2752, ''National Security Education Program (NSEP) Service Agreement for Scholarship and Fellowship Awards'' and the DD Form 2753, ''National Security Education Program (NSEP) Service Agreement Report (SAR) for Scholarship and Fellowship Awards'' are designed to appropriately collect information on the NSEP award recipients. This information will be used by the National Security Education Program Office, or designated administrative agents, as verification that applicable scholarship and fellowship recipients are fulfilling service obligations mandated by the David L. Boren National Security Education Act of 1991, Title VIII of Public Law 102–183, as amended.

Affected Public: Individuals or households.

Annual Burden Hours: 275 hours.

Number of Respondents: 1,650.

Responses per Respondent: 1.

Annual Responses: 1,650.

Average Burden per Response: 10 minutes.

Frequency: Annually.

Dated: June 29, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–14451 Filed 7–6–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2021–OS–0018]

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 6, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Federal Post Card Application (FPCA); SF 76; OMB Control Number 0704–0503.

Type of Request: Regular.

Number of Respondents: 1,200,000.

Responses per Respondent: 1.

Annual Responses: 1,200,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 300,000 hours.

Needs and Uses: The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 52 U.S.C. 203, requires the Presidential designee (Secretary of Defense) to prescribe an official form containing an absentee voter registration and ballot request application for use by the States to permit absent uniformed services voters and overseas voters to participate in general, special, primary and runoff elections for Federal office. The FPCA is completed in hardcopy or via the Federal Voting Assistance Program's (FVAP) online assistant (*fvap.gov*), and then submitted by the voter to an Election Official through mail, email, or fax (depending on State instructions).

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: June 29, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–14432 Filed 7–6–21; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Notice of Public Meeting and Hearing

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice of public meeting and hearing.

SUMMARY: Notice is hereby given that the Defense Nuclear Facilities Safety Board (Board) will hold a Public Meeting and Hearing regarding the status of the Savannah River Site (SRS). The purpose of this Public Meeting and Hearing is to gather information and discuss Department of Energy (DOE) and National Nuclear Security Administration (NNSA) operations in a constrained environment and actions that could impact the safety posture of particular operations at SRS.

DATES: The Public Meeting and Hearing will be held on July 13, 2021, from 9:30 a.m. to 4:30 p.m. A detailed agenda is posted at *www.dnfsb.gov.*

ADDRESSES: This proceeding will be broadcast via a live internet video stream. Individuals interested in viewing the meeting may visit: *https://www.dnfsb.gov/public-hearings-meetings/public-meeting-and-hearing-status-savannah-river-site.* On the day of the meeting, a link to view the video stream will be posted on that page. The page may also be accessed by visiting dnfsb.gov and clicking: Public Meeting and Hearing on the Status of the Savannah River Site.

FOR FURTHER INFORMATION CONTACT: Tara Tadlock, Manager of Board Operations, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901, (202) 694–7176.

SUPPLEMENTARY INFORMATION: On February 28, 2020, the Board published notice of a Public Hearing regarding SRS in the **Federal Register**. With the onset of the COVID–19 Pandemic, the Board subsequently published a notice postponing the hearing on March 16, 2020. On July 13, 2021, the Board will hold a Public Meeting and Hearing regarding SRS. The Public Meeting and Hearing will consist of a Public Meeting to be held at 9:30 a.m. and a Public Hearing to be held at 1:15 p.m.

The goal for the Public Meeting portion is to gather information on how DOE and NNSA are approaching operations in a constrained environment and discuss ongoing challenges and plans for transitioning back to a less-constrained work environment. The areas of focus will include policy and guidance related to personnel-centric areas (*e.g.,* training and qualifications, control room operations, and telework). The Public Meeting will consist of two sessions. In the first session, scheduled for 9:30 a.m., the Board will hear from senior officials representing Environmental Management (EM). In the second session, scheduled for 11:15 a.m., the Board will hear from senior officials representing NNSA.

The goal for the Public Hearing portion is to gather information on DOE and NNSA actions that could impact the safety posture of defense nuclear operations at SRS. The Public Hearing will be comprised of three sessions. In the first session, scheduled for 1:15 p.m., the Board will hear from senior officials representing NNSA regarding the Savanah River Tritium Enterprise (SRTE) safety basis, completed improvements, and ongoing and planned actions to address the high radiological dose consequences to the workers for several accident scenarios. In particular, the Board will focus on the ongoing actions at the SRTE that DOE cited as a basis to not accept Board Recommendation 2019–2, Safety of the Savannah River Tritium Facilities. This session will also include an overview of SRTE safety issues from the Board's Technical Director.

In session 2 of the Public Hearing, scheduled for 2:45 p.m., the Board will hear from senior officials representing NNSA and EM regarding staffing to conduct oversight missions. This will include discussions of shortages in both facility representative positions for existing facilities and engineering positions responsible for reviewing safety bases and performing safety system oversight, and the approach of delegating inherently federal functions to the contractor as a substitute for federal oversight. This will also include discussions of future technical staffing needs as new site missions ramp up (*e.g.,* Savannah River Plutonium Processing Facility operations and Surplus Plutonium Disposition).

In session 3 of the Public Hearing, scheduled for 3:40 p.m., Board Members will hear testimony from interested members of the public. To participate during the public comment session, please send an email to *hearing@dnfsb.gov* with your name, email address, and affiliation, as applicable, before 11:59 p.m. on Sunday, July 11, 2021. The time allocated to each public commentator will be limited to 3 minutes or less. Additional Zoom connection instructions will be provided to registered public commenters prior to the hearing.

Interested members of the public may also submit written comments to *hearing@dnfsb.gov* before the hearing record closes at 5:00 p.m. on Friday, August 13, 2021. All comments received before the hearing record closes will be posted publicly on *www.dnfsb.gov.*

The hearing will be presented live through internet video streaming. A link to the presentation will be available on the Board's website, and a recording will be posted soon after. Additional details, including the detailed agenda for the hearing, are available at *www.dnfsb.gov.* A transcript of these sessions and the associated correspondence will be made available on the Board's website. The Board specifically reserves its right to further schedule and otherwise regulate the course of the hearing, to recess, reconvene, postpone, or adjourn the hearing, conduct further reviews, and otherwise exercise its authority under the Atomic Energy Act of 1954, as amended.

(Authority: 42 U.S.C. 2286b(a))

Dated: July 1, 2021.

Joyce Connery,

Chair.

[FR Doc. 2021–14460 Filed 7–6–21; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2021–OCIO–0026]

Privacy Act of 1974; System of Records

AGENCY: Office of the Chief Information Officer, U.S. Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the U.S. Department of Education (Department) publishes this notice of a new system of records entitled ''Education Enterprise Identity, Credential, and Access Management (ED ICAM) System'' (18–04–05). The ED ICAM System contains identifying information about individual Department employees and contractors.

DATES: Submit your comments on this new system of records notice on or before August 6, 2021. This new system of records will become effective upon publication in the **Federal Register** on July 7, 2021, unless the new system of records notice needs to be changed as a result of public comment. The routine uses listed in the paragraph entitled ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES will become effective on August 6, 2021, unless the new system of records notice needs to be changed as a result of public comment. The Department will publish any significant changes to the system of records or routine uses resulting from public comment.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the ''Help'' tab.
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about this new system of records notice, address them to: Roman Kulbashny, Branch Chief, Security Engineering and Architecture, Information Assurance Services, Office of the Chief Information Officer, U.S. Department of Education, 550 12th Street SW, Washington, DC 20202.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will supply an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Roman Kulbashny, Branch Chief, Security Engineering and Architecture, Information Assurance Services, Office of the Chief Information Officer, U.S. Department of Education, 550 12th Street SW, Washington, DC 20202. Telephone: (202) 245–6848. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), you may call the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The records maintained in this system establish a central and authoritative identity management data repository for the Department's enterprise identities. The system of records is maintained to provide authorized individuals access to, or to interact with, the Department's information technology resources. The system will be utilized to support identity management data activities including, but limited to: (1) The management and governance of digital identity lifecycle activities; (2) the full auditing of all digital identities; and, (3) the management of application and system access.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.*

At this site, you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Jason Gray,

Chief Information Officer.

For the reasons discussed in the preamble, the Office of the Chief Information Officer of the U.S. Department of Education publishes a notice of a new system of records to read as follows:

SYSTEM NAME AND NUMBER:

Education Enterprise Identity, Credential, and Access Management (ED ICAM) System (18–04–05).

SECURITY CLASSIFICATION:

Controlled Unclassified.

SYSTEM LOCATION:

Office of the Chief Information Officer, Information Assurance, U.S. Department of Education, 550 12th Street SW, Washington, DC 20202.

Oracle Corporation, 1501 4th Avenue, Suite #1800/Century Square Building, Seattle, WA 98101 (provides the infrastructure on which the ED ICAM System runs).

IBM SmartCloud for Government, 6300 Diagonal Hwy., B001, 1st Floor, Boulder, CO 80301–3292 (provides the infrastructure on which the ED ICAM System runs).

SYSTEM MANAGER(S):

Branch Chief, Office of the Chief Information Officer, U.S. Department of Education, 550 12th Street SW, Washington, DC 20202.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Information Security Modernization Act of 2014, 44 U.S.C. 3551 *et seq.;* Homeland Security Presidential Directive 12: Policy for a Common Identification Standard for Federal Employees and Contractors (Aug. 2015); Federal Information

Processing Standards (FIPS) 201–2, Personal Identity Verification (PIV) of Federal Employees and Contractors (Aug. 2013); Office of Management and Budget (OMB) Circular A–130, Managing Information as a Strategic Resource (July 2016); OMB Memorandum 10–28, Clarifying Cybersecurity Responsibilities and Activities of the Executive Office of the President and the Department of Homeland Security (July 6, 2010); OMB Memorandum 14–03, Enhancing the Security of Federal Information and Information Systems (Nov. 18, 2013); and OMB Memorandum 19–17, Enabling Mission Delivery through Improved Identity, Credential, and Access Management (May 21, 2019).

PURPOSE(S) OF THE SYSTEM:

The records maintained in this system establish a central and authoritative identity management data repository for the Department's enterprise identities. The system of records is maintained to provide authorized individuals with access to, or to interact with, the Department's information technology resources. The system will be utilized to support identity management data activities including, but not limited to:

(1) The management and governance of digital identity lifecycle activities;

(2) the full auditing of all digital identities; and,

(3) the management of application and system access.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on Department employees and contractors who apply for, and were granted access to, the Department's information technology resources.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains records for employees and contractors related to digital identity, credential, access management, and identity governance including, but not limited to: Name; unique numerical/alphanumerical identification numbers; work address; date of birth (DOB); country of citizenship; credential information; contact information; organizational data; identity investigation and summary adjudication information; verification of training requirements or other prerequisite requirements for access to Department information technology resources; and system access data such as account data, roles, privileges, and entitlements.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from official Department information technology systems and is fed into the system of records from the following source systems: The Department's system of records entitled ''Investigatory Material Compiled for Personnel Security, Suitability, Positive Identification Verification and Access Control for the Department of Education Security Tracking and Reporting System (EDSTAR),'' (18–05–17), which was last published in full in the **Federal Register** at 72 FR 66158 (Nov. 27, 2007); and the General Services Administration's system of records entitled ''HSPD–12 USAccess,'' (GSA/GOVT–7), which was last published in full in the **Federal Register** at 80 FR 64416 (Oct. 23, 2015).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The Department may disclose individually identifiable information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purpose(s) for which the record was collected. The Department may make these disclosures on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act of 1974, as amended (Privacy Act), under a computer matching agreement.

(1) *Congressional Member Disclosure.* The Department may disclose information to a member of Congress and to his or her staff from the records of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested the inquiry.

(2) *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the parties listed in sub-paragraphs (i) through (v) is involved in judicial or administrative litigation or ADR, or has an interest in judicial or administrative litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department or any of its components;

(ii) Any Department employee in his or her official capacity;

(iii) Any Department employee in his or her individual capacity if the U.S. Department of Justice (DOJ) agrees to or has been requested to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the Department has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to DOJ.

(c) *Adjudicative Disclosure.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, to a person or entity designated by the Department or otherwise empowered to resolve or mediate disputes, is relevant and necessary to judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the adjudicative body, person, or entity.

(d) *Disclosure to Parties, Counsel, Representatives, or Witnesses.* If the Department determines that disclosure of certain records is relevant and necessary to judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(3) *Enforcement Disclosure.* If information in this system of records, alone or in connection with other information, indicates a violation or potential violation of any applicable statutory, regulatory, or legally binding requirement, the Department may disclose records to an entity charged with investigating or prosecuting such violation or potential violation.

(4) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with its decision concerning the hiring or retention of an

employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(5) *Employee Grievance, Complaint, or Conduct Disclosure.* If a record is relevant and necessary to an employee grievance, complaint, or disciplinary action involving a present or former employee of the Department, the Department may disclose a record in this system of records in the course of investigation, fact-finding, or adjudication, to any party to the grievance, complaint, or action; to the party's counsel or representative; to a witness; or to a designated fact-finder, mediator, or other person designated to resolve issues or decide the matter.

(6) *Labor Organization Disclosure.* The Department may disclose records from this system of records to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

(7) *Freedom of Information Act (FOIA) or Privacy Act Advice Disclosure.* The Department may disclose records to DOJ or OMB if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under FOIA or the Privacy Act.

(8) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to the employees of the contractor, the Department may disclose the records to those employees. As part of such a contract, the Department shall require the contractor to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(9) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(10) *Disclosure in the Course of Responding to a Breach of Data.* The Department may disclose records from this system to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that there has been a breach of the system of records; (b) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(11) *Disclosure in Assisting another Agency in Responding to a Breach of Data.* The Department may disclose records from this system to another Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(12) *Disclosure in the Course of Responding to a Security Incident.* The Department may disclose records to appropriate governmental agencies, entities, and persons when (a) the Department suspects or has confirmed that there has been a security incident involving the system of records; (b) the Department has determined that as a result of the suspected or confirmed security incident, there is a risk of harm to individuals, the Department (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such governmental agencies, entities, and persons is necessary to assist in connection with the Department's efforts to respond to such suspected or confirmed security incident or to prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored on an encrypted server within a secured and controlled environment. There are no hardcopy records that require additional storage.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by a combination of name and other unique personal identifiers.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with General Records Schedule (GRS) 3.2, Item 030 (DAA–GRS–2013–0006–0003) and Item 031 (DAA–GRS–2013–0006–0004). GRS 3.2, Item 030, requires destruction of records when business use ceases; and, GRS 3.2, Item 031, requires destruction of records 6 years after password is altered or user account is terminated, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

All physical access to the Department site, and the sites of Department contractors where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge. The computer systems employed by the Department offer a high degree of resistance to tampering and circumvention. These security systems limit data access to Department and contract staff on a ''need to know'' basis and control individual users' ability to access and alter records within the system. All users of this system of records are given a unique user ID with personal identifiers. All interactions by individual users with the system are recorded.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record regarding you in this system of records, contact the system manager at the address listed above. You must provide the system manager with the necessary particulars such as your full, legal name, date of birth, work address, country of citizenship, and any other identifying information requested by the Department while processing the request in order to distinguish between individuals with the same name. Requesters must also reasonably specify the record contents sought. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you in this system of records, contact the system manager at

the address listed above. You must provide your full, legal name, and any other identifying information requested by the Department while processing the request in order to distinguish between individuals with the same name. You must also specify the information to be contested. Your request must meet the requirements of the regulations at 34 CFR 5b.7.

NOTIFICATION PROCEDURES:

If you wish to determine whether a record exists regarding you in this system of records, contact the system manager at the address listed above. You must provide necessary particulars such as your full, legal name, date of birth, work address, country of citizenship, and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2021–14409 Filed 7–6–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Case Number 2021–004; EERE–2021–BT–WAV–0009]

Energy Conservation Program: Notification of Petition for Waiver of GE Appliances, a Haier Company From the Department of Energy Miscellaneous Refrigeration Products Test Procedure and Notification of Denial of Interim Waiver

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notification of petition for waiver and denial of an interim waiver; request for comments.

SUMMARY: This notification announces receipt of and publishes a petition for waiver and interim waiver from GE Appliances, a Haier Company, which seeks a waiver for a specified miscellaneous refrigeration product basic model from the U.S. Department of Energy (''DOE'') test procedure used for determining the energy consumption of these products. This notice also announces that DOE is declining to grant the request for an interim waiver from the test procedure for the reasons described in this notification. DOE solicits comments, data, and information concerning the petition and its suggested alternate test procedure so as to inform DOE's final decision on the waiver request.

DATES: Written comments and information are requested and will be accepted on or before August 6, 2021.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Alternatively, interested persons may submit comments, identified by docket number EERE–2021–BT–WAV–0009, by any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email:* To *AS_Waiver_Requests@ee.doe.gov.* Include docket number EERE–2021–BT–WAV–0009 in the subject line of the message.

No telefacsimiles (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing COVID–19 pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the COVID–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

Docket: The docket, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *www.regulations.gov/docket/EERE-2021-BT-WAV-0009.* The docket web page contains instruction on how to access all documents, including public comments, in the docket. See the **SUPPLEMENTARY INFORMATION** section for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: *AS_Waiver_Request@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE is publishing GEA's petition for waiver in its entirety, pursuant to 10 CFR 430.27(b)(1)(iv).[1] DOE invites all interested parties to submit in writing by August 6, 2021, comments and information on all aspects of the petition, including the alternate test procedure. Pursuant to 10 CFR 430.27(d), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is:

Bill A. Brown, GE Appliances, A Haier Company, Appliance Park—AP5–1S–86, Louisville, KY 40225. Email: *b.brown@geappliances.com.*

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. If this instruction is followed, persons

[1] The petition did not identify any of the information contained therein as confidential business information.

viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI''). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

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Include contact information each time you submit comments, data, documents, and other information to DOE. Faxes will not be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

I. Background and Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[2] authorizes the U.S. Department of Energy (''DOE'') to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [3] of EPCA, Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, which, in addition to identifying particular types of consumer products and commercial equipment as covered under the statute, permits the Secretary of Energy to classify additional types of consumer products as covered products. (42 U.S.C. 6292(a)(20)) DOE added miscellaneous refrigeration products (''MREFs'') as covered products through a final determination of coverage published in the **Federal Register** on July 18, 2016 (the ''July 2016 Final Rule''). 81 FR 46768 (July 18, 2016). *Id.*

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that product (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the covered product complies with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect the energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

MREFs are consumer refrigeration products other than refrigerators, refrigerator-freezers, or freezers. These products include coolers and combination cooler refrigeration products. 10 CFR 430.2. A ''cooler'' is a cabinet, used with one or more doors, that has a source of refrigeration capable of operating on single-phase, alternating current and is capable of maintaining compartment temperatures either: (1) No lower than 39 °F (3.9 °C); or (2) in a range that extends no lower than 37 °F (2.8 °C) but at least as high as 60 °F (15.6 °C) as determined according to the applicable DOE test procedure. The test procedure for MREFs is contained in the Code of Federal Regulations (''CFR'') at 10 CFR part 430, appendix A to subpart B of part 430—Uniform Test Method for Measuring the Energy Consumption of Refrigerators, Refrigerator-Freezers, and Miscellaneous Refrigeration Products (''Appendix A'').

Under 10 CFR 430.27, any interested person may submit a petition for waiver from DOE's test procedure requirements. DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model

[2] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

[3] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(f)(2). A petitioner must include in its petition any alternate test procedures known to the petitioner to evaluate the performance of the product type in a manner representative of the energy consumption characteristics of the basic model. 10 CFR 430.27(b)(1)(iii). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(f)(2).

As soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. 10 CFR 430.27(l) As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule to that effect. *Id.*

The waiver process also provides that DOE may grant an interim waiver if it appears likely that the underlying petition for waiver will be granted and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the underlying petition for waiver. 10 CFR 430.27(e)(2). Within one year of issuance of an interim waiver, DOE will either: (i) Publish in the **Federal Register** a determination on the petition for waiver; or (ii) publish in the **Federal Register** a new or amended test procedure that addresses the issues presented in the waiver. 10 CFR 430.27(h)(2).

If DOE ultimately denies the petition for waiver DOE will provide a period of 180 days before the manufacturer is required to use the DOE test procedure to make representations of energy efficiency. 10 CFR 430.27(i). When DOE amends the test procedure to address the issues presented in a waiver, the waiver will automatically terminate on the date on which use of that test procedure is required to demonstrate compliance. 10 CFR 430.27(h)(3).

II. GEA's Petition for Waiver and Interim Waiver

On April 9, 2021, DOE received [4] from GE Appliances, a Haier Company (''GEA'') a petition for waiver and interim waiver from the test procedure for MREFs set forth at appendix A to subpart B of 10 CFR part 430. (GEA, No. 1 at p. 1) [5] Pursuant to 10 CFR 430.27(e)(i), DOE posted the petition on the DOE website at: *www.regulations.gov/document/EERE-2021-BT-WAV-0009–0001*.[6]

The specific basic model for which the petition applies is ''S–IHG–R'', which was provided by GEA in its April 9, 2021 petition and is described by GEA as an ''In-Home Grower''—a product with lighting, temperature, humidity, and nutrient water control which allows the user to grow plants within their home year-round. GEA stated that the average compartment temperatures of the In-Home Grower exceed the 55 °F standardized temperature required for testing under the existing DOE test procedure (see section 3 of Appendix A) and, therefore, the product cannot be tested using the existing test procedure. GEA also noted characteristics of this basic model that GEA stated would prevent the use of certain test setup, stabilization, temperature control, and energy use determination requirements in Appendix A. (GEA, No. 1 at pp. 3–4)

In its April 9, 2021 petition, GEA submitted to DOE an alternate test procedure to determine the energy consumption of its In-Home Grower. (GEA, No. 1 at p. 6) GEA stated that its alternate test procedure would allow for the measurement of the energy use of this product where the requirements of the current DOE test procedure cannot be met. DOE received a follow-up correspondence from GEA on April 26, 2021, which provided a revised alternate test procedure.[7] DOE reviewed the alternate test procedure included in the April 26, 2021 correspondence as the requested alternate test approach when making the initial determinations discussed in this document. GEA also provided additional correspondence on June 2, 2021, in which it clarified certain aspects of the proposed alternate test procedure included in the April 26, 2021 submission.[8]

GEA also requests an interim waiver from the existing DOE test procedure. DOE must review the petition for interim waiver within 45 business days of receipt of the petition. 10 CFR 430.27(e)(1)(ii). If DOE does not notify the applicant of the disposition of the petition for interim waiver, in writing, within 45 business days of receipt of the petition, the interim waiver is granted utilizing the alternate test procedure requested in the petition.[9] *Id.* DOE will grant an interim waiver if it appears likely that the petition for waiver will be granted, and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. 10 CFR 430.27(e)(2).

Based on GEA's description of the In-Home Grower, DOE has determined that the basic model meets the definition of a cooler in 10 CFR 430.2 for the following reasons:

1. The product consists of a cabinet used with one or more glass doors, as specified by GEA;

2. The product maintains compartment temperatures no lower than 39 °F, as determined when tested in a 90 °F ambient temperature, as GEA specified that the compartment temperatures measured 79.90 °F and 79.97 °F under these conditions at the minimum temperature setting.

The definition for cooler at 10 CFR 430.2 does not reference a specific design intent (such as storage of food or beverages) and does not require that the product be capable of maintaining a compartment temperature of 55 °F when tested in a 90 °F ambient temperature.

DOE understands, based upon GEA's petition, that absent an interim waiver, GEA's In-Home Grower cannot be tested and rated for energy consumption according to the MREF test procedure on a basis representative of its true energy consumption characteristics. However, as discussed in section III, DOE has tentatively determined that GEA's proposed alternative test procedure (as revised on April 26, 2021) would not result in a measurement of the energy use of this basic model that is representative of an average use cycle or period of use. Therefore, DOE has determined that GEA's waiver petition is unlikely to be granted as submitted and that it is not desirable for public policy reasons to grant GEA with the immediate relief it seeks. As a result,

[4] A petition submitted under 10 CFR 430.27 is considered ''received'' on the date it is received by DOE through DOE's established email box for receipt of waiver petitions or, if delivered by mail, on the date the waiver petition is stamped as received by the DOE. 10 CFR 430.27(e)(1)(iii).

[5] A notation in this form provides a reference for information that is in the docket for this test procedure waiver (Docket No. EERE–2021–BT–WAV–0009) (available at *www.regulations.gov/docket/EERE-2021-BT-WAV-0009*). This notation indicates that the statement preceding the reference is document number 1 in the docket and appears at page 1 of that document.

[6] The petition did not identify any of the information contained therein as confidential business information.

[7] This document can be found in the docket for this test procedure waiver under Document No. 002.

[8] This document can be found in the docket for this test procedure waiver under Document No. 003.

[9] The June 2, 2021 submission specified the energy use intended to be measured under the alternate test procedure suggested by GEA, thereby providing the information necessary for DOE to evaluate the representativeness of the suggested procedure. DOE considers June 2, 2021 to be the date on which GEA completed its submission to DOE, and DOE calculated the 45-day period as beginning on June 2, 2021.

DOE is declining to grant an GEA an interim waiver for the subject basic model and is seeking additional information on the underlying basis for GEA's suggested alternative test procedure for the purpose of making a final determination on the underlying petition for waiver.

The following two sections discuss specific aspects of GEA's petition for waiver and interim waiver.

A. Requirements Sought To Be Waived

GEA requested to waive the current test procedure, calculations, and accompanying conditions for testing coolers as specified in section 6.2.2 of Appendix A. The primary assertion of the petition is that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed DOE MREF test procedure. GEA states that the In-Home Grower, when tested at its coldest setting in a 90 °F ambient temperature, cannot achieve the 55 °F standardized temperature required for the DOE MREF test procedure (see section 3 of Appendix A). GEA stated that its testing in a 90 °F ambient condition resulted in compartment temperatures of 79.90 °F and 79.97 °F.

The DOE test procedure at Appendix A simulates typical room conditions (72 °F) with door openings, by testing at 90 °F without door openings. 10 CFR 430.23(ff)(7). The test procedure directly measures the energy consumed during steady-state operation and defrosts, if applicable. Additionally, the DOE test procedure incorporates usage adjustment factors to account for differences in these user-related thermal loads for different types of consumer refrigeration products (*i.e.,* MREFs are typically used less frequently than a primary refrigerator-freezer in a household and thus have an adjustment factor of 0.55). See Appendix A, section 5.2.1.1.

GEA states that there is no need to elevate the ambient temperature for the test to account for door openings and loads because the In-Home Grower has a very low number of door openings and, after the initial loading with plants, will typically not have additional loads introduced.

As stated, the existing test procedure for MREFs contains a method for addressing certain types of products for which less frequent door openings occur. Specifically, the test procedure applies an adjustment factor to account for the relatively fewer expected door openings. See Appendix A, section 5.2.1.1. The adjustment factor does not address the potential inability of an MREF to maintain a 55 °F compartment temperature at a 90 °F ambient condition.

GEA seeks to waive the requirement for testing the In-Home Grower at a 90 °F ambient condition. See Appendix A section 2.1.1. GEA instead requests to test the In-Home Grower in a 72 °F ambient condition, which it asserts better represents typical use of the product. GEA further stated that testing at a 72 °F ambient with the product temperature set to 60 °F (the minimum temperature set point) yielded compartment temperatures between 59.15 and 61.41 °F. As the In-home Grower is not capable of maintaining the 55 °F standardized compartment temperature specified in Appendix A, GEA also seeks to waive the requirement in section 6.2.2 of Appendix A that performance be calculated at a standardized compartment temperature of 55 °F. Instead, GEA requests that the model be tested in the 72 °F ambient condition using default settings.

Additionally, GEA seeks to waive the existing DOE test procedure requirement to measure the internal compartment temperatures of the unit under test. See Appendix A, section 5.1. GEA claims that the rotation of the compartments significantly increases the test burden of temperature measurements, as the thermocouple wires would require a customized testing setup to avoid tangling of the wires and movement of the temperature masses. Under GEA's requested approach, compartment temperature measurements would not be necessary because no interpolation would be made to reflect performance at the standardized 55 °F compartment temperature because the In-Home Grower cannot achieve a 55 °F compartment temperature at its lowest temperature setting.

GEA also seeks to waive the stabilization and test period requirements specified in sections 2.9 and 4 of Appendix A, respectively. Specifically, GEA requests an 8-hour stabilization period (the duration of each rotation) and 24-hour test period (the duration of one full rotation) based on the rotation of the internal compartments rather than based on compressor cycling as specified in Appendix A.

B. Requested Alternate Test Procedure

GEA seeks to use an alternate test procedure to test and rate a specific MREF basic model. GEA's requested alternate test procedure addresses the test procedure requirements to be waived as discussed in the previous section of this document. GEA's requested approach also includes additional test instructions regarding isolating refrigeration system energy use and additional setup and settings instructions.

GEA requests that two tests be conducted, one with the model operating as normal and another with the refrigeration system disabled to allow for identifying the cooling system's energy contribution. In its April 26, 2021 submission, GEA stated that the main purpose of the cooling system is to counteract the heat from the lighting and that the proposed revised test procedure would be used to determine the energy consumption of the cooling system only. In the June 2, 2021 correspondence, GEA further asserted that the existing MREF test procedure does not anticipate or account for any product that has a purpose other than chilling the contents below ambient temperature, so there was no need for the existing test procedure to account for products that have significant other functions and that consume energy to provide those functions. GEA claimed that the In-Home Grower is distinctly different from all other MREFs in that its intended purpose (growing plants), its primary function (providing light and appropriate water and humidity), and the purpose for its sealed system (removing heat generated by those process, generally to ambient temperature) are all distinct from all other MREFs (chilling items placed in the cabinet to below ambient temperature). GEA stated that the revised proposed alternate test procedure accounts for these differences while honoring the intent of the existing test procedure (as it applies to all other MREFs) to measure the energy used by the refrigeration system.

GEA further claimed that the exclusion of energy other than that used by the refrigeration system is consistent with section 2.2 of the Appendix A (which incorporates by reference portions of AHAM HRF–1–2008). GEA stated that under this provision, product features not required for normal operation of the refrigeration system are to be set to their lowest energy setting during testing, and that this is what allows, for instance, refrigerators with large-format touchscreen computers integrated into the product to be tested with those computers (and their large screens) turned off. GEA asserted that similar logic applies to testing only the refrigeration portion of the In-Home Grower.

Because the In-Home Grower supplies water and nutrients to plants during

normal operation, GEA's suggested alternate test procedure also provides instructions for filling nutrient tanks with water prior to the start of the test. As requested, water at the proposed ambient temperature would be supplied to the nutrient tanks.

The proposed alternate test approach also provides instructions for product settings, as the suggested test procedure would not be based on the product maintaining compartment temperature to the 55 °F standardized compartment temperature specified in Appendix A. Specifically, GEA requests that the In-Home Grower be controlled via use of an application on a connected device and that the product be operated using default settings.

In summary, GEA's suggested alternate test procedure provides a method for measuring the test cycle energy of the vapor compression system only, as follows; [10]

(1) two tests, one with the basic model operating as normal and one with the basic model operating with the refrigeration system disabled, and a calculation of daily energy consumption of the vapor compression refrigeration system based on the difference between these two tests;

(2) directions for filling the nutrient water tanks with water at ambient temperature;

(3) a specific stabilization period of 8 hours (in place of the requirements of section 2.9 of Appendix A);

(4) a specific test period of 24 hours (in place of the test period described in section 4.1 of Appendix A);

(5) an alternative ambient test condition of 72 °F (in place of the requirement in section 2.1.1 of Appendix A);

(6) that no compartment temperature measurements be taken during the test (in place of the requirements in section 5.1 of Appendix A); and

(7) that the product be controlled using an application from a connected device and operated using default settings. (GEA, No. 2 at p. 6)

III. Denial of Interim Waiver and Request for Comments

DOE has reviewed GEA's petition for an interim waiver and the alternate test procedure requested by GEA. Based on this review, DOE is denying GEA's April 26, 2021 petition for an interim waiver, which incorporates elements from GEA's April 9, 2021 submission. In its April 9, 2021 submission, GEA stated that its petition for waiver is likely to be granted, as the suggested alternate test procedure accurately measures the energy consumed by the subject basic model based on its design and intended use, which GEA stated is consistent with the goals of the DOE appliance standards program and the test procedure requirements this application seeks to waive.

DOE has tentatively determined that the requested alternate test procedure would not result in measured energy use of the basic model that is representative of actual energy used during representative average use. Specifically, DOE has determined that the requested test approach to isolate the refrigeration system energy consumption does not provide a representative measurement of energy use for this basic model during an average use cycle or period of use. Therefore, DOE is denying GEA's petition for an interim waiver.

As discussed, GEA stated that the In-Home Grower's primary function is to provide light and appropriate water and humidity for plant growing, and that the purpose of its sealed system is to remove heat generated by those process. (GEA, No. 3 at p. 1) However, the requested alternate test procedure would determine the energy consumption of only the cooling function of the product without accounting for the energy consumption of the primary function of the product. During average use, the energy consumed by the subject basic model would include the refrigeration system energy use plus the energy consumed by any other components active during normal operation (*e.g.,* lighting, fans, controls, *etc.*).

In contrast to GEA's assertion, DOE's test procedure is not intended to measure only the cooling function of consumer refrigeration products. The test procedure measures the electrical energy consumption of the overall product, including any components not included in the refrigeration system. For example, DOE stated in an April 21, 2014 final rule that the DOE test procedures for refrigeration products measure the energy use of these products during extended time periods that include periods when the compressor and other key components are cycled off and that the energy use of these products during the compressor off cycle is included in the measurements. 79 FR 22320, 22345 (April 21, 2014).

As stated by GEA, Appendix A, by referencing AHAM HRF–1–2008 section 5.5.2(g), provides instructions for test settings. GEA stated that its proposed test approach to exclude energy other than that used by the refrigeration system is consistent with the AHAM HRF–1–2008 requirements. However, section 5.5.2(g) of AHAM HRF–1–2008 specifies that customer accessible features not required for normal operation, which are electrically-powered, manually-initiated, and manually-terminated, shall be set at their lowest energy usage positions when adjustment is provided. This provision does not isolate refrigeration system energy use, but rather limits (or excludes) energy consumption of customer accessible features not required for normal operation of the refrigeration product. What is considered ''normal operation'' is not defined in HRF–1–2008 or in Appendix A. In the case of the GEA In-Home Grower, GEA stated that the model's intended purpose is growing plants, its primary function is providing light and appropriate water and humidity, and the purpose for its sealed system is to remove heat generated by those process, generally to ambient temperature. (GEA, No. 3 at p. 1) Therefore, DOE has tentatively determined that ''normal operation'' for this basic model includes functions beyond operation of the refrigeration system, and that testing should account for the energy consumed by such functions.

Because GEA's proposed alternate test procedure would not account for lighting energy use (a primary function of the basic model), or the energy use of other components required for normal operation (*e.g.,* the motor rotating the internal tower and product controls), DOE has tentatively determined that the requested alternate test procedure would not provide a representative measure of energy use of the In-Home Grower during an average use cycle or period of use. Therefore, DOE is denying GEA's petition for an interim waiver.

While DOE declines to approve the use of GEA's suggested alternate test procedure in an interim waiver at this time, DOE may consider including this alternate procedure, or a modified version of this alternate procedure, in a subsequent Decision and Order. DOE solicits comments from interested parties on all aspects of the petition, including the suggested alternate test procedure and calculation methodology.

Signing Authority

This document of the Department of Energy was signed on June 29, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting Assistant Secretary for Energy Efficiency

[10] The summary of the proposed alternate test procedure printed in this section is consistent with that included in GEA's April 26, 2021 message to DOE. The original proposed alternate test procedure is appended to this notice, along with GEA's original April 9, 2021 petition.

and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on June 30, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

Appendix 1—Petition for Waiver & Application for Interim Waiver Regarding Test Procedure for Measuring the Energy Consumption of Refrigerators, Refrigerator-Freezers, and Miscellaneous Refrigeration Products

GE Appliances, a Haier company (GEA) respectfully submits this Petition for Waiver and Application for Interim Waiver from the Department of Energy (DOE) test procedure for Miscellaneous Refrigeration Products in 10 CFR 430 Subpart B, Appendix A. GEA's request is for a new product that allows users to grow plants within their home the entire year. The product is designed to be used in am [*sic*] indoor, temperature-controlled environment with room temperatures from 60 °F to 80 °F. The appliance provides the lighting, temperature and humidity control, and nutrient water to grow an array of plants. The average compartment temperatures of the appliance exceed the 55 °F standardized temperature for the existing DOE miscellaneous refrigeration products test procedures. The product, therefore, cannot be tested using the existing test procedure.

1. About GE Appliances

GEA is a leading US manufacturer of home appliances. GEA offers a full suite of major appliances across seven brands as well as portable appliances. GEA has been a participant in and contributor to the DOE's home appliance energy conservation program since its founding more than 40 years ago. Indeed, GEA supports the goal of the appliance efficiency program: Maximizing energy savings improvements that offer consumers real economic benefits and that do not diminish product performance. GEA devotes substantial resources to the development of new technologies to increase energy efficiency where they are feasible and engineering products to meet the demanding DOE energy efficiency requirements. GEA manufactures a substantial portion of its refrigerator products at its manufacturing facilities in Louisville, KY, Decatur, AL, and Selmer, TN. The products covered by this waiver request will be manufactured in the United States.

2. Basic Models for Which a Waiver Is Requested

This Petition for Waiver and Application for Interim Waiver covers the ''In-Home Grower''. There is no existing Product Class for this type of appliance. The Basic Model is S–IHG–R. The basic model will be distributed in commerce under the brand name ''Profile''.

The In-Home Grower allows the user to grow plants within their home year-round. The appliance provides the lighting, temperature and humidity control and nutrient water needed to grow an array of plants. The product is designed to be in a controlled environment with room temperature from 60 to 80 °F.

The appliance has a circular grow tower that is in the center of the product. The tower is divided into three equal-sized vertical sections, each comprising ⅓rd of a circular cross section (see Figure 1 below).[11]

On each of the three sides of the tower are gardens. In addition to the three sections of the tower, there are three chambers within the product cabinet. The dividers of the three chambers meet up with the walls of the three cabinet sections to create three distinct and individually controlled compartments within the product. There are seals on the center tower walls to ensure that the environment in each chamber remains separate. This tower rotates every eight hours. Each time the tower rotates, a section of the tower enters a new chamber.

The front chamber is called the display chamber. This is the side of the garden the customer will see through the front glass doors. In the display chamber, there is no grow lighting, temperature controls, or humidity controls.

The back right and back left chambers are individually controlled for grow lighting, temperature, and humidity.

3. Design Characteristic Constituting Grounds for the Petition

a. The appliance, at its coldest setting in a 90 °F ambient, cannot achieve the 55 °F reference temperature necessary for the DOE MREF test procedure. The procedure therefore cannot be used for this appliance.

b. There is no need to test at an elevated ambient to account for door openings and loading as is the case with the current DOE miscellaneous refrigeration products test procedures. This is true for the following reasons.

i. The basic model listed operates at an ambient between 60 °F and 80 °F.

ii. Once loaded with plants, there are a minimal amount of door openings as the product is intended to grow the plants until they are grown and ready for use.

iii. Since the internal temperatures are closer to the ambient temperature, any door openings that did occur would only result in minimal heat addition to the interior.

iv. The chambers that have the temperature and humidity control are not accessible by the door and are sealed to prevent any air exchange with the front display chamber.

v. The appliance has rotating compartments which make taking internal temperature measurements burdensome if not impossible. Thermocouple wires for refrigeration tests run from inside the unit under test to a panel box affixed to a wall. The internal compartments of the In-Home Grower rotate during operation. Unique fixtures and test setup would be required in order to avoid tangling of the wires, movement of the thermocouple, or pulling the wires out of the panel box.

c. At the product's coldest setting in a 90 °F ambient, the internal compartment temperature does not reach the reference temperature of 55 °F for a miscellaneous refrigeration product. Per Table 1 in 10 CFR 430 Subpart B, Appendix A, 3.2.1.3, ''No Energy Use Rating can be established under the existing test procedure''. Therefore, interpolation to 55 °F is not possible, and the existing DOE interpolation method cannot be used to establish a test result.

4. Requirements Sought To Be Waived

GEA seeks to replace the current test procedure in Appendix A for Coolers, 6.2.2, with the accompanying test conditions specified in Exhibit A, below, for the In-Home Grower appliance.

Instead of a 90 °F ambient, GEA has specified a 70 °F ambient for the testing. This is representative of customer usage as the product is designed to be placed in an indoor, conditioned space with an ambient between 60 and 80 °F. Also, as stated above, there is no need to elevate the ambient for the test to account for door openings and loads as the appliance has a very low number of door openings and, after the initial loading with plants, will typically not have additional loads introduced.

The proposed test procedure does not have temperature measurements. Based on internal testing in a 90 F environment, the internal temperatures of the two controlled compartment [*sic*], at its coldest setting were 79.90 °F and 79.97 °F, well above the 55 °F reference temperature of the DOE MREF test procedure. Also, the rotation of the compartments significantly increases the test burden of temperature measurements as the thermocouple wires would have to have a setup to avoid tangling of the wires and movement of the temperature masses.

This appliance has no defrosting capabilities and can be tested similarly to a non-automatic defrost. In order to capture a complete cycling of the growing chambers, GEA is proposing a test that has an 8-hour stabilization period followed by a 24-hour test period. The growing chambers rotate 120° every 8 hours. This comprises one rotation for stability and three rotations for the test period.

5. Manufacturers of All Other Basic Models With Similar Design Characteristics

To GEA's knowledge, there are no products of this type in the marketplace.

[11] Product images provided with petition may be found at Docket No. EERE–2021–BT–WAV–0009 at *www.regulations.gov/docket/EERE-2021-BT-WAV-0009.*

6. The Application for Interim Waiver Should Be Granted

a. The Petition for Waiver Will Likely be Successful

This Petition for Waiver is likely to be granted as the proposed alternative test procedure accurately measures the energy consumed by this novel product based on its design and intended use, all of which is consistent with the goals of the DOE appliance standards program and the test procedure requirements this application seeks to waive.

b. Failure To Provide an Interim Waiver Will Cause Economic Hardship and Competitive Disadvantage

If DOE does not promptly grant an interim waiver, GEA will likely be unable to test and certify this model within a commercially reasonable time. Such delay will prevent GEA from offering the product in a manner most likely to lead to its commercial success and will prevent or delay GEA from expanding its US manufacturing workforce.

7. Notice to Other Manufacturers

Pursuant to 10 CFR 430.27(c), upon publication of a grant of interim waiver, GEA will notify in writing all known manufacturers of domestically marketed basic models of the same product class (as specified in 10 CFR 430.32) and of other product classes known to the petitioner to use the technology or have the characteristic at issue in the waiver. The notice will include a statement that DOE has published the interim waiver and petition for waiver in the **Federal Register** and the date the petition for waiver was published. The notice will also include a statement that DOE will receive and consider timely written comments on the petition for waiver. Within five working days of publication of the grant of interim waiver, GEA will file with DOE a statement certifying the names and addresses of each person to whom a notice of the petition for waiver was sent.

8. Conclusion

GEA respectfully requests that DOE grant this Petition for Waiver and Application for Interim Waiver from the current test procedure for the specified basic models.

Very truly yours,

Signed by: /s/Bill A. Brown, P.E.

[Date: April 8, 2021]

Attachments:
Exhibit A—Alternate Test Procedure

Exhibit A: Alternate Test Procedure for In-Home Grower Miscellaneous Refrigeration Product

Energy Consumption is Determined by the Formula: E = EP * 1440/T where:

- E is the test cycle energy (kWh/day)
- 1440 = number of minutes in a day
- EP is the energy expended during three full rotations of the growing chambers (kWh)
- T is the length of time for EP (minutes)

Water in Tanks: Fill nutrient tanks with water (70.0 ± 5.0 °F) prior to start of the stabilization period.

Stabilization: The test shall start after a minimum 8 hours stabilization run for each temperature control setting. This constitutes one rotation of the growing chambers.

Ambient Temperature: Measure and record the ambient temperature at points located 3 feet (91.5 cm) above the floor and 10 inches (25.4 cm) from the center of the two sides of the unit under test. The ambient temperature shall be 70.0 ± 1 °F (21.1 ± 0.6 °C) during the stabilization period and the test period.

Temperature Measurements: No compartment temperature measurements are taken during the test.

Test Procedure: Run the test using the SmartHQ App

1. Download the SmartHQ app on a connected device
2. Select ''Connect Appliance'' and then ''In Home Grower''
3. Follow the procedures per the SmartHQ app to set up the appliance.
4. Fill the nutrient tanks with 70.0 ± 5.0 °F water.
5. Select ''Let's Start Planting'' from the main screen.
6. Select Garden 1 from the ''Select Garden'' screen

a. Select the ''Default'' growing region.
b. Select ''Next'' at the bottom of the screen

7. At the screen titled ''What do you want to plant in Garden x?'', select ''Choose Later''
8. Repeat this process for Garden 2 and Garden 3.
9. Select ''Start the Growing Cycle''
10. The first rotation (8 hours) is the stabilization period.
11. The next three rotations (24 hours) is the period where EP and T data are taken.

Appendix 2—April 26, 2021: Response to DOE Questions for GEA Petition for Waiver

GE Appliances, a Haier company (GEA) respectfully submits the below answers to the DOE's questions contined [*sic*] in your email of April 16, 2021. Additionally, GEA has modified the proposed test procedure to address the comments and questions raised by DOE and to account for only the sealed system energy use, which is consistent with the provisions of 10 CFR 430.23 (ff) and 10 CFR 430 Subpart B, Appendix A. The revised procedure is found in Exhibit A of this document, which is submitted as a substitution for Exhibit A in the initial submission.

1. Model Description

a. What is the cooling system employed (*i.e.,* vapor compression, thermoelectric, evaporative, or something else)?

GEA Response: Vapor compression.

b. Is there a way the rotation function can be disabled via user-accessible settings/controls?

GEA Response: No.

c. Does the unit connect using peer-to-peer wireless technology (*e.g.,* WiFi Direct or Bluetooth) or does it require a LAN?

GEA Response: WiFi. The product connects to a router in the user's home.

2. Test Method

a. Is the 70 °F ambient condition most representative of actual use? DOE's cooler test procedure is intended to simulate typical room conditions (72 °F (22.2 °C)) with door openings, by testing at 90 °F (32.2 °C) without door openings. 430.23(ff)(7). Recommend a 72 °F test condition for consistency with the intent of DOE's test procedure.

GEA Response: Testing at a 72 °F ambient is acceptable. A revised test procedure making this change is included in Exhibit A.

b. Can the model maintain 55 °F compartment temperature when operated in a 72 °F ambient condition?

GEA Response: No. There are temperature sensors in the two compartments that maintain the user-selected set points. The product allows the user to select between 60 °F and 80 °F for the compartment temperatures. Temperatures below 60 °F are not conducive for growing plants. GEA's testing at a 72 °F ambient with the product temperature set to 60 °F yielded compartment temperatures between 59.15 and 61.41 °F.

c. If the rotation is disabled, can thermocouples be placed inside the refrigerated space while it operates, and would the refrigerated compartments achieve temperatures lower than during operation with the rotation active?

GEA Response: Disabling rotation is not an intended operation of the unit and is not an available option to the user. Disabling rotation of the unit is not capable of being implemented by a test lab without physical modification of the unit. Temperatures in the compartments will stabilize at the user-selected set point regardless whether the chambers are rotating, but the unit will use less energy than it would if the units are rotating as the front chamber is not conditioned.

Can thermocouples be placed in the corners of the refrigerated compartments and avoid any rotating components?

GEA Response: Thermocouples cannot be placed in the corners of the temperature-controlled compartments and avoid rotating components. The back corners are not in the controlled space. They are used for wire and tubing routing and circuit board placements. See the top view picture below. The grow tower comes very close to the circular liners, similar to the operation of a revolving door. There is not enough of a gap to allow TCs to be placed and not cause an interference.

[Product Image Included]

d. Is the SmartHQ app the only method of controlling the unit? Are there any digital controls on the unit itself?

GEA Response: There are limited controls on the unit (see attached picture). The In-Home Grower will not function without being connected to Wifi.

[Control Panel Image Included]

- The ''Rotate'' buttons on the User Interface (UI) allow the user to rotate the tower 120 degrees either clockwise or counterclockwise.
- ''Control Lock'' prevents the buttons on the UI from being used.
- ''WiFi Connect'' is used for connecting the unit to the user's wireless network.

Are control settings available (either on the unit or through the SmartHQ app) to adjust operating temperature, lighting, and humidity?

GEA Response: There are two modes the user can operate the unit:

Mode 1: The user can select a growing region (based on the types of seeds they want to plant). In this mode, lighting, temperature, and humidity settings are controlled by the product. The user cannot modify any settings. They can only change the growing region.

Mode 2: The user can select ''Advanced Mode''. In this mode, the user has full control over the all settings within limited ranges set by the product (*e.g.,* temperature can only be selected within the 60 °F to 80 °F range). The user can choose to turn lighting completely off. In both modes, the settings can be specified for each of the three gardens (each garden can have its own settings).

e. Does the lighting contribute to a significant thermal load for the cooling system to counteract?

GEA Response: Yes. The main purpose of the cooling system is to counteract the heat from the lighting.

Do any additional control settings needed to be specified for testing (*e.g.,* lighting, humidity controls)?

GEA Response. The proposed, revised test procedure is used to determine the energy consumption of the cooling portion of the product. There are two portions to the test: One with lighting and cooling active, and the second with the lighting active and cooling disabled. This allows for a direct measurement of the cooling system's energy contribution.

f. Is the intent for the test be conducted using a single test at the lowest control temperature setting? Exhibit A refers to ''each temperature control setting'' in the stabilization section.

GEA Response: The proposed test procedure has been modified to state that the test is only at one control setting, the default setting of the product. The original language was extraneous as the test is run using only one control setting.

If conducting multiple temperature setting tests, how would the interpolation to 55F occur with no compartment temperature measurements?

GEA Response. The energy result from the test will be derived from two tests at the default setting, as described previously. Interpolation to 55 °F is not possible with this product as it does not achieve temperatures below 55 °F at its coldest setting.

Very truly yours,

Signed by: /s/Bill A. Brown, P.E.

[Date: April 26, 2021]

Technical Director
GE Appliances, a Haier company

Attachments: Exhibit A—Revised Alternate Test Procedure

Exhibit A (Revised 4/26/2021)

Alternate Test Procedure for In-Home Grower Miscellaneous Refrigeration Product

Energy Consumption is Determined by the Formula: E = E1—E2.

- E is the test cycle energy of the vapor compression system (kWh/day)
- E1 is the test cycle energy of the appliance with the lights and vapor compression system active (kWh/day)
  - E1 = (1440 * EP1)/T1
  - 1440 = number of minutes in a day
  - EP1 is the energy expended during three full rotations of the growing chambers (kWh) with the lights and vapor compression system active.
  - T1 is the length of time for the EP1 measurement (minutes)
- E2 is the test cycle energy of the appliance with the lights active and vapor compression system inactive (kWh/day)
  - E2 = (1440 * EP2)/T2
  - 1440 = number of minutes in a day
  - EP2 is the energy expended during three full rotations of the growing chambers (kWh) with the lights active and the vapor compression system inactive.
  - T2 is the length of time for the EP2 measurement (minutes)

Water in Tanks: Fill nutrient tanks with water (72.0 ± 5.0 °F) prior to start of the stabilization period.

Stabilization: The test shall start after a minimum 8 hours stabilization run for the default setting of the appliance. This constitutes one rotation of the growing chambers.

Ambient Temperature: Measure and record the ambient temperature at points located 3 feet (91.5 cm) above the floor and 10 inches (25.4 cm) from the center of the two sides of the unit under test. The ambient temperature shall be 72.0 ± 1 °F (22.2 ± 0.6 °C) during the stabilization period and the test period.

Temperature Measurements: No compartment temperature measurements are taken during the test.

Test Procedure: Run the test using the SmartHQ App

1. Download the SmartHQ app on a connected device
2. Select ''Connect Appliance'' and then ''In Home Grower''
3. Follow the procedures per the SmartHQ app to set up the appliance.
4. Fill the nutrient tanks with 72.0 ± 5.0 °F (22.2. ± 2.8 °C) water.
5. Select ''Let's Start Planting'' from the main screen.
6. Select Garden 1 from the ''Select Garden'' screen
   a. Select the ''Default'' growing region.
   b. Select ''Next'' at the bottom of the screen
7. At the screen titled ''What do you want to plant in Garden x?'', select ''Choose Later''
8. Repeat this process for Garden 2 and Garden 3.
9. Select ''Start the Growing Cycle''
10. The first rotation (8 hours) is the stabilization period.
11. The next three rotations (24 hours) is the period where EP1 and T1 data are taken.
12. Disconnect the compressor harness. Instructions to be provided when product is tested by a third-party.
13. The first rotation (8 hours) is the stabilization period
14. The next three rotations (24 hours) is the period where EP2 and T2 data are taken.

[FR Doc. 2021–14349 Filed 7–6–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement for Energy Conservation Standards for Manufactured Housing

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice of intent to prepare an environmental impact statement, to request public comments on its scope, and to conduct public scoping meetings.

SUMMARY: The U.S. Department of Energy (DOE) is required, as set forth in the Energy Independence and Security Act of 2007 (EISA), to establish energy conservation standards for manufactured housing. EISA further directs DOE to base its energy conservation standards on the most recent version of the International Energy Conservation Code (IECC), and any supplements to that document, except where DOE finds that the IECC is not cost effective or where a more stringent standard would be more cost effective. DOE's Office of Energy Efficiency and Renewable Energy (EERE) is currently planning to finalize a Supplemental Notice of Proposed Rulemaking (SNOPR) (on or before August 16, 2021) for publication in the **Federal Register** that will propose energy conservation standards for manufactured housing based on the 2021 IECC. In accordance with the National Environmental Policy Act of 1969 (NEPA), DOE NEPA Implementing Procedures and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, DOE will prepare an environmental impact statement (DOE/EIS–0550) to evaluate the potential impacts to the human environment associated with the proposed energy conservation standards for manufactured housing.

DATES: The public scoping period for the EIS starts with the publication of this notice and ends on August 6, 2021. DOE will hold virtual informational/public scoping meetings on Wednesday, July 21, 2021 at 5:00 p.m.–7:00 p.m. Eastern Time and Thursday July 22, 2021 at 2:00 p.m.–4:00 p.m. Eastern Time. Details on how to participate in the virtual public meetings will be posted on the EIS web page at: *https://ecs-mh.evs.anl.gov*. In defining the scope of the EIS, DOE will consider all scoping comments received or postmarked by August 6, 2021.

ADDRESSES: Oral comments may be provided at the public scoping meetings. Written comments may be submitted online at: *https://ecs-mh.evs.anl.gov* or by mail at: Roak Parker, NEPA Document Manager, U.S. Department of Energy—Golden Field Office, 15013 Denver West Parkway, Golden, CO 80401.

FOR FURTHER INFORMATION CONTACT: For additional information on the scoping meetings and/or the EIS process, or to request to be added to an email list to receive updates on the EIS, contact Roak Parker via email at: *DOE_EIS_MANUFACTURED_HOUSING@ee.doe.gov* or via mail at: NEPA Document Manager, U.S. Department of Energy—Golden Field Office, 15013 Denver West Parkway, Golden, CO 80401. For general information on DOE's NEPA review process, contact Brian Costner, Director, Office of NEPA Policy and Compliance, GC–54, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0119, email *AskNEPA@hq.doe.gov,* telephone (202) 586–4600 or (800) 472–2756. This NOI, the draft EIS, and other documents, as they are available, will be posted at: *https://ecs-mh.evs.anl.gov*.

SUPPLEMENTARY INFORMATION: On February 22, 2010, DOE published an advanced notice of proposed rulemaking (ANOPR) and request for comment. *See* Energy Standards for Manufactured Housing, 75 FR 7556. DOE determined that the proposed rule would benefit from a negotiated rulemaking. On June 13, 2014, DOE published a notice of intent to establish a negotiated rulemaking Manufactured Housing working group, which consisted of representatives of interested stakeholders. *See* 79 FR 33873. The working group met a total of 12 days over a three-month period. *See* Energy Conservation Program: Energy Efficiency Standards for Manufactured Housing 80 FR 7550 (February 11, 2015). DOE also sought public comment and held numerous meetings with the U.S. Department of Housing and Urban Development (HUD), which sets construction and safety standards for manufactured homes, including the current energy efficiency requirements for manufactured homes (the ''HUD Code,'' 24 CFR part 3820). *See* 80 FR 7551–7553 (February 11, 2015), and 81 FR 39756 (June 17, 2016).

In June 2016, DOE issued a technical support document (*See* Document ID EERE–2009–BT–BC–0021–0136 [1]) and published a Notice of Proposed Rulemaking (NOPR) in the **Federal Register** that proposed to establish energy conservation standards for manufactured housing based on the negotiated consensus recommendations of the manufactured housing working group. 81 FR 39756 (June 17, 2016). In addition, DOE prepared a draft environmental assessment (EA) pursuant to NEPA to evaluate the potential environmental impacts of the proposed standards and requested information to help analyze potential impacts on indoor air quality (IAQ), notably from sealing manufactured homes more tightly. *See* Draft Environmental Assessment for Notice of Proposed Rulemaking, ''Energy Conservation Standards for Manufactured Housing'' With Request for Information on Impacts to Indoor Air Quality, 81 FR 42576 (June 30, 2016) (DOE/EA–2021). DOE received input on both the proposed rule and the draft EA. To help further inform certain aspects of the standards being developed and their underlying framework, DOE published a Notice of Data Availability (NODA) on August 3, 2018. *See* 83 FR 38073. In the NODA, DOE stated it was examining a number of factors and possible alternatives on which it sought further input from the public.

DOE has considered the information received, together with the recent issuance of the 2021 IECC, and intends to propose new energy conservation standards for manufactured housing that are based on the 2021 IECC, consistent with the considerations prescribed by EISA. DOE has determined that an EIS is the appropriate level of NEPA review to evaluate the potential environmental impacts associated with establishing energy conservation standards for manufactured housing based on the 2021 IECC (the proposed action). DOE/EA–2021 has been cancelled; however, information in the draft EA and comments received on the draft EA will be incorporated into the EIS, as appropriate.

Purpose and Need for Agency Action

DOE's purpose and need for agency action is to establish energy conservation standards for manufactured housing, in accordance with EISA Section 413. DOE's dual purpose is to satisfy these obligations and to help achieve the national goals of (a) saving energy, (b) reducing energy costs for manufactured homeowners, and (c) reducing outdoor pollutants and greenhouse gases.

Proposed Action

DOE's proposed action is to establish energy conservation standards for manufactured homes based on the 2021 IECC, consistent with the cost-effectiveness considerations identified in the EISA. In accordance with the EISA, which explicitly allows DOE to consider the differences in design and factory construction techniques of manufactured homes, as compared to site-built and modular homes, the energy conservation standards under consideration by DOE are based on certain specifications included in the 2021 IECC while also accounting for the unique aspects of manufactured housing. Because the IECC has not been specifically applied to manufactured homes, DOE's supplemental proposal will include modifications to those related IECC provisions that can be adapted for use in these homes. DOE is proposing energy efficiency standards for manufactured housing that relate to the building thermal envelope; air sealing; installation of insulation; duct sealing; heating, ventilation and air conditioning (HVAC); service hot water systems; mechanical ventilation fan efficacy; and heating and cooling equipment sizing.

Action Alternative

DOE is also considering an action alternative that uses a tiered approach to address affordability and cost-effectiveness concerns with respect to energy cost savings and the cost of efficiency improvements relative to the retail price of manufactured housing. In the action alternative, DOE is considering that for manufactured homes priced below a certain (to be determined) retail price, the stringency of certain building thermal envelope requirements would be based on incremental costs that provide a beneficial financial outcome with respect to life-cycle cost savings, while minimizing upfront cost impacts. Two sets of energy conservation standards would be established under the action alternative: Tier 1 standards would apply to manufactured homes priced at or below a retail price threshold and provide more limited improvements in efficiency up to a maximum incremental price increase; and Tier 2 standards would apply to homes above the retail price threshold. The Tier 2 standards would be the same as those considered under the proposed action. DOE has not yet determined the Tier 1 retail price threshold or the maximum incremental price increase. DOE is considering a retail price threshold from $50,000 to $100,000 and a maximum incremental price increase of $500 to $1,000. DOE will publish the Tier 1 threshold and maximum incremental price increase in the SNOPR. The draft EIS will analyze

[1] Available at: *https://www.regulations.gov/document?D=EERE-2009-BT-BC-0021-0136.*

potential environmental impacts of the tiered approach as defined in the SNOPR as the action alternative.

The energy conservation standards proposed under either the proposed action or the action alternative would be based on the current climate zones in the HUD Code (24 CFR 3820.506) and would apply to homes manufactured on or after one year following the publication of a final rule for DOE's energy conservation standards for manufactured housing in the **Federal Register**.

No Action Alternative

NEPA requires consideration of a no action alternative. The no action alternative serves as the baseline to compare the potential environmental impacts of the proposed action and alternatives. As part of the EIS process, DOE will consider a no action alternative where DOE would not establish energy conservation standards for manufactured housing, and energy conservation requirements would remain at the levels established in the existing HUD Code.

Preliminary Identification of Environmental Issues

DOE's analysis and discussion in the EIS will focus on potentially significant environmental impacts. DOE's 2016 Draft EA (Draft Environmental Assessment for Notice of Proposed Rulemaking, ''Energy Conservation Standards for Manufactured Housing'' With Request for Information on Impacts to Indoor Air Quality, DOE/EA–2021) analyzed potential impacts related to indoor air, outdoor air, socioeconomics and environmental justice, and climate change. Other resource areas (such as sensitive ecosystems, geology and soils, and wetlands and floodplains) were considered and dismissed from detailed analysis because impacts of the proposed energy conservation standards would not be expected to have any measurable effects. Considering the analyses developed to support the draft EA, DOE anticipates that establishing energy conservation standards for manufactured housing would have potential impacts (beneficial, adverse, or both) in the same resource areas analyzed in the draft EA.

Accordingly, in the EIS, DOE anticipates evaluating potential impacts related to: (1) Indoor air quality and human health; (2) outdoor emissions of air pollutants and greenhouse gases; (3) energy consumption; (4) socioeconomics; (5) environmental justice; and (6) climate change. This list is not intended to be all-inclusive or to imply a predetermination of potential impacts. DOE invites interested stakeholders to suggest specific issues, including possible mitigation measures, within these general categories or others, to be considered in the EIS.

Public Participation

The purpose of the EIS scoping process is to gather input on the issues, concerns, possible alternatives, and potential significant impacts to the quality of the human environment that DOE should consider in the EIS. Persons and organizations affected by or interested in the proposed action are invited to participate in the scoping process to help define the important resources and issues to be analyzed in depth, and to eliminate other issues from detailed study in the EIS. Participants are anticipated to include, and are not limited to, agencies (Federal, State, county, and local), Native American tribes, public interest groups, nongovernmental organizations, businesses, trade associations, and individual members of the public.

There will be two scoping meetings, as described under the **DATES** section of this notice, to accommodate and encourage public participation. Each will be a virtual meeting (webcast) to avoid in-person interactions, toward mitigating any spread of the COVID–19 pandemic. DOE will post information on how to participate in the virtual public meetings on the EIS website listed previously, in advance of the meetings. The public will have the opportunity to present comments on the scope of the EIS. DOE representatives will be available to answer questions and provide additional information to meeting attendees. In addition to providing comments at the public scoping meetings, stakeholders may submit written comments as described in the **ADDRESSES** section.

The public is encouraged to provide information and comments on issues to be addressed in the EIS. Comments may be broad in nature or restricted to specific areas of concern, but they should be directly relevant to the NEPA process or potential environmental impacts. Note that public comments on the DOE SNOPR and its requirements, supporting bases, and analyses, that are unrelated to the NEPA process or potential environmental impacts, will be invited separately, pursuant to the rulemaking process, and will not be addressed during this EIS public scoping period. Instructions for providing those comments will be included with the publication of the SNOPR in the **Federal Register**.

DOE will consider the comments received on the scope of the EIS during the 30-day scoping period as it prepares the draft EIS. When the draft EIS is completed, a Notice of Availability of the draft EIS will be published in the **Federal Register**, which will begin a 45-day public comment period. This Notice of Availability will include instructions on how to comment on the draft EIS, which will be available for download from the EIS website identified previously. DOE is considering holding two virtual public hearings during the public comment period for the draft EIS.

DOE's EIS process will include the virtual public scoping meetings; consultation and coordination with appropriate Federal, State, county, and local agencies and tribal governments; making the draft EIS available for public review and comment; a virtual public hearing or hearings on the draft EIS; publication of the final EIS, with accessibility via the EIS website; and publication of the Record of Decision in the **Federal Register**. DOE will maintain information about the NEPA process, including documents, meeting information, and important dates, on the EIS website identified previously.

Signing Authority

This document of the Department of Energy was signed on June 28, 2021, by Mathew Blevins, Director, Environment, Safety, and Health Office, Office of Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on July 1, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2021–14484 Filed 7–6–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–465–000]

Driftwood Pipeline LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on June 17, 2021, Driftwood Pipeline LLC (Driftwood), 1201 Louisiana Street, Suite 3100, Houston, TX 77002, filed an application, pursuant to section 7(c) of the NGA and Parts 157 and 284 of the Commission's regulations, requesting that the Commission grant a certificate of public convenience and necessity, and related approvals, authorizing Driftwood to construct, own and operate, dual 42-inch-diameter natural gas pipelines totaling approximately 67.7 miles in length, an approximately 211,200 horsepower compressor station and appurtenant facilities, to transport approximately 4.6 billion cubic feet of natural gas per day, to be located in Beauregard and Calcasieu Parishes, Louisiana, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding the proposed project should be directed to: Joey Mahmoud, Driftwood Pipeline LLC, 1201 Louisiana Street Suite 3100, Houston, TX 77002, 832–962–4000, *joey.mahmoud@tellurianinc.com;* or Lisa M. Tonery, Partner, Orrick, Herrington & Sutcliffe LLP, 51 West 52nd Street, New York, N.Y. 10019–6142, 212 506–3710, *ltonery@orrick.com.*

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: Complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are two ways to become involved in the Commission's review of this project: You can file comments on the project, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on July 21, 2021.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please submit your comments on or before July 21, 2021.

There are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number CP21–465–000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. 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.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address below.[2] Your written comments must reference the Project docket number (CP21–465–000).

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov*.

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[3] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure[4] and the regulations under the NGA[5] by the intervention deadline for the project, which is July 21, 2021. As described further in Rule 214, your motion to intervene must state, to the

[1] 18 CFR (Code of Federal Regulations) § 157.9.

[2] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[3] 18 CFR 385.102(d).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

extent known, your position regarding the proceeding, as well as the your interest in the proceeding. [For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene.] For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP21–465–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf.;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below.[6] Your motion to intervene must reference the Project docket number CP21–465–000.

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Motions to intervene must be served on the applicant either by mail or email at: Joey Mahmoud, Driftwood Pipeline LLC, 1201 Louisiana Street Suite 3100, Houston, TX 77002, 832–962–4000, *joey.mahmoud@tellurianinc.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed [7] motions to intervene are automatically granted by operation of Rule 214(c)(1).[8] Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[9] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website *www.ferc.gov* using the ''eLibrary'' link as described above. 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 which 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. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Intervention Deadline: 5:00 p.m. Eastern Time on July 21, 2021.

Dated: June 30, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–14468 Filed 7–6–21; 8:45 am]

BILLING CODE 6717–01–P

[6] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[7] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[8] 18 CFR 385.214(c)(1).

[9] 18 CFR 385.214(b)(3) and (d).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL21–86–000; QF20–1303–000; QF20–1304–000]

Beaver Creek Wind I, LLC; Beaver Creek Wind IV, LLC; Broadview Solar LLC; Meadowlark Solar LLC; Greenfields Irrigation District; Notice of Petition for Declaratory Order

Take notice that on June 24, 2021, pursuant to section 210(h) of the Public Utility Regulatory Policies Act of 1978 (PURPA) [1] and Rule 207(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission) [2], Beaver Creek Wind I, LLC, Beaver Creek Wind IV, LLC, Broadview Solar LLC, Meadowlark Solar LLC, and Greenfields Irrigation District (Petitioners), filed a petition for declaratory order (Petition) requesting that the Commission issue a declaratory order directing the Montana Public Service Commission to comply with PURPA, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy

[1] 1 16 U.S.C. 824a–3(h).

[2] 18 CFR 385.207(a)(2).

Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern time on July 15, 2021.

Dated: June 30, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–14475 Filed 7–6–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #3

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–2291–000.
Applicants: Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: DEC—City of Concord NITSA SA–150 to be effective 6/1/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5153.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2292–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to WMPA SA No. 5875; Queue No AE2–129 to be effective 12/3/2020.
Filed Date: 6/30/21.
Accession Number: 20210630–5154.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2293–000.
Applicants: Fish Springs Ranch Solar, LLC.
Description: Baseline eTariff Filing: Fish Springs Ranch Solar, LLC Application for Market-Based Rate Authorization to be effective 8/30/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5155.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2294–000.
Applicants: Arlington Energy Center II, LLC.
Description: Baseline eTariff Filing: Arlington Energy Center II, LLC Application for Market-Based Rate Authorization to be effective 8/30/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5160.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2295–000.
Applicants: Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: DEC–NCMPA1 NITSA SA–212 to be effective 6/1/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5163.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2296–000.
Applicants: Ensign Wind Energy, LLC.
Description: Baseline eTariff Filing: Ensign Wind Energy, LLC Application for Market-Based Rate Authorization to be effective 8/30/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5169.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2297–000.
Applicants: Cleco Power LLC.
Description: § 205(d) Rate Filing: Filing of Amendment to Rate Schedule No. 12 to be effective 9/1/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5170.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2299–000.
Applicants: Upper Michigan Energy Resources Corporation.
Description: Market-Based Triennial Review Filing: Central Region Triennial of UMERC to be effective N/A.
Filed Date: 6/30/21.
Accession Number: 20210630–5173.
Comments Due: 5 p.m. ET 8/30/21.

Docket Numbers: ER21–2300–000.
Applicants: Wisconsin Electric Power Company.
Description: Market-Based Triennial Review Filing: Central Region Triennial of WEPCO to be effective N/A.
Filed Date: 6/30/21.
Accession Number: 20210630–5174.
Comments Due: 5 p.m. ET 8/30/21.

Docket Numbers: ER21–2301–000.
Applicants: Calumet Energy Team, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 8/30/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5177.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2302–000.
Applicants: Casco Bay Energy Company, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 8/30/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5178.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2303–000.
Applicants: Dynegy Energy Services (East), LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 8/30/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5179.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2304–000.
Applicants: Arlington Solar, LLC.
Description: Baseline eTariff Filing: Arlington Solar, LLC Application for Market-Based Rate Authority to be effective 8/30/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5181.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2306–000.
Applicants: Dynegy Energy Services, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 8/30/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5183.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2307–000.
Applicants: Wisconsin Public Service Corporation.
Description: Market-Based Triennial Review Filing: Central Region Triennial of WPSC to be effective N/A.
Filed Date: 6/30/21.
Accession Number: 20210630–5186.
Comments Due: 5 p.m. ET 8/30/21.

Docket Numbers: ER21–2308–000.
Applicants: Dynegy Marketing and Trade, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 8/30/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5187.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2309–000.
Applicants: Dynegy Power Marketing, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 8/30/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5189.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2310–000.
Applicants: Wisconsin River Power Company.
Description: Market-Based Triennial Review Filing: Central Region Triennial of Wisconsin River to be effective N/A.
Filed Date: 6/30/21.
Accession Number: 20210630–5191.
Comments Due: 5 p.m. ET 8/30/21.

Docket Numbers: ER21–2311–000.

Applicants: Kincaid Generation, L.L.C.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 8/30/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5192.
Comments Due: 5 p.m. ET 7/21/21.
Docket Numbers: ER21–2312–000.
Applicants: Lake Road Generating Company, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 8/30/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5193.
Comments Due: 5 p.m. ET 7/21/21.
Docket Numbers: ER21–2313–000.
Applicants: Liberty Electric Power, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 8/30/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5194.
Comments Due: 5 p.m. ET 7/21/21.
Docket Numbers: ER21–2314–000.
Applicants: Ontelaunee Power Operating Company, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 8/30/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5195.
Comments Due: 5 p.m. ET 7/21/21.
Docket Numbers: ER21–2315–000.
Applicants: Pleasants Energy, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 8/30/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5200.
Comments Due: 5 p.m. ET 7/21/21.
Docket Numbers: ER21–2316–000.
Applicants: Public Power & Utility of NY, Inc.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 8/30/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5203.
Comments Due: 5 p.m. ET 7/21/21.
Docket Numbers: ER21–2317–000.
Applicants: Richland-Stryker Generation LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 8/30/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5207.
Comments Due: 5 p.m. ET 7/21/21.
Docket Numbers: ER21–2318–000.
Applicants: Sithe/Independence Power Partners, L.P.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 8/30/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5208.
Comments Due: 5 p.m. ET 7/21/21.
Docket Numbers: ER21–2319–000.
Applicants: Tatanka Ridge Wind, LLC.
Description: Market-Based Triennial Review Filing: Central Region Triennial of Tatanka Ridge to be effective 8/30/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5221.
Comments Due: 5 p.m. ET 8/30/21.

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 30, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–14471 Filed 7–6–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Number: PR21–52–000.
Applicants: Washington 10 Storage Corporation.
Description: Tariff filing per 284.123(e)+(g)/: Notice of Cancellation of Statement of Operating Conditions to be effective 8/1/2021.
Filed Date: 6/25/2021.
Accession Number: 202106255093.
Comments Due: 5 p.m. ET 7/16/2021.
284.123(g) Protests Due: 5 p.m. ET 7/30/2021.

Docket Number: PR21–53–000.
Applicants: Moss Bluff Hub, LLC.
Description: Tariff filing per 284.123(b),(e)/: Updates to Tariff Contact Person to be effective 7/29/2021.
Filed Date: 6/29/2021.
Accession Number: 202106295056.
Comments/Protests Due: 5 p.m. ET 7/20/2021.

Docket Numbers: RP21–917–000.
Applicants: Steckman Ridge, LP.
Description: § 4(d) Rate Filing: Steckman Ridge Updates to Tariff Contact Person to be effective 7/29/2021.
Filed Date: 6/29/21.
Accession Number: 20210629–5065.
Comments Due: 5 p.m. ET 7/12/21.
Docket Numbers: RP21–918–000.
Applicants: Big Sandy Pipeline, LLC.
Description: § 4(d) Rate Filing: Big Sandy EPC 2021 to be effective 8/1/2021.
Filed Date: 6/29/21.
Accession Number: 20210629–5164.
Comments Due: 5 p.m. ET 7/12/21.

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 30, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–14467 Filed 7–6–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–2225–000]

Irish Creek Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Irish Creek Wind, LLC's application for market-based rate authority, with an

accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 19, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: June 29, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–14371 Filed 7–6–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–50–000; Docket No. CP20–51–000]

Tennessee Gas Pipeline Company, LLC; Southern Natural Gas Company, LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Evangeline Pass Expansion Project and Schedule for Environmental Review

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) for the Evangeline Pass Expansion Project (Project), proposed by Tennessee Gas Pipeline Company, LLC (Tennessee) and Southern Natural Gas Company, LLC (SNG) in Clarke and Smith Counties, Mississippi and St. Bernard and Plaquemines Parishes, Louisiana.[1] The EIS will tier off Commission staff's Environmental Assessment (EA) and its findings and conclusions for the Project issued on August 24, 2020, and respond to comments filed on the EA.[2] The EIS will assist the Commission in its consideration of the Project's contribution to climate change and its decision-making process to determine whether Tennessee and SNG's proposed Project is in the public convenience and necessity. The schedule for preparation of the EIS is discussed in the ''Schedule for Environmental Review'' section of this notice.

The National Environmental Policy Act Process

The production of the EIS is part of the Commission's overall National Environmental Policy Act review process. Commission staff will independently analyze the proposed Project and prepare a draft EIS, which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any draft and final EIS will be available in electronic format in the public record through eLibrary[3] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*).

Schedule for Environmental Review

This notice identifies the Commission staff's planned schedule for completion of a final EIS for the Project, which is based on an issuance of the draft EIS in July 2021.

Issuance of Notice of Availability of the final EIS—October 8, 2021

90-day Federal Authorization Decision Deadline—January 6, 2022

If a schedule change becomes necessary for the final EIS, an additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Environmental Mailing List

This notice is being sent to the Commission's current environmental mailing list for the Project which includes federal, state, and local government representatives and agencies; Native American Tribes; elected officials; environmental and public interest groups; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for Project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number (CP20–50–000 or

[1] SNG is proposing to construct or modify auxiliary facilities pursuant to section 2.55(a) of the Commission's regulations in these additional counties and parishes: Jasper, Simpson, Jefferson Davis, Lawrence, and Walthall Counties, Mississippi and Washington, St. Tammany, and Orleans Parishes, Louisiana.

[2] The EA for the Project is filed in Docket Nos. CP20–50–000 and CP20–51–000 under Accession No. 20200824–3066.

[3] For instructions on connecting to eLibrary, refer to the ''Additional Information'' section of this notice.

CP20–51–000) in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached ''Mailing List Update Form'' (appendix 1).

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. 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.

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Dated: June 30, 2021.

Kimberly D. Bose,

Secretary.

Appendix 1

MAILING LIST UPDATE FORM

Evangeline Pass Expansion Project

Name _____

Agency _____

Address _____

City_____ State_____ Zip Code_____

☐ Please update the mailing list

☐ Please remove my name from the mailing list

_____

FROM _____

_____

_____

_____

ATTN: OEP—Gas 2, PJ–11.2
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

CP20–50–000, CP20–51–000

Evangeline Pass Expansion Project

Staple or Tape Here

[FR Doc. 2021–14478 Filed 7–6–21; 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: EG21–182–000.
Applicants: Independence Wind Energy LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Independence Wind Energy LLC.
Filed Date: 6/29/21.
Accession Number: 20210629–5078.
Comments Due: 5 p.m. ET 7/20/21.

Docket Numbers: EG21–183–000.
Applicants: Glass Sands Wind Energy, LLC.
Description: Notice of Self-Certification Exempt Wholesale Generator of Glass Sands Wind Energy, LLC.
Filed Date: 6/29/21.
Accession Number: 20210629–5206.
Comments Due: 5 p.m. ET 7/20/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2822–019; ER12–2076–007; ER12–2077–007; ER12–2078–007; ER12–2081–007; ER12–2083–007; ER12–2084–007; ER12–2086–007; ER12–2097–007; ER12–2101–007; ER12–2102–008; ER12–2106–007; ER12–2107–007; ER12–2108–007; ER12–2109–007; ER16–1250–011.
Applicants: Atlantic Renewable Projects II LLC, Avangrid Renewables, LLC, Barton Windpower LLC, Buffalo Ridge I LLC, Buffalo Ridge II LLC, Elm Creek Wind, LLC, Elm Creek Wind II LLC, Farmers City Wind, LLC, Flying Cloud Power Partners, LLC, MinnDakota Wind LLC, Moraine Wind LLC, Moraine Wind II LLC, New Harvest Wind Power LLC, Northern Iowa Windpower II LLC, Rugby Wind LLC, Trimont Wind I LLC.
Description: Triennial Market Power Analysis for Central Region of Atlantic Renewable Projects II LLC, et al.
Filed Date: 6/28/21.
Accession Number: 20210628–5183.
Comments Due: 5 p.m. ET 8/27/21.

Docket Numbers: ER10–3057–005; ER14–1348–007; ER14–1349–007; ER19–1646–001.
Applicants: Dow Pipeline Company, The Dow Chemical Company, Union Carbide Corporation, Performance Materials NA, Inc.
Description: Triennial Market Power Analysis for Central Region of Dow Pipeline Company, et al.
Filed Date: 6/29/21.
Accession Number: 20210629–5205.
Comments Due: 5 p.m. ET 8/30/21.

Docket Numbers: ER10–3097–013.
Applicants: Bruce Power Inc.
Description: Triennial Market Power Analysis for Central Region of Bruce Power Inc.
Filed Date: 6/28/21.
Accession Number: 20210628–5181.
Comments Due: 5 p.m. ET 8/27/21.

Docket Numbers: ER10–3246–018; ER10–2474–024; ER10–2475–024; ER10–2984–052; ER13–1266–035; ER15–2211–032.
Applicants: PacifiCorp, Sierra Pacific Power Company, Nevada Power Company, Merrill Lynch Commodities, Inc., CalEnergy, LLC, MidAmerican Energy Services, LLC.
Description: Notice of Change in Status of PacifiCorp, et al.
Filed Date: 6/24/21.
Accession Number: 20210624–5193.
Comments Due: 5 p.m. ET 7/15/21.

Docket Numbers: ER11–2534–009; ER16–2234–005.
Applicants: Morris Cogeneration, LLC, EF Kenilworth LLC.
Description: Triennial Market Power Analysis for Northeast Region of Morris Cogeneration, LLC, et al.
Filed Date: 6/29/21.
Accession Number: 20210629–5186.
Comments Due: 5 p.m. ET 8/30/21.

Docket Numbers: ER20–2382–002.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2021–06–29_SA 3516 Ameren-Broadlands Wind Farm Sub FSA GIA (J468) to be effective 10/1/2020.
Filed Date: 6/29/21.
Accession Number: 20210629–5105.
Comments Due: 5 p.m. ET 7/20/21.

Docket Numbers: ER20–2385–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2021–06–29 SA 3025 Ameren-Broadland Wind Farm Sub 1st Rev FCA (J468) to be effective 7/9/2020.
Filed Date: 6/29/21.
Accession Number: 20210629–5112.
Comments Due: 5 p.m. ET 7/20/21.

Docket Numbers: ER20–2386–001.
Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2021–06–29_SA 3024 Broadlands-Ameren Sub 2nd Rev GIA (J468) to be effective 7/9/2020.

Filed Date: 6/29/21.

Accession Number: 20210629–5076.

Comments Due: 5 p.m. ET 7/20/21.

Docket Numbers: ER20–2700–002.

Applicants: Deuel Harvest Wind Energy LLC.

Description: Triennial Market Power Analysis for Central Region of Deuel Harvest Wind Energy LLC under ER20–2700.

Filed Date: 6/29/21.

Accession Number: 20210629–5183.

Comments Due: 5 p.m. ET 8/30/21.

Docket Numbers: ER21–1810–001.

Applicants: Marco DM Holdings, L.L.C.

Description: Tariff Amendment: Correction to Market-Based Rate Tariff Revision Filing to be effective 6/30/2021.

Filed Date: 6/28/21.

Accession Number: 20210628–5058.

Comments Due: 5 p.m. ET 7/19/21.

Docket Numbers: ER21–2184–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits Prospective Waiver of the requirements of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C.

Filed Date: 6/22/21.

Accession Number: 20210622–5167.

Comments Due: 5 p.m. ET 7/13/21.

Docket Numbers: ER21–2209–000.

Applicants: Harts Mill Solar, LLC.

Description: Harts Mill Solar, LLC Submits a One-Time Limited Waiver of the 90-day Prior Notice Requirement Set Forth in Schedule 2 of the PJM Interconnection, L.L.C Open Access Transmission Tariff.

Filed Date: 6/23/21.

Accession Number: 20210623–5160.

Comments Due: 5 p.m. ET 7/14/21.

Docket Numbers: ER21–2232–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3675R2 Doniphan Electric Cooperative Assn, Inc. NITSA NOA to be effective 9/1/2021.

Filed Date: 6/28/21.

Accession Number: 20210628–5087.

Comments Due: 5 p.m. ET 7/19/21.

Docket Numbers: ER21–2233–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1636R25 Kansas Electric Power Cooperative, Inc. NITSA and NOA to be effective 9/1/2021.

Filed Date: 6/28/21.

Accession Number: 20210628–5097.

Comments Due: 5 p.m. ET 7/19/21.

Docket Numbers: ER21–2234–000.

Applicants: El Paso Electric Company.

Description: § 205(d) Rate Filing: Service Agreement No. 355, Simultaneous Exchange with Dynasty to be effective 8/1/2021.

Filed Date: 6/28/21.

Accession Number: 20210628–5101.

Comments Due: 5 p.m. ET 7/19/21.

Docket Numbers: ER21–2235–000.

Applicants: New York State Electric & Gas Corporation.

Description: § 205(d) Rate Filing: Rate Schedule FERC No. 87 Supplement to be effective 9/1/2021.

Filed Date: 6/28/21.

Accession Number: 20210628–5109.

Comments Due: 5 p.m. ET 7/19/21.

Docket Numbers: ER21–2236–000.

Applicants: Virginia Electric and Power Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Dominion submits Two WDSA, SA No. 5975 and 6079 to be effective 10/2/2020.

Filed Date: 6/28/21.

Accession Number: 20210628–5115.

Comments Due: 5 p.m. ET 7/19/21.

Docket Numbers: ER21–2237–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of WMPA, SA No. 3187; Queue No. W3–134 to be effective 6/29/2021.

Filed Date: 6/29/21.

Accession Number: 20210629–5015.

Comments Due: 5 p.m. ET 7/20/21.

Docket Numbers: ER21–2238–000.

Applicants: ITC Great Plains, LLC, Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3817 ITC Great Plains and Iron Star Wind Project FCRA to be effective 8/29/2021.

Filed Date: 6/29/21.

Accession Number: 20210629–5024.

Comments Due: 5 p.m. ET 7/20/21.

Docket Numbers: ER21–2239–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Rev. to OA, Schedule 12 RE: defaulted member, JCTP, LLC to be effective 8/30/2021.

Filed Date: 6/29/21.

Accession Number: 20210629–5036.

Comments Due: 5 p.m. ET 7/20/21.

Docket Numbers: ER21–2240–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1883R10 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2021.

Filed Date: 6/29/21.

Accession Number: 20210629–5085.

Comments Due: 5 p.m. ET 7/20/21.

Docket Numbers: ER21–2241–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1887R11 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2021.

Filed Date: 6/29/21.

Accession Number: 20210629–5093.

Comments Due: 5 p.m. ET 7/20/21.

Docket Numbers: ER21–2242–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Tariff Cancellation: Notice of Cancellation of Service Agreement No. 890 to be effective 6/24/2020.

Filed Date: 6/29/21.

Accession Number: 20210629–5097.

Comments Due: 5 p.m. ET 7/20/21.

Docket Numbers: ER21–2243–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to Service Agreement No. 5849; Queue No. AE2–131 to be effective 10/28/2020.

Filed Date: 6/29/21.

Accession Number: 20210629–5100.

Comments Due: 5 p.m. ET 7/20/21.

Docket Numbers: ER21–2244–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1889R10 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2021.

Filed Date: 6/29/21.

Accession Number: 20210629–5102.

Comments Due: 5 p.m. ET 7/20/21.

Docket Numbers: ER21–2245–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1891R10 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2021.

Filed Date: 6/29/21.

Accession Number: 20210629–5109.

Comments Due: 5 p.m. ET 7/20/21.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES21–53–000.

Applicants: NorthWestern Corporation.

Description: Application under Section 204 of the Federal Power Act for Authorization to Issue Securities for NorthWestern Corporation.

Filed Date: 6/25/21.

Accession Number: 20210625–5258.

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 29, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–14369 Filed 7–6–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC21–26–000]

Commission Information Collection Activities (FERC–725B); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–725B, (Mandatory Reliability Standards, Critical Infrastructure Protection (CIP).

DATES: Comments on the collection of information are due September 7, 2021.

ADDRESSES: You may submit copies of your comments (identified by Docket No. IC21–26–000) by one of the following methods:

Electronic filing through *http://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:

○ *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (Including Courier) Delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–725B (Mandatory Reliability Standards, Critical Infrastructure Protection (CIP)).

OMB Control No.: 1902–0248.

Type of Request: Three-year extension of the FERC–725B information collection requirements with no changes to the reporting requirements.

Abstract: On August 8, 2005, Congress enacted the Energy Policy Act of 2005.[1] The Energy Policy Act of 2005 added a new section 215 to the FPA,[2] which requires a Commission-certified Electric Reliability Organization to develop mandatory and enforceable Reliability Standards,[3] including requirements for cybersecurity protection, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the Electric Reliability Organization subject to Commission oversight, or the Commission can independently enforce Reliability Standards.

On February 3, 2006, the Commission issued Order No. 672,[4] implementing FPA section 215. The Commission subsequently certified NERC as the Electric Reliability Organization. The Reliability Standards developed by NERC become mandatory and enforceable after Commission approval and apply to users, owners, and operators of the Bulk-Power System, as set forth in each Reliability Standard.[5] The CIP Reliability Standards require entities to comply with specific requirements to safeguard critical cyber assets. These standards are results-based and do not specify a technology or method to achieve compliance, instead leaving it up to the entity to decide how best to comply.

On January 18, 2008, the Commission issued Order No. 706,[6] approving the initial eight CIP Reliability Standards, CIP version 1 Standards, submitted by NERC. Subsequently, the Commission has approved multiple versions of the CIP Reliability Standards submitted by NERC, partly to address the evolving nature of cyber-related threats to the Bulk-Power System. On November 22, 2013, the Commission issued Order No. 791,[7] approving CIP version 5 Standards, the last major revision to the CIP Reliability Standards. The CIP version 5 Standards implement a tiered approach to categorize assets, identifying them as high, medium, or low risk to the operation of the Bulk Electric System (BES) [8] if compromised. High impact systems include large control centers. Medium impact systems include smaller control centers, ultra-high voltage transmission, and large substations and generating facilities.

[1] Energy Policy Act of 2005, Public Law 109–58, sec. 1261 *et seq.,* 119 Stat. 594 (2005).

[2] 16 U.S.C. 824o.

[3] FPA section 215 defines Reliability Standard as a requirement, approved by the Commission, to provide for reliable operation of existing bulk-power system facilities, including cybersecurity protection, and the design of planned additions or modifications to such facilities to the extent necessary to provide for reliable operation of the Bulk-Power System. However, the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity. *Id.* at 824o(a)(3).

[4] *Rules Concerning Certification of the Elec. Reliability Org.; and Procedures for the Establishment, Approval, and Enf't of Elec. Reliability Standards,* Order No. 672, 71 FR 8661 (Feb. 17, 2006), 114 FERC ¶ 61,104, *order on reh'g,* Order No. 672–A, 71 FR 19814 (Apr. 28, 2006), 114 FERC ¶ 61,328 (2006).

[5] NERC uses the term ''registered entity'' to identify users, owners, and operators of the Bulk-Power System responsible for performing specified reliability functions with respect to NERC Reliability Standards. *See, e.g., Version 4 Critical Infrastructure Protection Reliability Standards,* Order No. 761, 77 FR 24594 (Apr. 25, 2012), 139 FERC ¶ 61,058, at P 46, *order denying clarification and reh'g,* 140 FERC ¶ 61,109 (2012). Within the NERC Reliability Standards are various subsets of entities responsible for performing various specified reliability functions. We collectively refer to these as ''entities.''

[6] Order No. 706, 122 FERC ¶ 61,040 at P 1.

[7] *Version 5 Critical Infrastructure Protection Reliability Standards,* Order No. 791, 78 FR 72755 (Dec. 13, 2013), 145 FERC ¶ 61,160 (2013), *order on reh'g,* Order No. 791–A, 146 FERC ¶ 61,188 (2014).

[8] In general, NERC defines BES to include all Transmission Elements operated at 100 kV or higher and Real Power and Reactive Power resources connected at 100 kV or higher. This does not include facilities used in the local distribution of electric energy. *See* NERC, *Bulk Electric System Definition Reference Document,* Version 3, at page iii (August 2018). In Order No. 693, the Commission found that NERC's definition of BES is narrower than the statutory definition of Bulk-Power System. The Commission decided to rely on the NERC definition of BES to provide certainty regarding the applicability of Reliability Standards to specific entities. *See Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, 72 FR 16415 (Apr. 4, 2007), 118 FERC ¶ 61,218, at PP 75, 79, 491, *order on reh'g,* Order No. 693–A, 72 FR 49717 (July 25, 2007), 120 FERC ¶ 61,053 (2007).

The remainder of the BES Cyber Systems [9] are categorized as low impact systems. Most requirements in the CIP Reliability Standards apply to high and medium impact systems; however, a technical controls requirement in Reliability standard CIP–003, described below, applies only to low impact systems. Since 2013, the Commission has approved new and modified CIP Reliability Standards that address specific issues such as supply chain risk management, cyber incident reporting, communications between control centers, and the physical security of critical transmission facilities.[10]

The CIP Reliability Standards currently consist of 12 standards specifying a set of requirements that entities must follow to ensure the cyber and physical security of the Bulk-Power System. There are 12 currently effective cybersecurity standards and one cybersecurity standard that has been approved by the Commission and will become enforceable on July 1, 2022. There is also one physical security standard CIP–002–5.1a Bulk Electric System Cyber System Categorization: requires entities to identify and categorize BES Cyber Assets for the application of cyber security requirements commensurate with the adverse impact that loss, compromise, or misuse of those BES Cyber Systems could have on the reliable operation of the BES.

- *CIP–003–8 Security Management Controls:* Requires entities to specify consistent and sustainable security management controls that establish responsibility and accountability to protect BES Cyber Systems against compromise that could lead to mis-operation or instability in the BES.
- *CIP–004–6 Personnel and Training:* Requires entities to minimize the risk against compromise that could lead to mis-operation or instability in the BES from individuals accessing BES Cyber Systems by requiring an appropriate level of personnel risk assessment, training, and security awareness in support of protecting BES Cyber Systems.
- *CIP–005–6 Electronic Security Perimeter(s):* Requires entities to manage electronic access to BES Cyber Systems by specifying a controlled Electronic Security Perimeter in support of protecting BES Cyber Systems against compromise that could lead to mis-operation or instability in the BES.
- *CIP–006–6 Physical Security of Bulk Electric System Cyber Systems:* Requires entities to manage physical access to BES Cyber Systems by specifying a physical security plan in support of protecting BES Cyber Systems against compromise that could lead to mis-operation or instability in the BES.
- *CIP–007–6 System Security Management:* Requires entities to manage system security by specifying select technical, operational, and procedural requirements in support of protecting BES Cyber Systems against compromise that could lead to mis-operation or instability in the BES.
- *CIP–008–6 Incident Reporting and Response Planning:* Requires entities to mitigate the risk to the reliable operation of the BES as the result of a cybersecurity incident by specifying incident response requirements.
- *CIP–009–6 Recovery Plans for Bulk Electric System Cyber Systems:* Requires entities to recover reliability functions performed by BES Cyber Systems by specifying recovery plan requirements in support of the continued stability, operability, and reliability of the BES.
- *CIP–010–3 Configuration Change Management and Vulnerability Assessments:* Requires entities to prevent and detect unauthorized changes to BES Cyber Systems by specifying configuration change management and vulnerability assessment requirements in support of protecting BES Cyber Systems from compromise that could lead to mis-operation or instability in the BES.
- *CIP–011–2 Information Protection:* Requires entities to prevent unauthorized access to BES Cyber System Information by specifying information protection requirements in support of protecting BES Cyber Systems against compromise that could lead to mis-operation or instability in the BES.
- *CIP–012–1 Communications between Control Centers:*[11] requires entities to protect the confidentiality and integrity of Real-time Assessment and Real-time monitoring data transmitted between Control Centers.
- *CIP–013–1 Supply Chain Risk Management:* requires entities to mitigate cybersecurity risks to the reliable operation of the BES by implementing security controls for supply chain risk management of BES Cyber Systems.

The CIP Reliability Standards, viewed as a whole, implement a defense-in-depth approach to protecting the security of BES Cyber Systems at all impact levels.[12] The CIP Reliability Standards are objective-based and allow entities to choose compliance approaches best tailored to their systems.[13]

FERC–725B—(MANDATORY RELIABILITY STANDARDS FOR CRITICAL INFRASTRUCTURE PROTECTION [CIP] RELIABILITY STANDARDS) AFTER ADDING FILERS FROM CYBERSECURITY INCENTIVES INVESTMENT ACTIVITY (SUBMITTED AS A SEPARATE IC WITHIN FERC–725B)

	Number and type of respondent [14]	Annual number of responses per respondent	Total number of responses	Average burden per response (hours) [15] & cost per response	Total annual burden (hours) & total annual cost [16] ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)
CIP–003–8 [17]	1,149 [18]	300	344,700	1.5 hrs.; $127.53	517,050 hrs.; $43,959,591.
CIP–003–8 [19]	1,149	1	1,149	20 hrs.; $1,700.40	23,220 hrs.; $1,974,164.4.
CIP–003–8 [20]	343	1	343	1 hr.; $85.02	343 hrs.; $29,161.86.

[9] NERC defines BES Cyber System as ''[o]ne or more BES Cyber Assets logically grouped by a responsible entity to perform one or more reliability tasks for a functional entity.'' NERC, Glossary of Terms Used in NERC Reliability Standards, at 5 (2020), *https://www.nerc.com/files/glossary_of_terms.pdf* (NERC Glossary of Terms). NERC defines BES Cyber Asset as A Cyber Asset that if rendered unavailable, degraded, or misused would, within 15 minutes of its required operation, mis-operation, or non-operation, adversely impact one or more Facilities, systems, or equipment, which, if destroyed, degraded, or otherwise rendered unavailable when needed, would affect the reliable operation of the Bulk Electric System. Redundancy of affected Facilities, systems, and equipment shall not be considered when determining adverse impact. Each BES Cyber Asset is included in one or more BES Cyber Systems. *Id.* at 4.

[10] *See, e.g.,* Order No. 791, 78 FR 72755; *Revised Critical Infrastructure Protection Reliability Standards,* Order No. 822, 81 FR 4177 (Jan. 26, 2016), 154 FERC ¶ 61,037, *reh'g denied,* Order No. 822–A, 156 FERC ¶ 61,052 (2016); *Revised Critical Infrastructure Protection Reliability Standard CIP–003–7—Cyber Security—Security Management Controls,* Order No. 843, 163 FERC ¶ 61,032 (2018).

[11] CIP–012–1: Communications between Control Centers will be subject to enforcement by July 1, 2022.

[12] Order No. 822, 154 FERC ¶ 61,037 at 32.

[13] Order No. 706, 122 FERC ¶ 61,040 at 72.

FERC–725B—(MANDATORY RELIABILITY STANDARDS FOR CRITICAL INFRASTRUCTURE PROTECTION [CIP] RELIABILITY STANDARDS) AFTER ADDING FILERS FROM CYBERSECURITY INCENTIVES INVESTMENT ACTIVITY (SUBMITTED AS A SEPARATE IC WITHIN FERC–725B)—Continued

	Number and type of respondent [14] (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden per response (hours) [15] & cost per response (4)	Total annual burden (hours) & total annual cost [16] ($) (3) * (4) = (5)
CIP–002–5.1, CIP–004–6, CIP–005–7, CIP–006–6, CIP–007–6, CIP–008–6, CIP–009–6, CIP–010–3, CIP–011–2.	343	1	343	600 [21] hrs.; $51,012	205,800 hrs.; $17,497,116.
CIP–013–1	343	1	343	30 hrs.; $2550.60	10,290 hrs.; $874,855.80.
CIP–014–2	[22] 321	1	321	2 hrs.; $170.04	642 hrs.; $54,582.84.
CIP–012–1	[23] 724	1	724	83 hrs.; $7,056.66	60,092 hrs., $5,109,021.84.
Total Burden of FERC–725B	.....	.....	347,923	.....	817,437 hrs.; $69,498,493.74.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) 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.

[14] The number of respondents is based on the NERC Compliance Registry as of June 22, 2021. Currently there are 1,508 unique NERC Registered, subtracting 16 Canadians Entities yields 1492 U.S. entities.

[15] Of the average estimated 295.702 hours per response, 210 hours are for recordkeeping, and 85.702 hours are for reporting.

[16] The estimates for cost per hour are $85.02/hour (averaged based on the following occupations):

- Manager (Occupational Code: 11–0000): $97.89/hour; and
- Electrical Engineer (Occupational Code 17–2071): $72.15/hour, from the Bureau of Labor and Statistics at *http://bls.gov/oes/current/naics3_221000.htm,* as of June 2021.

[17] Updates and reviews of low impact TCA assets (ongoing)

[18] We estimate that 1,161 entities will face an increased paperwork burden under Reliability Standard CIP 003–8, estimating that a majority of these entities will have one or more low impact BES Cyber Systems.

[19] Update paperwork for access control implementation in Section 2 and Section 3 (ongoing)

[20] Modification and approval of cybersecurity policies for all CIP Standards

[21] 600 hr. estimate is based on ongoing burden estimate from Order No. 791, added to the 3-year audit burden split over 3 years: 600 = (640/3) + (408 – (20 + 1)). (20 + 1) is the CIP–003–8 burden.

[22] 321 U.S. Transmission Owners in NERC Compliance Registry as of June 22, 2021.

[23] The number of entities and the number of hours required are based on FERC Order No. 802 which approved CIP–012–1.

Dated: June 30, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–14477 Filed 7–6–21; 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 electric rate filings:

Docket Numbers: ER10–1186–012; ER10–1329–012; ER11–2731–005; ER11–3097–013.

Applicants: DTE Energy Supply, Inc., DTE Electric Company, DTE Energy Trading, Inc., DTE Garden Wind Farm, LLC, DTE Stoney Corners Wind Farm, LLC, St. Paul Cogeneration, LLC.

Description: Triennial Market Power Analysis for Central Region of DTE Energy Supply, Inc., et al.

Filed Date: 6/29/21.

Accession Number: 20210629–5267.

Comments Due: 5 p.m. ET 8/30/21.

Docket Numbers: ER10–1520–006; ER10–1521–006; ER10–1522–005; ER20–2493–001.

Applicants: Occidental Power Services, Inc., Occidental Power Marketing, L.P., Occidental Chemical Corporation, OTCF, LLC.

Description: Triennial Market Power Analysis for Central Region of Occidental Power Services, Inc., et al.

Filed Date: 6/29/21.

Accession Number: 20210629–5214.

Comments Due: 5 p.m. ET 8/30/21.

Docket Numbers: ER10–1581–025; ER10–2265–019; ER11–1846–010; ER11–1847–010; ER11–1850–010; ER11–2062–027; ER11–2175–005; ER11–2176–004; ER11–2598–013; ER11–3188–005; ER11–3418–007; ER11–4307–028; ER11–4308–028; ER12–224–006; ER12–225–006; ER12–2301–005; ER12–261–027; ER13–1192–007; ER17–764–005; ER17–765–005; ER17–767–005; ER18–1160–003.

Applicants: NRG Power Marketing LLC, Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Direct Energy Marketing Inc., Direct Energy Services, LLC, Energy Plus Holdings LLC, Gateway Energy Services Corporation, Green Mountain Energy Company, Independence Energy Group LLC, Long Beach Peakers LLC, NRG Cottonwood Tenant LLC, Reliant Energy Northeast LLC, SGE Energy Sourcing, LLC, Stream Energy Columbia, LLC, Stream Energy Delaware, LLC, Stream Energy Illinois, LLC, Stream Energy Maryland, LLC, Stream Energy New Jersey, LLC, Stream Energy New York, LLC, Stream Energy Pennsylvania, LLC, Stream Ohio Gas & Electric, LLC, XOOM Energy, LLC.

Description: Triennial Market Power Analysis for Central Region of Long Beach Peakers LLC, et al.

Filed Date: 6/29/21.

Accession Number: 20210629–5266.

Comments Due: 5 p.m. ET 8/30/21.

Docket Numbers: ER10–1874–013; ER19–9–007.

Applicants: Mankato Energy Center, LLC, Mankato Energy Center II, LLC.

Description: Triennial Market Power Analysis for Central Region of Mankato Energy Center, LLC, et al.

Filed Date: 6/29/21.

Accession Number: 20210629–5264.

Comments Due: 5 p.m. ET 8/30/21.

Docket Numbers: ER10–2742–016; ER14–153–010; ER14–154–010; ER16–517–005.

Applicants: Tilton Energy LLC, Gibson City Energy Center, LLC, Grand Tower Energy Center, LLC, Shelby County Energy Center, LLC, Southern Illinois Generation Company, LLC.

Description: Triennial Market Power Analysis for Central Region of Tilton Energy, LLC, et al.
Filed Date: 6/29/21.
Accession Number: 20210629–5265.
Comments Due: 5 p.m. ET 8/30/21.
Docket Numbers: ER17–1442–003.
Applicants: Axiall, LLC.
Description: Triennial Market Power Analysis for Central Region of Axiall, LLC.
Filed Date: 6/29/21.
Accession Number: 20210629–5215.
Comments Due: 5 p.m. ET 8/30/21.
Docket Numbers: ER21–1264–002.
Applicants: Duke Energy Indiana, LLC.
Description: Tariff Amendment: Amendment to Annual Reconciliation Filing to be effective 7/1/2020.
Filed Date: 6/29/21.
Accession Number: 20210629–5167.
Comments Due: 5 p.m. ET 7/20/21.
Docket Numbers: ER21–1848–000.
Applicants: Isabella Wind, LLC.
Description: Report Filing: Isabella Wind Supplemental MBR Cancellation Filing to be effective N/A.
Filed Date: 6/30/21.
Accession Number: 20210630–5000.
Comments Due: 5 p.m. ET 7/21/21.
Docket Numbers: ER21–2264–000.
Applicants: Terra-Gen Energy Services, LLC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 6/30/2021.
Filed Date: 6/29/21.
Accession Number: 20210629–5213.
Comments Due: 5 p.m. ET 7/20/21.
Docket Numbers: ER21–2265–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1885R11 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2021.
Filed Date: 6/29/21.
Accession Number: 20210629–5222.
Comments Due: 5 p.m. ET 7/20/21.
Docket Numbers: ER21–2266–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1893R11 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2021.
Filed Date: 6/29/21.
Accession Number: 20210629–5240.
Comments Due: 5 p.m. ET 7/20/21.
Docket Numbers: ER21–2267–000.
Applicants: New England Power Pool Participants Committee.
Description: § 205(d) Rate Filing: June 2021 Membership Filing to be effective 6/1/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5001.
Comments Due: 5 p.m. ET 7/21/21.
Docket Numbers: ER21–2268–000.
Applicants: City of Independence, Missouri.
Description: Request For Waiver of Tariff Provisions, et al. of City of Independence Missouri.
Filed Date: 6/29/21.
Accession Number: 20210629–5259.
Comments Due: 5 p.m. ET 7/20/21.
Docket Numbers: ER21–2269–000.
Applicants: Orangeville Energy Storage LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/30/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5012.
Comments Due: 5 p.m. ET 7/21/21.
Docket Numbers: ER21–2270–000.
Applicants: Jayhawk Wind, LLC.
Description: Baseline eTariff Filing: Filing of Market-Based Rate Application to be effective 8/30/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5018.
Comments Due: 5 p.m. ET 7/21/21.
Docket Numbers: ER21–2271–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 6105; Queue No. AG1–336 to be effective 6/21/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5032.
Comments Due: 5 p.m. ET 7/21/21.
Docket Numbers: ER21–2272–000.
Applicants: Golden Hills Wind Farm, LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization, Request for Related Waivers to be effective 8/30/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5044.
Comments Due: 5 p.m. ET 7/21/21.

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 30, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–14469 Filed 7–6–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC21–21–000]

Commission Information Collection Activities (FERC–516); Comment Request; Revision

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–516 (Electric Rate Schedules and Tariff Filings). Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below.

DATES: Comments on the collection of information are due August 6, 2021.

ADDRESSES: Send written comments on FERC–516 to OMB through *www.reginfo.gov/public/do/PRAMain,* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB control number (1902–0096) in the subject line. Your comments should be sent within 30 days of publication of this notice in the **Federal Register**.

Please submit copies of your comments (identified by Docket No. IC21–21–000) to the Commission as noted below. Electronic filing through *http://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

○ *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (Including Courier) Delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review field,'' select Federal Energy Regulatory Commission; click ''submit'' and select ''comment'' to the right of the subject collection.

FERC submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov* and telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–516, Electric Rate Schedules and Tariff Filings.

OMB Control No.: 1902–0096.

Type of Request: Three-year extension of the FERC–516 information collection requirements with no changes to the current reporting requirements.

Abstract: This notice for FERC–516 includes 11 components listed in the table below.[1] Section 205(c) of the Federal Power Act (FPA) requires that every public utility have all its jurisdictional rates and tariffs on file with the Commission and make them available for public inspection, within such time and in such form as the Commission may designate. Section 205(d) of the FPA requires that every public utility must provide notice to FERC and the public of any changes to its jurisdictional rates and tariffs, file such changes with FERC, and make them available for public inspection, in such manner as directed by the Commission. FPA section 205 specifies that all rates and charges, and related contracts and service conditions, for wholesale sales and transmission of energy in interstate commerce must be filed with the Commission and must be ''just and reasonable''. In addition, FPA section 206 requires the Commission, upon complaint or its own motion, to modify existing rates or services that are found to be unjust, unreasonable, unduly discriminatory or preferential.

Several rulemakings related to this information collection and its components have been summarized below.

In Order No. 745 (in Docket No. RM10–17), the Commission amended its regulations under the Federal Power Act (FPA). That amendment sought to ensure that when a demand response resource participating in an organized wholesale energy market administered by a Regional Transmission Organization (RTO) or Independent System Operator (ISO) has to demonstrate by a compliance filing that it has the capability to balance supply and demand as an alternative to a generation resource, and when dispatch of that demand response resource is cost-effective as determined by the net benefits test described in the final rule, that demand response resource must be compensated for the service it provides to the energy market at the market price for energy, referred to as the locational marginal price (LMP).[2] This approach for compensating demand response resources helps to ensure the competitiveness of organized wholesale energy markets and remove barriers to the participation of demand response resources, thus ensuring just and reasonable wholesale rates.

In Order 845 (in Docket No. RM11–7), the Commission revised its regulations to remedy undue discrimination in the procurement of frequency regulation in the organized wholesale electric markets and ensure that providers of frequency regulation receive just and reasonable and not unduly discriminatory or preferential rates. To remedy this undue discrimination, the Commission found that it is just and reasonable to require all RTOs and ISOs to modify their tariffs to provide for a two-part payment to frequency regulation resources.[3] The compensation methods for regulation service in RTO and ISO markets failed to acknowledge the inherently greater amount of frequency regulation service being provided by faster-ramping resources. In addition, certain practices of some RTOs and ISOs resulted in economically inefficient economic dispatch of frequency regulation resources. By remedying these issues, the Commission removed unduly discriminatory and preferential practices from RTO and ISO tariffs and required the setting of just and reasonable rates. It specifically required RTOs and ISOs to compensate frequency regulation resources based on the actual service provided, including a capacity payment that includes the marginal unit's opportunity costs and a payment for performance that reflects the quantity of frequency regulation service provided by a resource when the resource is accurately following the dispatch signal.

Order No. 764 (in Docket No. RM10–11), the Commission amended the *pro forma* Open Access Transmission Tariff (OATT) to remove unduly discriminatory practices and to ensure just and reasonable rates for Commission-jurisdictional services. Specifically, the Commission removed barriers to the integration of variable energy resources by requiring each public utility transmission provider to: (1) Offer intra-hourly transmission scheduling; and, (2) incorporate provisions into the *pro forma* Large Generator Interconnection Agreement requiring interconnection customers whose generating facilities are variable energy resources to provide meteorological and forced outage data to the public utility transmission provider for the purpose of power production forecasting.

In Order 676–G (in Docket No. RM05–5–020), the Commission amended its regulations at 18 CFR 38.2 (which establish standards for business practices and electronic communications for public utilities) to incorporate by reference updated business practice standards adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB) to categorize various products and services for demand response and energy efficiency and to support the measurement and verification of these products and services in organized wholesale electric markets. These standards provided common definitions and processes regarding demand response and energy efficiency products in organized wholesale electric markets where such products are offered. The standards also required each RTO and ISO to address in the RTO or ISO's governing documents the performance evaluation methods to be used for demand response and energy efficiency products. The standards facilitated the ability of demand response and energy efficiency providers to participate in organized wholesale electric markets, reducing transaction costs and providing an opportunity for more customers to participate in these programs, especially for customers that operate in more than one organized market.

In Order No. 676–H (in Docket No. RM05–5–022), the Commission revised its regulations to incorporate by

[1] This notice does not address the requirements in the Supplementary Notice of Proposed Rulemaking (NOPR) in Docket No. RM20–10. The Supplementary NOPR is available here: *https://www.ferc.gov/media/rm20-10-000-041521.*

[2] The full text of the Final Rule is available on FERC's eLibrary system (*https://elibrary.ferc.gov/eLibrary/search*) by searching Docket No. RM10–17.

[3] The full text of the Final Rule is available on FERC's eLibrary system (*https://elibrary.ferc.gov/eLibrary/search*) by searching Docket No. RM11–7.

reference, with certain enumerated exceptions, Version 003 of the Standards for Business Practices and Communication Protocols for Public Utilities adopted by the WEQ of NAESB as mandatory enforceable requirements. These standards updated NAESB's WEQ Version 002 and Version 002.1 Standards to reflect policy determinations made by the Commission in the Order Nos. 890, 890–A, 890–B and 890–C.[4] In addition, the Commission listed informationally, as guidance, NAESB's Smart Grid Standards (WEQ–016 through WEQ–020) in Part 2 of the Commission's regulations. The Commission required public utilities and those entities with reciprocity tariffs to modify their open access transmission tariffs (OATTs) to include the WEQ standards that were incorporated by making a compliance filing.

In Order No. 819 (in Docket No. RM15–2), the Commission revised its regulations to foster competition in the sale of primary frequency response service. Specifically, the Commission amended its regulations governing market-based rates for public utilities pursuant to the FPA to permit the sale of primary frequency response service at market-based rates by sellers with market-based rate authority for sales of energy and capacity. The Commission found that a seller that already has market-based rate authority as of the effective date of the Final Rule is authorized as of that date to make sales of primary frequency response service at market-based rates.[5] Such a seller was required to revise the third-party provider ancillary services provision of its market-based rate tariff to reflect that it wished to make sales of primary frequency response service at market-based rates. In order to reduce their administrative burden, the Commission permitted such sellers to wait to file this tariff revision until the next time they made a market-based rate filing with the Commission, such as a notice of change in status filing or a triennial update.

In Order No. 842 (in Docket No. RM16–6–000), the Commission revised its regulations to require newly interconnecting large and small generating facilities, both synchronous and non-synchronous, to install, maintain, and operate equipment capable of providing primary frequency response as a condition of interconnection. To implement these requirements, the Commission modified the *pro forma* Large Generator Interconnection Agreement (LGIA) and the *pro forma* Small Generator Interconnection Agreement (SGIA). These changes were designed to address the potential reliability impact of the evolving generation resource mix, and to ensure that the relevant provisions of the *pro forma* LGIA and *pro forma* SGIA are just, reasonable, and not unduly discriminatory or preferential. Section 35.28(f)(1) of the Commission's regulations requires every public utility with a non-discriminatory OATT on file to also have a *pro forma* LGIA and *pro forma* SGIA on file with the Commission. Each public utility transmission provider that has a pro forma LGIA and/or *pro forma* SGIA within its OATT was required to submit a compliance filing that demonstrates that it meets the requirements set forth in the Final Rule within Docket No. RM16–6–000.

In Order 845 (in Docket No. RM17–8), the Commission amended the *pro forma* Large Generator Interconnection Procedures and the *pro forma* LGIA to improve certainty, promote more informed interconnection, and enhance interconnection processes. The reforms were intended to ensure that the generator interconnection process is just and reasonable and not unduly discriminatory or preferential. The Commission required all public utility transmission providers to submit compliance filings to adopt the requirements of the Final Rule (in Docket No. RM17–8), as revisions to the LGIP and LGIA in their OATTs.

In Order 864 (in Docket No. RM19–5), the Commission required public utility transmission providers with transmission formula rates under an OATT, a transmission owner tariff, or a rate schedule to revise those transmission formula rates to account for changes caused by the Tax Cuts and Jobs Act of 2017. The Commission required public utilities with transmission formula rates to include a mechanism in those transmission formula rates to deduct any excess accumulated deferred income taxes (ADIT) from or add any deficient ADIT to their rate bases. Public utilities with transmission formula rates were also required to incorporate a mechanism to decrease or increase their income tax allowances by any amortized excess or deficient ADIT, respectively. Finally, the Commission required public utilities with transmission to update their formula rates through a compliance filing to incorporate a new permanent worksheet into their transmission formula rates that will annually track information related to excess or deficient ADIT.

Estimate of Annual Burden:[6] The Commission estimates the average annual burden and cost[7] for FERC–516 as follows.[8] The 'annual no. of responses per respondent' have been rounded. The estimated total annual burden for this information collection has decreased due to the completion of several one-time filings. The one-time filings required in Order 845 (in Docket No. RM17–8), Order 755 (in Docket No. RM11–7), and Order 676–G (in Docket No. RM05–05–020) are complete. Because Order Nos. 845, 755, 676–G remain a one-time filing requirement for transmission organizations, the burden associated with this data collections will result only if a new transmission organization enters FERC jurisdiction. One response for one new transmission organization is being used as a placeholder for a possible application from such a new transmission organization with an organized electricity market.[9]

[4] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g,* Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299 (2008), *order on reh'g and clarification,* Order No. 890–C, 126 FERC ¶ 61,228 (2009) (Order No. 890–C). The Version 002 standards also included revisions made in response to Order No. 890.

[5] The full text of the Final Rule is available on FERC's eLibrary system (*https://elibrary.ferc.gov/eLibrary/search*) by searching Docket No. RM15–2.

[6] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR part 1320.

[7] The Commission staff estimates that the average respondent for this collection is similarly situated to the Commission, in terms of salary plus benefits. Based on FERC's 2020 annual average of $172,329 (for salary plus benefits), the average hourly cost is $83/hour.

[8] The following currently approved one-time filings for FERC–516 are complete.

- The one-time total burden for Electric Rate Schedules and Tariffs in Docket No. RM17–8 was a total of 65,220 hours that was averaged over three years (65,220 ÷ 3 = 21,740 hours/year over three years).
- The one-time total burden for Electric Rate Schedules and Tariffs in Docket No. RM11–7 was a total of 5,500 hours that was averaged over three years (5,500 ÷ 3 = 1,833 hours/year over three years).
- The one-time total burden for Electric Rate Schedules and Tariffs in Docket No. RM05–05–020 was a total of 60 hours.

[9] If a new RTO/ISO is formed, their tariff filings would be required by Order 845 (in Docket No. RM17–8), Order 755 (in Docket No. RM11–7), and Order 676–G (in Docket No. RM05–05–020).

FERC–516, ELECTRIC RATE SCHEDULES AND TARIFF FILINGS

Requirements	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) × (2) = (3)	Average burden and cost per response (4)	Total annual burden hours and cost (3) * (4) = (5)	Cost per respondent (5)/(1) = (5)
Electric Rates Schedules and Tariff Filings.	1,230	3.633	4,469	103.27 hrs.; $8,571.41 ...	461,513.63 hrs.; $38,305,631.29.	$31,142.79
Demand Response, RM10–17 (one-time and monthly filings).	6	11.33	68	114.71 hrs.; $9,520.93 ...	7,800.28 hrs.; $647,423.24.	107,903.87
Frequency Regulation, RM11–7 (one-time tariff filing and system modification) [9].	1	1	1	366.66 hrs.; $30,432.78	366.66 hrs.; $30,432.78	30,432.78
Variable Energy Resource Integration Rule (RM10–11), Voluntary Burden.	142	2.113	300	29.95 hrs.; $2,485.85	8,985 hrs.; $745,755	5,251.80
Variable Energy Resource Integration Rule, (RM10–11) Mandatory Burden.	294	1.9116	562	30.91 hrs.; $2,565.53	17,371.42 hrs.; $1,441,827.86.	4,904.18
Tariff Filings in RM05–5–020 (one-time) [9].	1	1	1	5 hrs.; $415	5 hrs.; $415	415
Standards for Business Practices and Communication Protocols for Public Utilities Tariff Filings in RM05–5–022 (one-time) [10].	162	1	162	6 hrs.; $498	972 hrs.; $80,676	498
Tariff Filings to Reflect Primary Frequency Response Services in MBR (Final Rule in RM15–2).	1,585	0.1634	259	6 hrs.; $498	1,554 hrs.; $128,982	81.38
Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response in RM16–6.	74	1	74	10 hrs.; $830	740 hrs.; $61,420	830
Reform of Generator Interconnection Procedures and Agreements in RM17–8 (ongoing) [10].	162	2.66	431	4 hrs.; $332	1,724 hrs.; $143,092	883.28
Reform of Generator Interconnection Procedures and Agreements in RM17–8 (one-time) [9].	1	1	1	49.41 hrs.; $4,101.03	49.41 hrs.; $4,101.03	4,101.03
Public Utility Transmission Rate Changes to Address Accumulated Deferred Income Taxes in RM19–5, one-time and ongoing.	106	1.666	177	13.57 hrs.; $1,126.31	2,401.89 hrs.; $199,356.87.	1,880.73
Total Burden for FERC–516 [11] ..	.....	.....	6,505	.....	503,483.29 hrs.; $41,789,113.07.	.....

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) 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.

[10] The increase in the number of respondents from 132 to 162 is based on the increased number of companies subject to compliance and changes in the last few years as identified by the NERC registry.

[11] The total number of responses for FERC–516 is 6,504.98 which is rounded to 6,505.

Dated: June 30, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–14474 Filed 7–6–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP21–913–000.

Applicants: Mississippi Canyon Gas Pipeline, L.L.C.

Description: § 4(d) Rate Filing: MCGP Updates to Tariff Contact Person to be effective 7/28/2021.

Filed Date: 6/28/21.

Accession Number: 20210628–5002.

Comments Due: 5 p.m. ET 7/12/21.

Docket Numbers: RP21–914–000.

Applicants: Egan Hub Storage, LLC.

Description: § 4(d) Rate Filing: Egan Updates to Tariff Contact Person to be effective 7/28/2021.

Filed Date: 6/28/21.

Accession Number: 20210628–5003.

Comments Due: 5 p.m. ET 7/12/21.

Docket Numbers: RP21–915–000.

Applicants: Maritimes & Northeast Pipeline, L.L.C.

Description: § 4(d) Rate Filing: Updates to Tariff Contact Person to be effective 7/28/2021.

Filed Date: 6/28/21.

Accession Number: 20210628–5034.

Comments Due: 5 p.m. ET 7/12/21.

Docket Numbers: RP21–916–000.

Applicants: Texas Eastern Transmission, LP.

Description: Compliance filing TETLP OFO June 2021 Penalty Disbursement Report.

Filed Date: 6/28/21.

Accession Number: 20210628–5098.

Comments Due: 5 p.m. ET 7/12/21.

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 29, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–14373 Filed 7–6–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: ER21–2246–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1894R10 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2021.
Filed Date: 6/29/21.
Accession Number: 20210629–5116.
Comments Due: 5 p.m. ET 7/20/21.

Docket Numbers: ER21–2247–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1897R11 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2021.
Filed Date: 6/29/21.
Accession Number: 20210629–5122.
Comments Due: 5 p.m. ET 7/20/21.

Docket Numbers: ER21–2248–000.
Applicants: PacifiCorp.
Description: Tariff Cancellation: Termination of UAMPS Const Agmt for Heber 2nd POD to be effective 9/6/2021.
Filed Date: 6/29/21.
Accession Number: 20210629–5123.
Comments Due: 5 p.m. ET 7/20/21.

Docket Numbers: ER21–2249–000.
Applicants: Kentucky Utilities Company.
Description: § 205(d) Rate Filing: Revisions to Wholesale Requirements Service Bardstown and Nicholasville to be effective 7/1/2021.
Filed Date: 6/29/21.
Accession Number: 20210629–5127.
Comments Due: 5 p.m. ET 7/20/21.

Docket Numbers: ER21–2250–000.
Applicants: Sayreville Power LP.
Description: § 205(d) Rate Filing: Notice of Succession and Revisions to Tariffs (I) to be effective 5/18/2021.
Filed Date: 6/29/21.
Accession Number: 20210629–5128.
Comments Due: 5 p.m. ET 7/20/21.

Docket Numbers: ER21–2251–000.
Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: ATSI submits Two ECSAs, SA Nos. 5951 and 5952 to be effective 8/29/2021.
Filed Date: 6/29/21.
Accession Number: 20210629–5130.
Comments Due: 5 p.m. ET 7/20/21.

Docket Numbers: ER21–2252–000.
Applicants: Sayreville Power LP.
Description: § 205(d) Rate Filing: Notice of Succession and Revisions to Tariffs (II) to be effective 5/18/2021.
Filed Date: 6/29/21.
Accession Number: 20210629–5129.
Comments Due: 5 p.m. ET 7/20/21.

Docket Numbers: ER21–2253–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1892R10 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2021.
Filed Date: 6/29/21.
Accession Number: 20210629–5136.
Comments Due: 5 p.m. ET 7/20/21.

Docket Numbers: ER21–2254–000.
Applicants: Assembly Solar I, LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 6/30/2021.
Filed Date: 6/29/21.
Accession Number: 20210629–5150.
Comments Due: 5 p.m. ET 7/20/21.

Docket Numbers: ER21–2255–000.
Applicants: Dressor Plains Solar, LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 6/30/2021.
Filed Date: 6/29/21.
Accession Number: 20210629–5144.
Comments Due: 5 p.m. ET 7/20/21.

Docket Numbers: ER21–2256–000.
Applicants: Iris Solar, LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 6/30/2021.
Filed Date: 6/29/21.
Accession Number: 20210629–5145.
Comments Due: 5 p.m. ET 7/20/21.

Docket Numbers: ER21–2257–000.
Applicants: North Star Solar PV LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 6/30/2021.
Filed Date: 6/29/21.
Accession Number: 20210629–5146.
Comments Due: 5 p.m. ET 7/20/21.

Docket Numbers: ER21–2258–000.
Applicants: NRG Cottonwood Tenant LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/30/2021.
Filed Date: 6/29/21.
Accession Number: 20210629–5151.
Comments Due: 5 p.m. ET 7/20/21.

Docket Numbers: ER21–2259–000.
Applicants: Prairie State Solar, LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 6/30/2021.
Filed Date: 6/29/21.
Accession Number: 20210629–5155.
Comments Due: 5 p.m. ET 7/20/21.

Docket Numbers: ER21–2260–000.
Applicants: St. James Solar, LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 6/30/2021.
Filed Date: 6/29/21.
Accession Number: 20210629–5157.
Comments Due: 5 p.m. ET 7/20/21.

Docket Numbers: ER21–2261–000.
Applicants: Exelon Generation Company, LLC.
Description: § 205(d) Rate Filing: Reactive Service Rate Schedule Filing for Deactivation of Units to be effective 9/14/2021.
Filed Date: 6/29/21.
Accession Number: 20210629–5158.
Comments Due: 5 p.m. ET 7/20/21.

Docket Numbers: ER21–2262–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2045R10 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2021.
Filed Date: 6/29/21.
Accession Number: 20210629–5169.
Comments Due: 5 p.m. ET 7/20/21.

Docket Numbers: ER21–2263–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1978R10 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2021.
Filed Date: 6/29/21.
Accession Number: 20210629–5189.
Comments Due: 5 p.m. ET 7/20/21.

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 29, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–14372 Filed 7–6–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC21–18–000]

Commission Information Collection Activities (FERC–725Y); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on a renewal of currently approved information collection FERC–725Y, Mandatory Reliability Standard (Personnel Performance, Training, and Qualifications), which will be submitted to the Office of Management and Budget (OMB) for review.

DATES: Comments on the collection of information are due August 6, 2021.

ADDRESSES: Send written comments on FERC–725Y to OMB through *www.reginfo.gov/public/do/PRAMain.* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Number (1902–0279) in the subject line of your comments. Comments should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Please submit copies of your comments to the Commission. You may submit copies of your comments (identified by Docket No. IC21–18–000) by one of the following methods:

Electronic filing through *http://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.
  - *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
  - *Hand (including courier) Delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review'' field, select Federal Energy Regulatory Commission; click ''submit,'' and select ''comment'' to the right of the subject collection. *FERC submissions* must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov/ferc-online/overview.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–725Y, Mandatory Reliability Standard (Personnel Performance, Training, and Qualifications).

OMB Control No.: 1902–0279.

Type of Request: Three-year extension of the FERC–725Y information collection requirements with no changes to the reporting requirements.

Abstract: The FERC–725Y information collection is intended to help ensure the safe and reliable operation of the interconnected grid through the retention of suitably trained and qualified personnel in positions that can impact the reliable operation of the Bulk-Power System. The Commission uses the FERC–725Y to implement the Congressional mandate of the Energy Policy Act of 2005 to develop mandatory and enforceable Reliability Standards to better ensure the reliability of the nation's Bulk-Power System. FERC–725Y ensures that personnel performing or supporting real-time operations on the Bulk Electric System (BES) are trained using a systematic approach. The Reliability Standard requires entities to maintain records subject to review by the Commission and North American Electric Reliability Corporation (NERC) to ensure compliance with the Reliability Standard.

Reliability Standard PER–005–2 (Operations Personnel Training) requires entities to maintain records subject to review by the Commission and NERC to ensure compliance with the Reliability Standard. This Reliability Standard contains of six Requirements:

- R1 requires reliability coordinators, balancing authorities, and transmission operators to develop and implement a training program for system operators
- R2 requires transmission owners to develop and implement a training program for system operators
- R3 requires reliability coordinators, balancing authorities, transmission operators and transmission owners to verify the capabilities of their identified personnel
- R4 requires reliability coordinators, balancing authorities, transmission operators and transmission owners to provide those personnel with emergency operations training using simulation technology
- R5 requires reliability coordinators, balancing authorities, and transmission operators develop and implement training for system operators whose job functions can impact BES real-time reliability tasks
- R6 requires applicable generator operators to develop and implement training for certain of their dispatch personnel at a centrally located dispatch center

Reliability Standard PER–006–1 (Specific Training for personnel) ensures that personnel are trained on specific topics essential to reliability to perform or support Real-Time operations of the Bulk Electric System.

- R1 identifies generator operator plant personnel responsible for Real-time control and carrying out Operating instructions are trained on the operational functionality of Protection Systems and Remedial Action Schemes that affect the output of generating facility(ies) it operates.

The 60-day **Federal Register** Notice [1] published on April 21, 2021 and no comments were received during the comment period.

Type of Respondents: Transmission owners and generator owners.

Estimate of Annual Burden: [2] Our estimate below regarding the number of respondents is based on the NERC compliance registry as of February 5, 2021.

The Commission estimates the additional annual reporting burden and cost as follows:

	Number and type of respondents [3]	Annual number of responses per respondent	Total number of responses	Average burden & cost per response [4]	Total annual burden hours & total annual cost ($)	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
FERC–725Y in Docket No. IC21–18–000 Reliability Standard PER–005–2						
Annual Evaluation and Update of Training Program (Reporting for all Req.).	(RC, BA, TOP, TO, GOP) 1,148.	1	1,148	8 hrs.; $561.52	9,184 hrs.; $644,624.96	$561.52
Retention of Records	(RC, BA, TOP, TO, GOP) 1,148.	1	1,148	10 hrs.; $433.80	11,480 hrs.; $498,002.40	$433.80
FERC–725Y (Reliability Standard PER–006–1)						
GOP; Reporting Req. R1	937 [5]	1	937	5 hrs.; $350.95	4,685 hrs.; $328,840.15	$350.95
GOP; Recordkeeping Req. R1.	937	1	937	10 hrs. $433.80	9,370 hrs.; $406,470.60	$433.80
Total	.....	.....	.....	.....	34,719 hrs.; $1,877,938.11	.....

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) 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.

Dated: June 30, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–14476 Filed 7–6–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL21–81–000]

Hill Top Energy Center LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On June 29, 2021, the Commission issued an order in Docket No. EL21–81–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether Hill Top Energy Center LLC's proposed Rate Schedule [1] is unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful. *Hill Top Energy Center LLC,* 175 FERC ¶ 61,254 (2021).

The refund effective date in Docket No. EL21–81–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL21–81–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2020), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may

[1] 86 FR 20685.

[2] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[3] For PER–005–2 and PER–006–1: RC=Reliability Coordinator; BA=Balancing Authority; TOP=Transmission Operator; TO=Transmission Owner; GOP=Generator Operator. To eliminate counting the same number multiple times the figure reflects the number of US unique entities (1,148) accounts for overlaps between RC, BA, TOP, TO and GOP. The NERC compliance registry table February 5, 2021 was used preform analysis.

[4] The estimates for cost per response are loaded hourly wage figure (includes benefits) is based on two occupational categories for 2020 found on the Bureau of Labor Statistics website (*http://www.bls.gov/oes/current/naics2_22.htm*):

- Electrical Engineer (Occupation Code: 17–2071): $70.19 (to calculate the reporting requirements).
- Office and Administrative Support (Occupation Code: 43–0000): $43.38 (to calculate the recordkeeping requirements).

[5] The number of US unique GOPs is 937 taken from the NERC compliance registry information of February 5, 2021.

[1] Hill Top Energy Center LLC, Reactive Power Tariff, Hill Top Energy Center, Reactive Power Tariff, 0.0.0.

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.

Dated: June 29, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–14370 Filed 7–6–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG21–184–000.
Applicants: Broad River Solar, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Board River Solar, LLC.
Filed Date: 6/30/21.
Accession Number: 20210630–5078.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: EG21–185–000.
Applicants: CPRE 1 Lessee, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of CPRE 1 Lessee, LLC.
Filed Date: 6/30/21.
Accession Number: 20210630–5110.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: EG21–186–000.
Applicants: Speedway Solar NC, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Speedway Solar NC, LLC.
Filed Date: 6/30/21.
Accession Number: 20210630–5118.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: EG21–187–000.
Applicants: Stony Knoll Solar, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Stony Knoll Solar, LLC.
Filed Date: 6/30/21.
Accession Number: 20210630–5120.
Comments Due: 5 p.m. ET 7/21/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–2511–001.
Applicants: NorthWestern Corporation.
Description: Market-Based Triennial Review Filing: Triennial Market Power Analysis for the SPP Region to be effective N/A.
Filed Date: 6/30/21.
Accession Number: 20210630–5022.
Comments Due: 5 p.m. ET 8/30/21.

Docket Numbers: ER18–2511–001.
Applicants: NorthWestern Corporation.
Description: Market-Based Triennial Review Filing: Triennial Market Power Analysis for the SPP Region to be effective N/A.
Filed Date: 6/30/21.
Accession Number: 20210630–5023.
Comments Due: 5 p.m. ET 8/30/21.

Docket Numbers: ER21–1858–001.
Applicants: Northern States Power Company, a Minnesota corporation.
Description: Tariff Amendment: 2021–06–30–CAPX2020–Brookings–Request for Deferral Action–537–0.1.1 to be effective 12/31/9998.
Filed Date: 6/30/21.
Accession Number: 20210630–5168.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2165–000.
Applicants: Virginia Electric and Power Company.
Description: Virginia Electric and Power Company, submits Amendments to Mutual Operating Agreement with Northern Virginia Electric Cooperative.
Filed Date: 6/15/21.
Accession Number: 20210615–5173.
Comments Due: 5 p.m. ET 7/6/21.

Docket Numbers: ER21–2273–000.
Applicants: NSTAR Electric Company.
Description: § 205(d) Rate Filing: Medway Grid, LLC ? Engineering, Design and Procurement Agreement to be effective 7/1/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5052.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2274–000.
Applicants: Ohio Power Company, American Electric Power Service Corporation, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: AEP submits ILDSA, SA No. 1677 and a Facilities Agreement to be effective 6/11/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5053.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2275–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2491R9 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5056.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2276–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2066R10 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5062.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2277–000.
Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.
Description: § 205(d) Rate Filing: 2021–06–30_SA 3028 Ameren IL—Prairie Power Project #28 Wenonah to be effective 8/30/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5066.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2278–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1895R10 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5069.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2279–000.
Applicants: Iron Star Wind Project, LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization, Request for Related Waivers to be effective 9/1/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5082.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2280–000.
Applicants: Independence Wind Energy LLC.
Description: Baseline eTariff Filing: Filing of Market-Based Rate Application to be effective 8/30/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5090.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2281–000.
Applicants: NSTAR Electric Company.
Description: § 205(d) Rate Filing: Hingham Municipal Lighting Plant ? Design and Engineering Agreement to be effective 7/1/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5113.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2282–000.
Applicants: PPL Electric Utilities Corporation, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: PJM Transmission Owners submit revisions to OATT adding new sec 217.8 & Att. O–2 to be effective 8/30/2021.

Filed Date: 6/30/21.
Accession Number: 20210630–5116.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2283–000.
Applicants: Phillips 66 Company.
Description: § 205(d) Rate Filing: Amendments to Market-Based Rate Schedule to be effective 8/30/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5122.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2284–000.
Applicants: Coyote Ridge Wind, LLC.
Description: Market-Based Triennial Review Filing: Central Region Triennial of Coyote Ridge to be effective 8/30/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5124.
Comments Due: 5 p.m. ET 8/30/21.

Docket Numbers: ER21–2285–000.
Applicants: Bishop Hill Energy III LLC.
Description: Market-Based Triennial Review Filing: Central Region Triennial of BH III to be effective 8/30/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5125.
Comments Due: 5 p.m. ET 8/30/21.

Docket Numbers: ER21–2286–000.
Applicants: WPS Power Development, LLC.
Description: Market-Based Triennial Review Filing: Central Region Triennial of WPS Power Development to be effective 8/30/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5126.
Comments Due: 5 p.m. ET 8/30/21.

Docket Numbers: ER21–2287–000.
Applicants: Glass Sands Wind Energy, LLC.
Description: Baseline eTariff Filing: Application for MBR Authority and Initial Bseline Tariff Filing to be effective 9/1/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5129.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2287–001.
Applicants: Glass Sands Wind Energy, LLC.
Description: Tariff Amendment: Amendment to MBR Authority Application and Initial Bseline Tariff Filing to be effective 9/1/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5222.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2288–000.
Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.
Description: § 205(d) Rate Filing: NYISO-National Grid Joint 205 Amended Restated SGIA2549 Duke North Country Solar to be effective 6/22/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5130.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2289–000.
Applicants: Clover Creek Solar, LLC.
Description: Baseline eTariff Filing: Clover Creek Solar, LLC MBR Tariff to be effective 7/1/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5148.
Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2290–000.
Applicants: NorthWestern Corporation, Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: NorthWestern Corporation (South Dakota) Formula Rate Revisions to be effective 9/1/2021.
Filed Date: 6/30/21.
Accession Number: 20210630–5152.
Comments Due: 5 p.m. ET 7/21/21.

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 30, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–14470 Filed 7–6–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2413–126]

Georgia Power Company; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed an application submitted by Georgia Power Company (licensee) to allow River Sand Inc., in Greene County, Georgia, the use of Wallace Dam Hydroelectric (FERC No. 2413) project lands and waters to conduct hydraulic sand mining for commercial purposes. The project is located at about river mile 173 on the Oconee River in the Altamaha River Basin in Putnam, Morgan, Oconee, Oglethorpe, Greene and Hancock counties, Georgia. The proposed sand mine would be operated by River Sand Inc. and sited in Greene County. The project occupies federal land administered by the U.S. Forest Service, but the proposed sand mine will not operate on Forest Service land.

An Environmental Assessment (EA) has been prepared as part of Commission staff's review of the proposal. This EA contains Commission staff's analysis of the probable environmental impacts of the proposed action and concludes that approval of the proposal would not constitute a major federal action significantly affecting the quality of the human environment.

The EA 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. 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. 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,* for TTY, call (202) 502–8659.

For further information, contact Michael Calloway at (202) 502–8041 or by email at *michael.calloway@ferc.gov.*

Dated: June 30, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–14472 Filed 7–6–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2020–0442; FRL–10024–70–OAR]

Withdrawal of Approval for Use of Phosphogypsum in Road Construction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is withdrawing its October 14, 2020 approval for use of phosphogypsum in government road projects. Under the Clean Air Act, the EPA may approve a request for other use of phosphogypsum if it includes certain prescribed information. Upon further review, EPA has determined that the approval was premature and should be withdrawn because the request did not contain all of the required information. With this action, phosphogypsum remains prohibited from use in road construction projects.

DATES: Effective July 7, 2021.

FOR FURTHER INFORMATION CONTACT: Jonathan P. Walsh, Radiation Protection Division, Office of Radiation and Indoor Air, Mail Code 6608T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 343–9238; fax number: (202) 343–2304; email address: *walsh.jonathan@epa.gov.*

Organization of this document. The information in this notice is organized as follows:

SUPPLEMENTARY INFORMATION:

I. General Information

A. How can I get copies of this document and other related information?

1. *Docket.* The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2020–0442. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

2. *Electronic Access.* You may access this **Federal Register** document electronically from the Government Printing Office under the ''**Federal Register**'' listings at FDSys (*http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR*).

II. Background and Overview of Decision

On October 14, 2020, EPA approved, subject to certain conditions, a request by The Fertilizer Institute (TFI) for the use of phosphogypsum in government road projects.[1] This request was submitted pursuant to Clean Air Act regulations at 40 CFR 61.206, which provide that EPA may approve request for a specific use of phosphogypsum if it is determined that the proposed use is at least as protective of public health as placement in a stack, which is the designated management method. EPA identified ten components that such a request ''must contain'' (40 CFR 61.206(b)). These include such items as the specific location where phosphogypsum will be used and the quantity of phosphogypsum to be used.

On December 18, 2020, various groups[2] petitioned the United States Court of Appeals for the District of Columbia Circuit for review of EPA's action conditionally approving TFI's request. On that same date, these same groups, ''as a precaution and as a matter of courtesy,'' submitted to EPA, ostensibly under Clean Air Act (CAA) § 307(d)(7)(B) (42 U.S.C. 7607(d)(7)(B)), a petition asking EPA to reconsider its action. EPA is further prompted to review this approval by Executive Order 13990, which directs agencies to examine a wide range of previously-issued actions in light of various policies and national objectives.[3]

EPA has the authority to review and reconsider, on its own initiative, previous decisions and actions. Upon further evaluation, EPA decides that it was premature for the Agency to approve the proposed use without all of the information specified as constituting a proper request under § 61.206(b). Therefore, EPA has withdrawn, revoked and rescinded the October 2020 approval.[4] This decision is without prejudice to a subsequent or further proper request under § 61.206 for approval of the use of phosphogypsum for other purposes that contains the information required by § 61.206(b). In accordance with the regulations at 40 CFR part 61, subpart R, unless and until any such request is approved, phosphogypsum must continue to be placed in stacks and may not be removed from stacks for use in road construction.

Michael S. Regan,

Administrator.

[FR Doc. 2021–14377 Filed 7–6–21; 8:45 am]

BILLING CODE 6560–50–P

[1] Letter from Andrew R. Wheeler, Administrator, Environmental Protection Agency, to Corey Rosenbusch, President and CEO, The Fertilizer Institute, dated October 14, 2020, Docket No. EPA–HQ–OAR–2020–0442–0015. See also 85 FR 66550, October 20, 2020.

[2] Center for Biological Diversity, Healthy Gulf, Manasota–88, Inc., North America's Building Trades Unions, People for Protecting Peace River, Inc., Public Employees for Environmental Responsibility, Rise St. James, and Sierra Club and its Florida chapter. See *Center for Biological Diversity* v. *EPA,* No. 20–1506.

[3] ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,'' signed January 20, 2021. 86 FR 7037, January 25, 2021.

[4] Letter from Michael S. Regan, Administrator, Environmental Protection Agency, to Corey Rosenbusch, President and CEO, The Fertilizer Institute, Docket No. EPA–HQ–OAR–2020–0442. See this letter for further discussion of the reasons for the withdrawal, revocation, and recission of the prior October 2020 decision.

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of Intent To Terminate Receivership; Correction

In the notice the Federal Deposit Insurance Corporation (FDIC or Receiver) published in the April 27, 2021, **Federal Register** (86 FR 22204), Georgian Bank was incorrectly listed as Georgia Bank. This notice makes that correction.

Notice is hereby given that the FDIC as Receiver for the institution listed below intends to terminate its receivership for said institution.

NOTICE OF INTENT TO TERMINATE RECEIVERSHIP

Fund	Receivership name	City	State	Date of appointment of receiver
10122	Georgian Bank	Atlanta	GA	09/25/2009

The liquidation of the assets for the receivership has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing, identify the receivership to which the comment pertains, and sent within thirty days of the date of this notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this timeframe.

(Authority: 12 U.S.C. 1819)

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on July 1, 2021.

Debra A. Decker,

Deputy Executive Secretary.

[FR Doc. 2021–14422 Filed 7–6–21; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

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 the BHC Act (12 U.S.C. 1842(c)).

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 August 6, 2021.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *First Bancorp of Taylorville, Inc., Taylorville, Illinois;* to merge with Mackinaw Valley Financial Services, Inc., and thereby indirectly acquire First Security Bank, both of Mackinaw, Illinois.

B. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *FirstSun Capital Bancorp, Denver, Colorado;* to merge with Pioneer Bancshares, Inc., and thereby indirectly acquire Pioneer Bank, SSB, both of Austin, Texas.

Board of Governors of the Federal Reserve System, July 1, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–14452 Filed 7–6–21; 8:45 am]

BILLING CODE 6210–01–P

OFFICE OF GOVERNMENT ETHICS

Solicitation of Input From Stakeholders Regarding the U.S. Office of Government Ethics Strategic Plan (FY 2022–2026)

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice of request for public comment.

SUMMARY: The U.S. Office of Government Ethics (OGE) is providing notice of request for public comment on its draft Strategic Plan (Plan). The Plan describes OGE's priorities for the next five years. OGE will consider all comments received by the deadline. You may access the Plan at *www.oge.gov/StrategicPlanFeedback,* or you may obtain a copy of the Plan by sending an email request to *OGEStrategicPlan@oge.gov.* You are also invited to share your thoughts on the Plan at a virtual town hall meeting on July 13, 2021 from 3–4p.m., EST or July 14, 2021 from 5:30–6:30 p.m., EST. If you plan to attend, please RSVP to *OGEStrategicPlan@oge.gov.*

DATES: All comments must be received by July 22, 2021.

ADDRESSES: You may submit comments by any of the following methods:

Email: OGEStrategicPlan@oge.gov.

Mail: U.S. Office of Government Ethics, Suite 500, 1201 New York Avenue NW, Washington, DC 20005–3917, Attention: Nicole Stein, OGE Strategic Plan.

Instructions: All submissions must include OGE's agency name and the words ''Strategic Plan.'' All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Comments may be posted on OGE's website, *www.oge.gov.* Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Nicole Stein, Chief, Agency Assistance Branch, U.S. Office of Government Ethics, Suite 500, 1201 New York Avenue NW, Washington, DC 20005–3917; Telephone (202) 482–9255; TTY: 800–877–8339; Email: *OGEStrategicPlan@oge.gov.*

Approved: July 1, 2021.

Emory Rounds,

Director, U.S. Office of Government Ethics.

[FR Doc. 2021–14483 Filed 7–6–21; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–21–0856; Docket No. CDC–2021–0058]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on an information collection project titled National Quitline Data Warehouse. The National Quitline Data Warehouse (NQDW) collects a core set of information from all U.S. states, the District of Columbia, Guam, Puerto Rico, and the Asian Smoker's Quitline, regarding what services telephone quitlines offer to tobacco users as well as the number and type of tobacco users who receive services from telephone quitlines.

DATES: CDC must receive written comments on or before September 7, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2021–0058 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov.*

*Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.*

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7118; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

National Quitline Data Warehouse (OMB Control No. 0920–0856, Exp. 10/31/2022)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Since 2010, the National Quitline Data Warehouse (NQDW) has collected a core set of information from the 50 U.S. states, the District of Columbia, Guam, and Puerto Rico regarding what services telephone quitlines offer to tobacco users as well as the number and type of tobacco users who receive services from telephone quitlines. The data collection was modified in 2015 to collect data from the Asian Smokers' Quitline (ASQ) in addition to the other 53 states/territories that provide data, and included five new questions to the NQDW Intake Questionnaire to help CDC and states tailor quitline services to the needs of its callers. Additionally, collection of the NQDW Services Survey was changed from quarterly to semiannually in 2019.

The NQDW provides data on the general smoking population who contact their state quitlines, but also allows for collections of information about key subgroups of tobacco users who contact state quitlines to better support cessation services. Data is collected on tobacco users who received service from state telephone quitlines from all funded U.S. states, territories, and the Asian Smokers' Quitline (ASQ) through the NQDW Intake Questionnaire. The NQDW Seven-month Follow-up Questionnaire is administered to tobacco users who received services from the ASQ only. Data on the quitline call volume, number of tobacco users served, and the services offered by state quitlines will be provided by state health department personnel who manage the quitline, or their designee, such as contracted quitline service providers, using the NQDW Quitline Services Survey. Data collected from the NQDW is analyzed with simple descriptive data tabulations, and trends are currently reported online through the CDC State Tobacco Activities Tracking and Evaluation (STATE) System website. More complex statistical analyses, including multivariate regression techniques will be utilized to assess quitline outcomes such as quitline reach, service utilization, how callers reported hearing about the quitline, and the effectiveness of quitline promotions and the CDC Tips From Former Smokers national tobacco education media campaigns on state quitline call volume, and tobacco users receiving services from state quitlines. CDC uses the information collected by the NQDW for ongoing monitoring, reporting, and evaluation related to state quitlines. Select data from the NQDW are reported online through the CDC's STATE System website (*http://www.cdc.gov/statesystem*).

CDC requests OMB approval to continue the NQDW information collection for three years. This Revision reflects inclusion of additional measures, including those related to e-cigarette use and online quitline services, that reflect the impact of new

technologies. Adding these measures to the NQDW survey instruments will impose minimal additional burden on states but will substantially improve the utility of the NQDW data to identify use of state quitlines by key tobacco use populations and through modalities other than telephone calls. Participation in the caller intake and follow-up interviews is voluntary for quitline callers. The estimated burden is 10 minutes for a complete intake call conducted with an individual who calls on their own behalf. The estimated burden is one minute for a caller who requests information for someone else, as these callers complete only a subset of questions on the intake questionnaire.

As a condition of funding (CDC–RFA–DP20–2001), the 54 cooperative agreement awardees are required to submit NQDW intake data quarterly, and services survey data semiannually. CDC recognizes that awardees incur additional burden for preparing and transmitting summary files with their de-identified caller intake and follow-up data. This burden is acknowledged in the instructions for transmitting the electronic data files. There is a net decrease in burden hours from the previous NQDW package estimate. This is primarily due to decreases in the overall number of telephone calls to the quitlines, which is estimated to be only partially offset by the use of other quitline modalities. The total estimated annual Burden Hours for the NQDW are 68,088. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per respondent (in hours)	Total burden (in hours)
Quitline participants who contact the quitline for help for themselves.	NQDW Intake Questionnaire (English-complete).	405,053	1	10/60	67,509
	ASQ Intake Questionnaire (Chinese, Korean, or Vietnamese-complete).	1,686	1	10/60	281
	ASQ Seven-Month Follow-up Questionnaire	236	1	7/60	28
Participants who contact the quitline on behalf of someone else.	NQDW Intake Questionnaire (English-subset)	819	1	1/60	14
	ASQ Intake Questionnaire (Chinese, Korean, or Vietnamese-subset).	249	1	1/60	4
Tobacco Control Manager or their Designee/ quitline Service Provider.	Submission of NQDW Intake Questionnaire Electronic Data File to CDC.	54	4	1	216
	Submission of NQDW (ASQ) Seven-Month Follow-up Electronic Data File to CDC.	1	1	1	1
	NQDW Quitline Services Survey	54	2	20/60	36
Total	.....	.....	.....	.....	68,088

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–14441 Filed 7–6–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–21–21FS; Docket No. CDC–2021–0059]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled The Muscular Dystrophy Surveillance, Tracking, and Research Network (MD STAR*net*) Muscular Dystrophy Questionnaire: Understanding the impact of COVID–19, flu, pain, fatigue, pregnancy and infertility, on adults with muscular dystrophy. The purpose of the proposed study is to describe the epidemiology of COVID–19 and flu and the experience with pain, fatigue, pregnancy, and infertility for adults living with muscular dystrophy who are identified through the Muscular Dystrophy Surveillance Tracking and Research Network (MD STAR*net*). Information will be used to develop interventions that improve the lives of people with muscular dystrophy and their families.

DATES: CDC must receive written comments on or before September 7, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2021–0059 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7118; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of

information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

The Muscular Dystrophy Surveillance, Tracking, and Research Network (MD STAR*net*) Muscular Dystrophy Questionnaire: Understanding the impact of COVID–19, flu, pain, fatigue, pregnancy and infertility, on adults with muscular dystrophy—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Since its establishment in 2002, the MD STAR*net* has been a population-based surveillance system that aims to identify and collect clinical data on individuals with muscular dystrophy (MD) in select surveillance areas. MD STAR*net* identifies and collects data on cases at sources including healthcare facilities where patients with MD receive care, and administrative datasets such as vital records and hospital discharge data. While MDs are rare genetic diseases with an estimated prevalence of 16.1/100,000, they have a high impact on affected individuals, their families, and society. MDs can be classified into nine major groups: Duchenne muscular dystrophy (DMD), Becker muscular dystrophy (BMD), myotonic dystrophy (DM), facioscapulohumeral muscular dystrophy (FSHD), limb-girdle muscular dystrophy (LGMD), Congenital muscular dystrophy (CMD), Emery-Dreifuss muscular dystrophy (EDMD), and distal muscular dystrophy. A recent MD STAR*net* study has estimated the combined prevalence for DMD and BMD to be 1.92–2.48/10,000 males age 5–9 years old. MD STAR*net* aims to improve understanding of MDs and ultimately the quality of life of people and their families living with MD. Individuals with MDs frequently report pain and fatigue, but studies have largely been conducted in clinic-based populations and included the three most common MDs. Population-based studies are needed to describe the frequency and management of pain and fatigue and their impact on the lives of individuals with various types of MD.

The purpose of the proposed study is to describe the epidemiology of COVID–19 and flu and the experience with pain, fatigue, pregnancy, and infertility for adults living with muscular dystrophy who are identified through the Muscular Dystrophy Surveillance Tracking and Research Network (MD STAR*net*).

Results generated from the study will provide a better understanding of (1) the occurrence, testing, treatment and severity of COVID–19 in relation to MD; (2) vaccination status and reasons for not receiving COVID–19 and flu vaccinations; (3) the frequency, intensity, and management of pain and fatigue; and (4) the effect of having muscular dystrophy on pregnancy and fertility on adults living with muscular dystrophy. Ultimately, this information can be used by stakeholders to develop interventions that improve the lives of people with muscular dystrophy and their families.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Adult males 18 and over	MD STAR*net* male questionnaire	1,794	1	15/60	449
Adult females 18 and over	MD STAR*net* female questionnaire	1,574	1	20/60	525
Total					974

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–14437 Filed 7–6–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–21–21BG]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Prevention Research Centers National Program Evaluation Reporting System (PERS) to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on December 18, 2020 to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice of publication.

Proposed Project

Prevention Research Centers National Program Evaluation Reporting System (PERS)—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 1984, Congress passed Public Law 98–551 directing the Department of Health and Human Services (DHHS) to establish Centers for Research and Development of Health Promotion and Disease Prevention. Beginning in 1986, the CDC received funding to lead the Prevention Research Centers (PRC) Program. Each PRC receives funding from the CDC to establish its core infrastructure and functions and conduct a core research project. Core research projects reflect each PRC's area of expertise and community needs. PRC core research projects align with the health disparities and goals outlined in Healthy People 2020 and Healthy People 2030. PRCs also have the opportunity to apply for additional competitive CDC funding to complete special interest projects (SIPs) to focus on a topic of interest or a gap in scientific evidence.

In 2018, the CDC published program announcement DP19–001 for the current PRC Program funding cycle (September 30, 2019–September 29, 2024). Twenty-six PRCs were selected through a competitive, external, peer-review process. The program is now in its second year of the current five-year funding cycle.

Each PRC is housed within an accredited school of public health or an accredited school of medicine or osteopathy with a preventive medicine residency program. The PRCs conduct outcomes-oriented, applied prevention research on priority public health topics using a multi-disciplinary and community-engaged approach. Partners include, but are not limited to, state, local, and tribal health departments, departments of education, schools and school districts, community-based organizations, healthcare providers, and health organizations. Partners collaborate with the PRCs to assess community needs; identify research priorities; set research agendas; conduct research projects and related activities such as training and technical assistance; translate research findings; and disseminate research results to public health practitioners, other researchers, and the general public.

In 2020, CDC convened a work group to review proposed data fields in the program evaluation reporting system (PERS) and provide feedback to CDC. Their feedback was used to refine the data fields and ensure feasibility of the data collection and reporting by PRCs. These data will be used for program monitoring and evaluation purposes.

CDC's proposed information collection plan is as follows:

CDC will use the information reported by PRCs through PERS to identify training and technical assistance needs, respond to requests for information from Congress and other sources, monitor grantees' compliance with cooperative agreement requirements, evaluate progress made in achieving goals and objectives, and inform program improvement efforts. In addition, these monitoring data will support CDC's ability to describe the impact and effectiveness of the PRC Program.

The CDC currently funds 26 PRCs and each center will annually report the required information to the CDC through PERS during years three through five of the cooperative agreement. The proposed web-based data collection system will allow data entry during the entire year, which will enable respondents to distribute burden throughout each funding year. Response burden is estimated to decrease significantly in years four and five, because cumulative reporting means some sections will require little to no editing through the funding cycle. OMB approval is requested for three years, which will cover the last three years in the current funding cycle. The average estimated annualized burden per respondent is 25 hours. The total estimated annualized burden for all respondents is 650 hours. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
PRCs	PERS	26	1	25

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–14439 Filed 7–6–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Request for Assistance for Child Victims of Human Trafficking

AGENCY: Office on Trafficking in Persons, Administration for Children and Families, HHS.

ACTION: Request for Public Comment.

SUMMARY: The Administration for Children and Families (ACF), Office on Trafficking in Persons (OTIP) is requesting a three-year extension of the form: Request for Assistance (RFA) for Child Victims of Human Trafficking (OMB #0970–0362, expiration 07/31/2021). Minor revisions have been made to the form, including the addition of a few fields that will enable the OTIP Child Protection Specialist team to better understand the child's specific needs, connect the child to appropriate services, and help ensure the safety of the child.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION:

Description: The Trafficking Victims Protection Act (TVPA) of 2000, as amended directs the Secretary of the U.S. Department of Health and Human Services (HHS), upon receipt of credible information that a foreign national minor may have been subjected to a severe form of trafficking in persons and is seeking assistance available to victims of trafficking, to promptly determine if the child is eligible for benefits and services to the same extent as refugees. HHS delegated this authority to the Office on Trafficking in Persons (OTIP).

OTIP developed a form for case managers, attorneys, law enforcement officers, child welfare workers, and other representatives to report these trafficking concerns to HHS in accordance with the TVPA of 2000, as amended, and allow for OTIP to review the concerns and determine eligibility for benefits.

Specifically, the form asks the requester for their identifying information, identifying information for the child, and information describing the potential trafficking concerns. The form takes into consideration the need to compile information regarding a child's experiences in a trauma-informed and child-centered manner and assists the requester in assessing whether the child may have been subjected to a severe form of trafficking in persons. The information provided through the completion of a Request for Assistance (RFA) for Child Victims of Human Trafficking form enables OTIP to make prompt determinations regarding a foreign national minor's eligibility for assistance, facilitate the required consultation process should the minor receive interim assistance, and enable OTIP to assess and address potential child protection issues. OTIP also uses the information provided to respond to congressional inquiries, fulfill federal reporting requirements, and inform policy and program development that is responsive to the needs of victims.

In 2019, OTIP launched Shepherd, an online case management system, to process requests for assistance and certification on behalf of foreign national minor and adult victims of trafficking. If a requester encounters issues submitting a request through Shepherd, they may submit the RFA form to OTIP as a password protected PDF to *childtrafficking@acf.hhs.gov.*

Respondents: Representatives of governmental entities, members of the community, and nongovernmental entities providing social, legal, or protective services to foreign national minors in the United States who may have been subjected to severe forms of trafficking in persons. Furthermore, representatives within the community with a concern that a foreign national minor may have been subjected to severe forms of trafficking in persons may also use the RFA form.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Request for Assistance for Child Victims of Human Trafficking	1,200	1	1	1,200	400

Estimated Total Annual Burden Hours: 400.

Authority: 22 U.S.C. 7105(b).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–14448 Filed 7–6–21; 8:45 am]

BILLING CODE 4184–47–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–1853]

Unique Device Identification System: Form and Content of the Unique Device Identifier; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a final guidance entitled ''Unique Device Identification System: Form and Content of the Unique Device Identifier (UDI).'' This document describes the requirements for, and FDA's recommendations regarding, the form and content of the UDI to help ensure that the UDIs developed under systems for the issuance of UDIs meet the objectives of the Unique Device Identification System Final Rule.

DATES: The announcement of the guidance is published in the **Federal Register** on July 7, 2021.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–D–1853 for ''Unique Device Identification System: Form and Content of the Unique Device Identifier (UDI).'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Unique Device Identification System: Form and Content of the Unique Device Identifier (UDI)'' to the Office of Policy, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Christopher Diamant, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3210, Silver Spring, MD 20993–0002, 301–796–5995 or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

This document is intended to assist labelers, as defined in 21 CFR 801.3, and FDA-accredited issuing agencies, as defined in 21 CFR 830.3, in complying with UDI labeling requirements, including by clarifying FDA's interpretation of certain requirements under 21 CFR 801.40. Specifically, this guidance describes the requirements for, and FDA's recommendations regarding, the form and content of the UDI to help ensure that the UDIs developed under systems for the issuance of UDIs meet the objectives of the Unique Device Identification System Final Rule, 78 FR

58786 (September 24, 2013). In this guidance, we describe the two forms of a UDI, clarify the content of the UDI, and address the use of data delimiters that identify specific data elements within the UDI. The guidance also addresses the recommended order of the data in the easily readable plain text form of a UDI carrier. This guidance does not apply to universal product codes.

A notice of availability of the draft guidance appeared in the **Federal Register** of July 26, 2016 (81 FR 48814). FDA considered the comments received and revised the guidance as appropriate in response to the comments.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Unique Device Identification System: Form and Content of the Unique Device Identifier (UDI).'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This guidance document is also available at *https://www.regulations.gov*, *https://www.fda.gov/regulatory-information/search-fda-guidance-documents*, or *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances.* Persons unable to download an electronic copy of ''Unique Device Identification System: Form and Content of the Unique Device Identifier (UDI)'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1500035 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in the following FDA regulations have been approved by OMB as listed in the following table:

21 CFR part	Topic	OMB Control No.
801 subpart B and 830	Unique Device Identification	0910–0720

Dated: July 1, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–14462 Filed 7–6–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–E–2223]

Determination of Regulatory Review Period for Purposes of Patent Extension; BARHEMSYS

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for BARHEMSYS and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by September 7, 2021. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 3, 2022. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 7, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 7, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submission'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management

Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–E–2223 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; BARHEMSYS.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product BARHEMSYS (amisulpride) indicated in adults for: (1) Prevention of postoperative nausea and vomiting (PONV) either alone or in combination with an antiemetic of a different class, or (2) treatment of PONV in patients who have received antiemetic prophylaxis with an agent of a different class or have not received prophylaxis. Subsequent to this approval, the USPTO received a patent term restoration application for BARHEMSYS (U.S. Patent No. 9,084,765) from Acacia Pharma Limited and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated December 14, 2020, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of BARHEMSYS represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for BARHEMSYS is 2,960 days. Of this time, 2,085 days occurred during the testing phase of the regulatory review period, while 875 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* January 21, 2012. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on January 21, 2012.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* October 5, 2017. FDA has verified the applicant's claim that the new drug application (NDA) for BARHEMSYS (NDA 209510) was initially submitted on October 5, 2017.

3. *The date the application was approved:* February 26, 2020. FDA has verified the applicant's claim that NDA 209510 was approved on February 26, 2020.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,085 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA

investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 25, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–14461 Filed 7–6–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2020–E–1315 and FDA–2020–E–1316]

Determination of Regulatory Review Period for Purposes of Patent Extension; BEOVU

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for BEOVU and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by September 7, 2021. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 3, 2022. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 7, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 7, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

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- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked, and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2020–E–1315 and FDA–2020–E–1316, for ''Determination of Regulatory Review Period for Purposes of Patent Extension; BEOVU.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be

extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product BEOVU (brolucizumab-dbll). BEOVU is indicated for the treatment of neovascular (wet) age-related macular degeneration. Subsequent to this approval, the USPTO received patent term restoration applications for BEOVU (U.S. Patent Nos. 8,349,322 and 9,090,684) from Novartis AG, and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated July 20, 2020, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of BEOVU represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for BEOVU is 3,064 days. Of this time, 2,821 days occurred during the testing phase of the regulatory review period, while 243 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* May 20, 2011. FDA has verified the applicant's claims that the date the investigational new drug application became effective was on May 20, 2011.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* February 7, 2019. FDA has verified the applicant's claim that the biologics license application (BLA) for BEOVU (BLA 761125) was initially submitted on February 7, 2019.

3. *The date the application was approved:* October 7, 2019. FDA has verified the applicant's claims that BLA 761125 was approved on October 7, 2019.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 888 or 1,354 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 28, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–14473 Filed 7–6–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. FDA–2021–F–0564]

Biomin Holding GmbH; Filing of Food Additive Petition (Animal Use)

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notification of petition.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that we have filed a petition, submitted by Biomin Holding GmbH, proposing that the food additive regulations be amended to provide for the safe use of fumonisin esterase to degrade fumonisins in poultry feed.

DATES: The food additive petition was filed on May 20, 2021.

ADDRESSES: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and insert the docket number found in brackets in the heading of this document into the ''Search'' box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Wasima Wahid, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl. (HFV–221), Rockville, MD 20855, 240–402–5857, *Wasima.Wahid@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5))), we are giving notice that we have filed a food additive petition (FAP 2314), submitted by Biomin Holdings GmbH, Biomin Research Center, Technopark 1, 3430 Tulin, Austria. The petition proposes to amend Title 21 of the Code of Federal Regulations (CFR) in part 573 (21 CFR part 573) *Food Additives Permitted in Feed and Drinking Water of Animals* to provide for the safe use of fumonisin esterase to degrade fumonisins in poultry feed.

The petitioner has claimed that this action is categorically excluded under 21 CFR 25.32(r) because it is of a type that does not individually or

cumulatively have a significant effect on the human environment. In addition, the petitioner has stated that, to their knowledge, no extraordinary circumstances exist. If FDA determines a categorical exclusion applies, neither an environmental assessment nor an environmental impact statement is required. If FDA determines a categorical exclusion does not apply, we will request an environmental assessment and make it available for public inspection.

Dated: June 30, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–14465 Filed 7–6–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2019–E–3016 and FDA–2019–E–3133]

Determination of Regulatory Review Period for Purposes of Patent Extension; Zephyr Endobronchial Valve Implant

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for Zephyr Endobronchial Valve Implant and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by September 7, 2021. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 3, 2022. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 7, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 7, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2019–E–3016 and FDA–2019–E–3133 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; ZEPHYR ENDOBRONCHIAL VALVE IMPLANT.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670)

generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device ZEPHYR ENDOBRONCHIAL VALVE IMPLANT. ZEPHYR ENDOBRONCHIAL VALVE IMPLANT is indicated for the bronchoscopic treatment of adult patients with hyperinflation associated with severe emphysema in regions of the lung that have little to no collateral ventilation. Subsequent to this approval, the USPTO received patent term restoration applications for ZEPHYR ENDOBRONCHIAL VALVE IMPLANT (U.S. Patent Nos. 6,527,761 and 7,798,147) from Pulmonx Corp., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated October 29, 2019, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of ZEPHYR ENDOBRONCHIAL VALVE IMPLANT represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ZEPHYR ENDOBRONCHIAL VALVE IMPLANT is 5,744 days. Of this time, 5,565 days occurred during the testing phase of the regulatory review period, while 179 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(g)) involving this device became effective:* October 9, 2002. The applicant claims that the investigational device exemption (IDE) required under section 520(g) of the FD&C Act for human tests to begin became effective on March 11, 2005. However, FDA records indicate that the IDE was determined substantially complete for clinical studies to have begun on October 9, 2002, which represents the IDE effective date.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* January 2, 2018. The applicant claims December 29, 2017, as the date the premarket approval application (PMA) for ZEPHYR ENDOBRONCHIAL VALVE IMPLANT (PMA 180002) was initially submitted. However, FDA records indicate that PMA 180002 was submitted on January 2, 2018.

3. *The date the application was approved:* June 29, 2018. FDA has verified the applicant's claim that PMA 180002 was approved on June 29, 2018.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 5 years or 1,510 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.)

Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 25, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–14482 Filed 7–6–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Lists of Designated Primary Medical Care, Mental Health, and Dental Health Professional Shortage Areas

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice informs the public of the availability of the complete lists of all geographic areas, population groups, and facilities designated as primary medical care, dental health, and mental health professional shortage areas (HPSAs) as of April 30, 2021. The lists are available on the shortage area topic page on HRSA's *data.hrsa.gov* website.

ADDRESSES: Complete lists of HPSAs designated as of April 30, 2021, are available on the website at *https://data.hrsa.gov/topics/health-workforce/shortage-areas.* Frequently updated information on HPSAs is available at *https://data.hrsa.gov/tools/shortage-area.* Information on shortage designations is available at *https://bhw.hrsa.gov/workforce-shortage-areas/shortage-designation.*

FOR FURTHER INFORMATION CONTACT: For further information on the HPSA designations listed on the website or to request additional designation, withdrawal, or reapplication for designation, please contact Janelle D. McCutchen, DHEd, MPH, CHES, Chief, Shortage Designation Branch, Division of Policy and Shortage Designation, Bureau of Health Workforce (BHW), HRSA, 5600 Fishers Lane, Room 11W14, Rockville, Maryland 20857, *sdb@hrsa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 332 of the Public Health Service (PHS) Act, 42 U.S.C. 254e, provides that the Secretary shall designate HPSAs based on criteria established by regulation. HPSAs are defined in section 332 to include (1) urban and rural geographic areas with shortages of health professionals, (2) population groups with such shortages, and (3) facilities with such shortages. Section 332 further requires that the Secretary annually publish lists of the designated geographic areas, population groups, and facilities. The lists of HPSAs are to be reviewed at least annually and revised as necessary.

Final regulations (42 CFR part 5) were published in 1980 that include the criteria for designating HPSAs. Criteria were defined for seven health professional types: Primary medical care, dental, psychiatric, vision care, podiatric, pharmacy, and veterinary care. The criteria for correctional facility HPSAs were revised and published on March 2, 1989 (54 FR 8735). The criteria for psychiatric HPSAs were expanded to mental health HPSAs on January 22, 1992 (57 FR 2473). Currently funded PHS Act programs use only the primary medical care, mental health, or dental HPSA designations.

HPSA designation offers access to potential federal assistance. Public or private nonprofit entities are eligible to apply for assignment of National Health Service Corps (NHSC) personnel to provide primary medical care, mental health, or dental health services in or to these HPSAs. NHSC health professionals enter into service agreements to serve in federally designated HPSAs. Entities with clinical training sites located in HPSAs are eligible to receive priority for certain residency training program grants administered by HRSA's BHW. Other federal programs also utilize HPSA designations. For example, under authorities administered by the Centers for Medicare and Medicaid Services, certain qualified providers in geographic area HPSAs are eligible for increased levels of Medicare reimbursement.

Content and Format of Lists

The three lists of designated HPSAs are available on the HRSA Data Warehouse shortage area topic web page and include a snapshot of all geographic areas, population groups, and facilities that were designated HPSAs as of April 30, 2021. This notice incorporates the most recent annual reviews of designated HPSAs and supersedes the HPSA lists published in the **Federal Register** on June 15, 2020 (**Federal Register**/Vol. 85, No. 115/Monday, June 15, 2020/Notices 36219).

In addition, all Indian Tribes that meet the definition of such Tribes in the Indian Health Care Improvement Act of 1976, 25 U.S.C. 1603, are automatically designated as population groups with primary medical care and dental health professional shortages. Further, the Health Care Safety Net Amendments of 2002 provides eligibility for automatic facility HPSA designations for all federally qualified health centers (FQHCs) and rural health clinics that offer services regardless of ability to pay. Specifically, these entities include FQHCs funded under section 330 of the PHS Act, FQHC Look-Alikes, and Tribal and urban Indian clinics operating under the Indian Self-Determination and Education Act of 1975 (25 U.S.C. 450) or the Indian Health Care Improvement Act. Many, but not all, of these entities are included on this listing. Absence from this list does not exclude them from HPSA designation; facilities eligible for automatic designation are included in the database when they are identified.

Each list of designated HPSAs is arranged by state. Within each state, the list is presented by county. If only a portion (or portions) of a county is (are) designated, a county is part of a larger designated service area, or a population group residing in a county or a facility located in the county has been designated, the name of the service area, population group, or facility involved is listed under the county name. A county that has a whole county geographic or population group HPSA is indicated by the phrase ''County'' following the county name.

Development of the Designation and Withdrawal Lists

Requests for designation or withdrawal of a particular geographic area, population group, or facility as a HPSA are received continuously by BHW. Under a Cooperative Agreement between HRSA and the 54 state and territorial Primary Care Offices (PCOs), PCOs conduct needs assessments and submit applications to HRSA to designate areas as HPSAs. BHW refers requests that come from other sources to PCOs for review. In addition, interested parties, including Governors, State Primary Care Associations, and state professional associations, are notified of requests so that they may submit their comments and recommendations.

BHW reviews each recommendation for possible addition, continuation, revision, or withdrawal. Following review, BHW notifies the appropriate agency, individuals, and interested organizations of each designation of a HPSA, rejection of recommendation for HPSA designation, revision of a HPSA designation, and/or advance notice of pending withdrawals from the HPSA list. Designations (or revisions of designations) are effective as of the date on the notification from BHW and are updated daily on the HRSA Data Warehouse Find Shortage Area website. The effective date of a withdrawal will be the next publication of a notice regarding the list of designated HPSAs in the **Federal Register**.

Diana Espinosa,

Acting Administrator.

[FR Doc. 2021–14408 Filed 7–6–21; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: The Maternal, Infant, and Early Childhood Home Visiting Program Quarterly Performance Report, OMB No. 0906–0016, Revision

AGENCY: Health Resources and Service's Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than September 7, 2021.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Lisa Wright-Solomon, the HRSA

Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: The Maternal, Infant, and Early Childhood Home Visiting Program Quarterly Performance Report, OMB No. 0906–0016, Revision

Abstract: This clearance request is for continued approval of the Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program Quarterly Performance Report. The MIECHV Program, administered by HRSA in partnership with the Administration for Children and Families, supports voluntary, evidence-based home visiting services during pregnancy and to parents with young children up to kindergarten entry. States, certain non-profit organizations, and tribal entities are eligible to receive funding from the MIECHV Program and have the flexibility to tailor the program to serve the specific needs of their communities. HRSA is revising the data collection forms for the MIECHV Program by making the following changes:

- *Form 4, reporting guidance:* Revise reporting instructions to reflect updated reporting requirements
- *Form 4, Definition of Key Terms:* Update definitions for Table A.1
- *Form 4, Definition of Key Terms:* Add definitions for Table A.2

HRSA is also requesting approval to expand the use of Form 4 in order to collect quarterly performance data from awardees who receive MIECHV funding appropriated by section 9101 of the American Rescue Plan Act (Pub. L. 117–2).

Need and Proposed Use of the Information: HRSA uses quarterly performance information to demonstrate program accountability and continuously monitor and provide oversight to MIECHV Program awardees. The information is also used to provide quality improvement guidance and technical assistance to awardees and help inform the development of early childhood systems at the national, state, and local level. HRSA is seeking to revise reporting instructions and definitions of key terms and to expand the use of Form 4 in order to collect distinct quarterly performance data related to the use of the American Rescue Plan Act funds. This notice is subject to the appropriation of funds, and is a contingency action taken to ensure that, should funds become available for this purpose, information can be collected in a timely manner.

Likely Respondents: MIECHV Program awardees that are states, territories, and, where applicable, nonprofit organizations receiving MIECHV funding to provide home visiting services within states.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Form 4: Section A—Quarterly Performance Report	56	8	448	24	10,752
Form 4: Section B Quarterly Benchmark Performance Measures	10	4	40	200	8,000
Total	*56		488		18,752

*The 10 responses for Section B are a sub-set of 56 total awardees funded through the MIECHV Program.

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2021–14412 Filed 7–6–21; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Extension of Designation of Scarce Materials or Threatened Materials Subject to COVID–19 Hoarding Prevention Measures; Extension of Effective Date With Modifications

AGENCY: Department of Health and Human Services (HHS).

ACTION: Temporary notice; solicitation of comments.

SUMMARY: The Department of Health and Humans Services (HHS) provides notice of the extension of the designation issued on February 1, 2021, under Executive Order 13910 (Executive Order) and section 102 of the Defense Production Act of 1950 (the Act), as amended, designating health and medical resources necessary to respond to the spread of the virus associated with Coronavirus Disease 2019 (COVID–19) that are scarce or the supply of which would be threatened by excessive accumulation by people or entities not needing the excess supplies. These designated materials are subject to the hoarding prevention measures authorized under the Executive Order and the Act.

DATES: This action took effect on July 1, 2021, and terminates on November 15, 2021. To be assured consideration, comments on this extension and update to the list of scarce or threatened materials must be received at the address provided below by August 6, 2021.

ADDRESSES: In commenting, please refer to Paige Ezernack: 202–260–0365;

paige.ezernack@hhs.gov. Comments, including mass comment submissions, must be submitted electronically. You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

FOR FURTHER INFORMATION CONTACT: Paige Ezernack: 202–260–0365; *paige.ezernack@hhs.gov.*

SUPPLEMENTARY INFORMATION: On March 23, 2020, and in response to the spread of the virus associated with COVID–19, President Trump signed Executive Order 13910 (Executive Order) to prevent hoarding of health and medical resources necessary to respond to the spread of COVID–19 within the United States. As provided in the Executive Order, it is the policy of the United States that health and medical resources needed to respond to the spread of COVID–19, such as personal protective equipment and sanitizing and disinfecting products, are appropriately distributed. This policy furthers the goal of protecting the Nation's healthcare systems from undue strain.

Through the Executive Order, the President delegated, to the Secretary of Health and Human Services (the Secretary), his authority under section 102 of the Defense Production Act of 1950, 50 U.S.C. 4512, as amended (the Act), to prevent hoarding of health and medical resources necessary to respond to the spread of COVID–19 within the United States, and his authority to implement the Act in subsection III of chapter 55 of title 50, United States Code (50 U.S.C. 4554, 4555, 4556, and 4560). Under this delegation and the Act, the Secretary may designate such resources as scarce materials or materials the supply of which would be threatened by such accumulation (threatened materials). The Secretary may also prescribe conditions with respect to accumulation of such materials in excess of the reasonable demands of business, personal, or home consumption. The Act prohibits any person or entity from accumulating designated materials (1) in excess of the reasonable demands of business, personal, or home consumption, or (2) for the purpose of resale at prices in excess of prevailing market prices.

The March 25 Designation Notice issued by HHS designates scarce materials or threatened materials that are subject to the hoarding prevention measures authorized under the Executive Order and the Act. *See* 85 FR 17592. (Mar. 30, 2020). Under 50 U.S.C. 4552(13), the term ''materials'' includes: (A) Any raw materials (including minerals, metals, and advanced processed materials), commodities, articles, components (including critical components), products, and items of supply; and (B) any technical information or services ancillary to the use of any such materials, commodities, articles, components, products, or items. For purposes of the March 25 Designation Notice, the term ''scarce materials or threatened materials'' means health or medical resources, or any of their essential components, determined by the Secretary to be needed to respond to the spread of COVID–19 and which are, or are likely to be, in short supply or the supply of which would be threatened by hoarding. 85 FR at 17592. Designated scarce materials or threatened materials are subject to periodic review by the Secretary.

The designation is not subject to the Administrative Procedure Act (APA). See 50 U.S.C. 4559(a) (providing an exemption from the APA). Pursuant to 50 U.S.C. 4559(b)(2), the Secretary finds that, in light of the current pandemic and need to ensure Americans have access to critical and life-saving health resources, urgent and compelling circumstances make compliance with public comment requirements impracticable prior to issuance. This temporary Notice is therefore effective immediately upon issuance, but the Secretary will provide an opportunity for 30 days of public comment before finalizing. *See id.*

The March 25 Designation Notice was scheduled to terminate 120 days from the date of publication, unless superseded by a subsequent notice. Given the ongoing pandemic, the Secretary finds good cause to extend the March 25 Designation Notice, as modified by the June 30, 2020, July 30, 2020, and February 1, 2021 notices, through November 15, 2021. The Secretary also finds good cause to remove the following materials from the list because they are no longer scarce or threatened materials:

1. In FR Doc. 2020–06641 of March 30, 2020 (85 FR 17592), remove the following text:

1. N–95 Filtering Facepiece Respirators, including devices that are disposable half-face-piece non-powered air-purifying particulate respirators intended for use to cover the nose and mouth of the wearer to help reduce wearer exposure to pathogenic biological airborne particulates
2. Other Filtering Facepiece Respirators (*e.g.,* those designated as N99, N100, R95, R99, R100, or P95, P99, P100), including single-use, disposable half-mask respiratory protective devices that cover the user's airway (nose and mouth) and offer protection from particulate materials at an N95 filtration efficiency level per 42 CFR 84.181
3. Elastomeric, air-purifying respirators and appropriate particulate filters/cartridges
4. Powered Air Purifying Respirator (PAPR)
5. Portable Ventilators, including portable devices intended to mechanically control or assist patient breathing by delivering a predetermined percentage of oxygen in the breathing gas
6. Sterilization services for any device as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) and sterilizers as defined in 21 CFR 880.6860, 880.6870, and 880.6880, including devices that already have FDA marketing authorization and those that do not have FDA marketing authorization but are intended for the same uses, or are authorized by FDA under section 564 of the FD&C Act for purposes of decontamination
7. Disinfecting devices intended to kill pathogens and other kinds of microorganisms by chemical means or physical means, including those defined in 21 CFR 876.1500, 880.6992, and 892.1570 and other sanitizing and disinfecting products suitable for use in a clinical setting.
9. Personal protective equipment (PPE) coveralls, *e.g.,* Tyvek Suits
10. Face masks, including any masks that cover the user's nose and mouth and may or may not meet fluid barrier or filtration efficiency levels
11. Surgical masks, including masks that covers the user's nose and mouth and provides a physical barrier to fluids and particulate materials
12. PPE face shields, including those defined at 21 CFR 878.4040 and those intended for the same purpose
13. PPE gloves or surgical gloves, including those defined at 21 CFR 880.6250 (exam gloves) and 878.4460 (surgical gloves) and such gloves intended for the same purposes
14. Ventilators, anesthesia gas machines modified for use as ventilators, and positive pressure breathing devices modified for use as ventilators (collectively referred to as ''ventilators''), ventilator tubing connectors, and ventilator accessories as those terms are

described in FDA's March 2020 Enforcement Policy for Ventilators and Accessories and Other Respiratory Devices During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency located at *https://www.fda.gov/media/136318/* download.

17. Alcohol-based (over 60 percent) hand sanitizer and rubs.

Notice of Designation of Scarce Materials or Threatened Materials

Health or medical resources, or any of their essential components, determined by the Secretary of HHS to be needed to respond to the spread of COVID–19 and which are, or are likely to be, in short supply (scarce materials) or the supply of which would be threatened by hoarding (threatened materials). Designated scarce materials or threatened materials are subject to periodic review by the Secretary.

The following materials are designated, pursuant to section 102 of the Defense Production Act (50 U.S.C. 4512) and Executive Order 13190 of March 23, 2020 (Preventing Hoarding of Health and Medical Resources to Respond to the Spread of COVID–19), as scarce materials or threatened materials:

1. Medical gowns or apparel, *e.g.,* surgical gowns or isolation gowns
2. Laboratory reagents and materials used for isolation of viral genetic material and testing, such as transport media, collection swabs, test kits and reagents specific to those kits, and consumables such as plastic pipette tips and plastic tubes
3. Drug products currently recommended by the National Institutes of Health COVID–19 Treatment Guidelines Panel, including (as of April 21, 2021) remdesivir and dexamethasone
4. Syringes and hypodermic needles (whether distributed separately or attached together) generally used in the United States for vaccinations that are either:

(i) Piston syringes in 1 ml or 3 ml sizes that allow for the controlled and precise flow of liquid as described by 21 CFR 880.5860, that are compliant with ISO 7886–1:2017 and use only Current Good Manufacturing Practices (CGMP) processes; or

(ii) Hypodermic single lumen needles between 1'' and 1.5'' and 22 to 25 gauge between 1'' and 1.5'' and 22 to 25 gauge that have engineered sharps injury protections as described in the Needlestick Safety and Prevention Act, Public Law 106–430, 114 Stat. 1901 (Nov. 6, 2000) and OSHA standard 29 CFR 1910.1030, Bloodborne Pathogens.''

Authority: The authority for this Notice is Executive Order 13910 and section 102 of the Defense Production Act of 1950, 50 U.S.C. 4512, as amended.

Dated: June 30, 2021.

Xavier Becerra

Secretary, Department of Health and Human Services.

[FR Doc. 2021–14383 Filed 7–2–21; 4:15 pm]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–4040–0001]

Agency Information Collection Request: 60-Day Public Comment Request

AGENCY: Office of the Secretary, Health and Human Services (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 September 7, 2021.

ADDRESSES: Submit your comments *sagal.musa@hhs.gov* or by calling (202) 205–2634.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 4040–0001–Revision–60D and project title for reference, to Sagal Musa, email: *sagal.musa@hhs.gov,* or call (202) 205–2634 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: SBIR/STTR Information.

Type of Collection: Revision of A Currently Approved Collection.

OMB No.: 4040–0001.

Abstract: The SBIR (Small Business Innovation Research)/STTR (Small Business Technology Transfer) program is designed to stimulate technological innovation in the private sector by strengthening the role of small business, increasing the commercial application of federally supported research results, as well as fostering and encouraging participation by socially and economically disadvantaged and women-owned small businesses. This form is used by grant applicants to apply for SBIR/STTR-related grants. *Grants.gov* seeks to include a question regarding the use of SBIR/STTR funds for Technical and Business Assistance (TABA).

ANNUALIZED BURDEN HOUR TABLE

Forms (If necessary)	Respondents (If necessary)	Number of respondents	Number of responses per respondents	Average burden per response	Total burden hours
SBIR/STTR Information	Grant Applicants	6,376	1	1	6,376
Total		6,376	1	1	6,376

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2021–14436 Filed 7–6–21; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Charter Renewal

In accordance with Title 42 of the U.S. Code of Federal Regulations, Section 217a, notice is hereby given that the Charter for the Sickle Cell Diseases Advisory Committee was renewed for an additional two-year period on June 30, 2021.

It is determined that the Sickle Cell Diseases Advisory Committee is in the public interest in connection with the performance of duties imposed on the National Institutes of Health by law, and that these duties can best be performed through the advice and counsel of this group.

Inquiries may be directed to Claire Harris, Director, Office of Federal Advisory. Committee Policy, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20892 (Mail Stop Code 4875), Telephone (301) 496–2123, or *harriscl@mail.nih.gov*.

Dated: June 30, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–14420 Filed 7–6–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Conference Grants.

Date: August 4, 2021.

Time: 12:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Michael P. Reilly, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–Z, Bethesda, MD 20892, (301) 827–7975, *reillymp@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 30, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–14421 Filed 7–6–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director Notice of Charter Renewal

In accordance with Title 42 of the U.S. Code of Federal Regulations, Section 217a, notice is hereby given that the Charter for the Novel and Exceptional Technology and Research Advisory Committee was renewed for an additional two-year period on June 30, 2021.

It is determined that the Novel and Exceptional Technology and Research Advisory Committee is in the public interest in connection with the performance of duties imposed on the National Institutes of Health by law, and that these duties can best be performed through the advice and counsel of this group.

Inquiries may be directed to Claire Harris, Director, Office of Federal Advisory Committee Policy, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20892 (Mail Stop Code 4875), Telephone (301) 496–2123, or *harriscl@mail.nih.gov*.

Dated: June 30, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–14368 Filed 7–6–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Myalgic Encephalomyelitis/Chronic Fatigue Syndrome.

Date: July 30, 2021.

Time: 11:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: M. Catherine Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, (301) 435–1766, *bennettc3@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–21–089 SPF Macaque Colonies.

Date: August 6, 2021.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shiv A. Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 1, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–14434 Filed 7–6–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Vascular Biology and Dysfunction.

Date: July 26, 2021.

Time: 1:00 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Natalia Komissarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, (301) 435–1206, *komissar@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–RM–21–021: UNITE Transformative Research to Address Health Disparities and Advance Health Equity (U01).

Date: July 27–28, 2021.

Time: 10:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aruna K. Behera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301–435–6809, *beheraak@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neuropsychiatric Disorders.

Date: July 29, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Julius Cinque, MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252, *cinquej@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cellular and Molecular Technologies.

Date: July 29, 2021.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Tatiana V. Cohen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, Bethesda, MD 20892, 301–455–2364, *tatiana.cohen@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 30, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–14418 Filed 7–6–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Enabling Bioanalytical and Imaging Technologies.

Date: July 30, 2021.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Kenneth Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7717, Bethesda, MD 20892, 301–435–0229, *kenneth.ryan@nih.hhs.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 30, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–14419 Filed 7–6–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topics: Learning, Memory and Sleep Related Neuroscience.

Date: July 16, 2021.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jyothi Arikkath, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5215, Bethesda, MD 20892, (301) 435–1042, *arikkathj2@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member

Conflict: Population Sciences and Epidemiology.

Date: July 27, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kate Fothergill, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3142, MSC 7770, Bethesda, MD 20892, (301) 435–2309, *fothergillke@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Respiratory Sciences.

Date: July 29–30, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ghenima Dirami, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, (240) 498–7546, *diramig@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Interdisciplinary Molecular Sciences and Training.

Date: July 29, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alexander Gubin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046B, MSC 7892, Bethesda, MD 20892, 301–408–9655, *gubina@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR20–103: Collaborative Program Grant for Multidisciplinary Teams (RM1).

Date: July 30, 2021.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: William A. Greenberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *greenbergwa@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR20–103: Collaborative Program Grant for Multidisciplinary Teams (RM1).

Date: July 30, 2021.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: David R. Jollie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7806, Bethesda, MD 20892, (301)–435–1722, *jollieda@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 30, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–14417 Filed 7–6–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; NIH NeuroBioBank Tissue Access Request Form, National Institutes of Health (NIH)

AGENCY: National Institutes of Health.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Andrew Hooper, Ph.D., NIMH Project Clearance Liaison, Science Policy and Evaluation Branch, Office of Science Policy, Planning and Communications, NIMH, Neuroscience Center, 6001 Executive Boulevard, MSC 9667, Bethesda, Maryland 20892, call (301) 480–8433, or email your request, including your mailing address, to *nimhprapubliccomments@mail.nih.gov*. Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, 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 minimizes the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: NIH NeuroBioBank Tissue Access Request Form, RESINSTATEMENT WITH CHANGE, OMB #0925–0723, exp., date 08/31/2021, National Institutes of Health (NIH).

Need and Use of Information Collection: This request serves as notice that the National Institutes of Health (NIH) plans to continue supporting the research community studying neurological, developmental, and psychiatric disorders by coordinating access to human post-mortem brain tissue and related biospecimens stored by our federation of networked brain and tissue repositories known as the NIH NeuroBioBank. To facilitate this process, researchers wishing to obtain brain tissue and biospecimens stored by the NIH NeuroBioBank must continue completing the NIH NeuroBioBank Tissue Access Request Form. The primary use of the information collected by this instrument is to document, track, monitor, and evaluate the appropriate use of the NIH NeuroBioBank resources, as well as to notify interested recipients of updates, corrections or changes to the system.

OMB approval is requested for 3 years. There are no costs to respondents' other than their time. The total estimated annualized burden hours are 57.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
NIH NeuroBioBank Tissue Access Request Form.	Researchers	225	1	15/60	57
Total		225	225		57

Dated: July 1, 2021.

Andrew A. Hooper,

Project Clearance Liaison, National Institute of Mental Health, National Institutes of Health.

[FR Doc. 2021–14449 Filed 7–6–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; RFA DK20–025: Diabetes Research Centers (P30 Clinical Trial Optional).

Date: October 4–5, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Najma S. Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7349, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 30, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–14416 Filed 7–6–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0055]

Harbor Maintenance Fee

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-day notice and request for comments; Extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection, Department of Homeland Security, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than September 7, 2021) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0055 in the subject line and the agency name. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov.*

Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Harbor Maintenance Fee.

OMB Number: 1651–0055.

Form Number: CBP Form 349 and 350.

Current Actions: Extension with an increase in burden hours.

Type of Review: Extension (with change).

Affected Public: Businesses.

Abstract: The Harbor Maintenance Fee (HMF) and Trust Fund is used for the operation and maintenance of certain U.S. channels and harbors by the Army Corps of Engineers. U.S. Customs and Border Protection (CBP) is required to collect the HMF from importers, domestic shippers, and passenger vessel operators using federal navigation projects. *See* 19 CFR 24.24. Commercial cargo loaded on or unloaded from a commercial vessel is subject to a port use fee of 0.125 percent of its value if the loading or unloading occurs at a port that has been designated by the Army Corps of Engineers. 19 CFR 24.24(a). The HMF also applies to the total ticket value of embarking and disembarking passengers and on cargo admissions into a Foreign Trade Zone (FTZ). *See* 19 CFR 24.24(e)(2)(iii).

CBP Form 349, *Harbor Maintenance Fee Quarterly Summary Report,* and CBP Form 350, *Harbor Maintenance Fee Amended Quarterly Summary Report* are completed by domestic shippers, foreign trade zone applicants, and passenger vessel operators and submitted with payment to CBP. 19 CFR 24.24(e).

CBP uses the information collected on CBP Forms 349 and 350 to verify that the fee collected is timely and accurately submitted. These forms are authorized by the Water Resources Development Act of 1986 (26 U.S.C. 4461, *et seq.*) and provided for by 19 CFR 24.24, which also includes the list of designated ports. CBP Forms 349 and 350 are accessible at *http://www.cbp.gov/newsroom/publications/forms* or they may be completed and filed electronically at *www.pay.gov.*

Type of Information Collection: CBP Form 349.

Estimated Number of Respondents: 846.

Estimated Number of Annual Responses per Respondent: 4.

Estimated Number of Total Annual Responses: 3,384.

Estimated Time per Response: 0.5 hours.

Estimated Total Annual Burden Hours: 1692.

Type of Information Collection: CBP Form 350.

Estimated Number of Respondents: 23.

Estimated Number of Annual Responses per Respondent: 4.

Estimated Number of Total Annual Responses: 92.

Estimated Time per Response: 0.5 hours.

Estimated Total Annual Burden Hours: 46.

Type of Information Collection: Record Keeping.

Estimated Number of Respondents: 869.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 869.

Estimated Time per Response: 0.166 hours.

Estimated Total Annual Burden Hours: 144.

Dated: July 1, 2021.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2021–14411 Filed 7–6–21; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0127]

Guarantee of Payment

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than September 7, 2021) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0127 in the subject line and the agency name. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov.*

Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/§.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Guarantee of Payment.

OMB Number: 1651–0127.

Form Number: CBP Form I–510.

Current Actions: Extension without Change.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: Section 253 of the Immigration and Nationality Act (INA), 8 U.S.C. 1283, requires that an alien

crewman found to be or suspected of having any of the diseases named in section 255 of the INA must be hospitalized or otherwise treated, with the associated expenses paid by the carrier. The owner, agent, consignee, commanding officer, or master of the vessel or aircraft must complete CBP Form I–510, *Guarantee of Payment,* that certifies the guarantee of payment for medical and other related expenses required by section 253 of the INA. No vessel or aircraft can be granted clearance until such expenses are paid or the payment is appropriately guaranteed.

CBP Form I–510 collects information such as the name of the owner, agent, commander officer or master of the vessel or aircraft; the name of the crewmember; the port of arrival; and signature of the guarantor. This form is provided for by 8 CFR 253.1(a) and is accessible at: *https://www.cbp.gov/newsroom/publications/forms?title=I-510.*

Type of Information Collection: CBP Form I–510.

Estimated Number of Respondents: 100.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 100.

Estimated Time per Response: 0.083 hours.

Estimated Total Annual Burden Hours: 8.

Dated: July 1, 2021.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2021–14413 Filed 7–6–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7034–N–36]

30-Day Notice of Proposed Information Collection: Continuum of Care (CoC) Homeless Assistance Grant Application; OMB Control No.: 2506–0112

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* August 6, 2021.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *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: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email her at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on December 14, 2020 at 85 FR 80814.

A. Overview of Information Collection

Title of Information Collection: Continuum of Care (CoC) Homeless Assistance Grant Application.

OMB Approval Number: 2506–0112.

Type of Request: Revision of currently approved collection.

Form Number: NA.

Description of the need for the information and proposed use: This submission is to request an extension of an existing collection in use without an OMB Control Number for the Recordkeeping for HUD's Continuum of Care Program. The CoC application has three parts: The CoC application, CoC Priority Listing that lists all project applications with a rank number determined by CoCs in their local competition process, and project applications. HUD requires the submission of CoC applications from Collaborative Applicants to capture information related to the CoC's overall performance toward addressing homelessness (*e.g.,* reducing the number of homelessness, increasing income), coordination with other federal and non-federal partners, planning process (*e.g.,* reducing homelessness, length of time homeless), and other criteria required by the statute and current Administration policies. The information provided in CoC applications is reviewed and scored by HUD to determine the order in which HUD will select projects based on the ranking communicated in the CoC Priority Listing. The CoC Priority Listing collection notifies HUD if CoCs are reallocating current projects to create new projects and most importantly, to rank project applications with a unique number for funding consideration by HUD and determines the order in which projects are selected in order of each CoC. Project applications collect information for eligibility and quality threshold review to determine suitability for funding consideration. Successful project applications selected for award receiving funding to carry out the activities approved by HUD. The statutory and regulatory requirements related to the CoC Program and applicable supplementary documents are located on the CoC Program page on HUD's website.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
CoC Applications							
CoC HIC (includes Subpopulation Extrapolation Tool, Stratified Extrapolation Tool, Housing Inventory Chart, and a General Extrapolation Tool)	405	1	405	8	3,240	$41.37	$134,038.80
CoC PIT Process	405	1	405	8	3,240	41.37	134,038.80
CoC Application	405	1	405	50	20,250	41.37	837,742.50
CoC Priority Listing and Reallocation Forms	405	1	405	15	6,075	41.37	251,322.75
HUD–2991	405	1	405	3	1,215	41.37	50,264.55
Subtotal CoC Application	405	1	405	84	34,020	41.37	1,407,407.40
Project Applications							
Renewal Project	7,300	1	7,300	0.50	3,650	41.37	151,000.50
New Project	803	1	803	1.50	1,204.50	41.37	49,830.17
Renewal YHPD Project	200	1	200	1.50	300	41.37	12,411.00
Replacement YHDP Project	80	1	80	2	160	41.37	6,619.20
CoC Planning	405	1	405	1.50	607.50	41.37	25,132.28
UFA Costs	12	1	12	1	12	41.37	496.44
SF–424	8,800	1	8,800	0.05	440	41.37	18,202.80
HUD–2880	8,800	1	8,800	0.05	440	41.37	18,202.80
HUD–50070	8,800	1	8,800	0.05	440	41.37	18,202.80
SF LLL	8,800	1	8,800	0.05	440	41.37	18,202.80
Certification of Lobbying	8,800	1	8,800	0.05	440	41.37	18,202.80
HUD–40090–4	8,800	1	8,800	0.05	440	41.37	18,202.80
Subtotal Project Applications Submissions	8,800	1	8,800	8.3	8,574	41.37	354,706.38
CoC and Project Applications Overall Total							
Total for CoC and Project Applications	9,205	1	9,205	92.3	42,594	41.37	1,762,113.78

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) If the information will be processed and used in a timely manner;

(3) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(4) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(5) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2021–14378 Filed 7–6–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2019–N156; FXES11140600000]

Endangered and Threatened Wildlife and Plants; Draft Recovery Plan for Mosquito Range Mustard

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability for review and comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of a draft recovery plan for Mosquito Range mustard, a plant species listed as threatened under the Endangered Species Act. We are requesting review and comment from the public on this draft plan.

DATES: We must receive any comments on the draft recovery plan on or before September 7, 2021.

ADDRESSES:

Document availability: Copies of the draft recovery plan are available at *http://www.fws.gov/endangered/species/recovery-plans.html.* Alternatively, you may request a copy by U.S. mail from the Western Colorado Ecological Services Field Office; 445 W Gunnison Ave. #240; Grand Junction, CO 81501; or by telephone at 970–243–2778. Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 800–877–8339.

Submitting comments: If you wish to comment on the draft recovery plan, you may submit your comments in writing by email to Ann Timberman, at *ann_timberman@fws.gov,* or by U.S. mail to Ann Timberman, Western Slope Field Supervisor, at the above U.S. mail address.

FOR FURTHER INFORMATION CONTACT: Ann Timberman, Western Slope Field Supervisor, at the above U.S. mail address or by telephone at 970–243–2778. Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft recovery plan for Mosquito Range mustard (*Eutrema penlandii*), a plant listed as threatened under the Endangered Species Act, as amended (Act; 16 U.S.C. 1531 *et seq.*). The draft recovery plan includes objective, measurable criteria, and site-specific management actions as may be necessary to remove the species from the Federal List of Endangered and Threatened Plants. We are requesting review and comment from the public on this draft recovery plan.

Species Information

On August 12, 1993, we listed Mosquito Range mustard as a threatened plant (July 28, 1993; 58 FR 40539). We did not designate critical habitat due to risk associated with vandalism.

Mosquito Range mustard is a small, herbaceous plant in the mustard family (Brassicaceae), with white flowers and stout leaves. The species is found in high-elevation, alpine habitats of the Mosquito Mountain Range, in Lake, Park, and Summit Counties in central Colorado. The Mosquito Mountain Range is one of the driest and highest elevation mountain ranges in Colorado; therefore, temperatures are cold, winds are strong, and winters are long. The alpine areas where Mosquito Range mustard lives range in elevations from 3,600 to 4,050 meters (11,800 to 13,280 feet) and are generally moist, fed by melting snowbanks, and contain a diverse and abundant moss community. Mosquito Range mustard is found primarily on public lands managed by the U.S. Forest Service (approximately 51 percent) and the Bureau of Land Management (17 percent). Approximately 31 percent of the overall range is privately owned, with the remaining 1 percent owned by the State of Colorado. There is no overlap of occupied habitat with Tribal lands.

Currently, there are 26 known populations of the mosquito range mustard, distributed across approximately 100 hectares (246 acres) of habitat. Only 11 out of the 26 total known populations are characterized as relatively large, with high or moderate resiliency, each with 200 or more individuals. These 11 populations account for over 95 percent of the known number of individuals across the species' range and are considered to be the most resilient populations. The remaining 15 populations have fewer than 200 individuals and are considered to have low resiliency.

The primary threats to Mosquito Range mustard, both at the time of listing and currently, are small and geographically isolated populations, climate change, the inadequacy of regulatory mechanisms, disturbances related to recreation, such as hiking, biking, camping, and off-highway vehicle use, disturbances related to mining, and alteration of hydrology. Please refer to our biological report for additional discussion and full analyses of the life history, ecology, and biological status for Mosquito Range mustard (Service 2021, entire).

Recovery Planning Process

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. Recovery means improving the status of a listed species to the point at which listing is no longer necessary according to the criteria specified under section 4(a)(1) of the Act. The Act requires recovery plans for listed species unless such a plan would not promote the conservation of a particular species. To help guide recovery efforts, we prepare recovery plans to promote the conservation of the species.

The purpose of a recovery plan is to provide a recommended framework for the recovery of a species so that protection of the Act is no longer necessary. Pursuant to section 4(f) of the Act, a recovery plan must, to the maximum extent possible, include:

(1) A description of site-specific management actions as may be necessary to achieve the plan's goal for the conservation and survival of the species;

(2) Objective, measurable criteria which, when met, would support a determination under section 4(a)(1) of the Act that the species should be removed from the List of Endangered and Threatened Species; and

(3) Estimates of time and costs required to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal.

We used our new recovery planning and implementation (RPI) process to develop the draft recovery plan for Mosquito Range mustard. The RPI process helps reduce the time needed to develop and implement recovery plans, increases the relevancy of the recovery plan over longer timeframes, and adds flexibility so that the recovery plan can be more easily adjusted to new information and circumstances. Under our RPI process, a recovery plan will include the three statutorily required elements for recovery plans—objective and measurable criteria, site-specific management actions, and estimates of time and cost—along with a concise introduction and our strategy for how we plan to achieve species recovery. The RPI recovery plan is supported by a separate biological report for Mosquito Range mustard (Service 2021, entire). The biological report is an in-depth, but not exhaustive, review of the species' biology and threats, an evaluation of its biological status, and an assessment of the resources and conditions needed to maintain long-term viability. The biological report provides the scientific background and threats assessment for Mosquito Range mustard, which are key to the development of the recovery plan. A third, separate working document, called the recovery implementation strategy (RIS), steps down the more general descriptions of actions in the recovery plan to detail the specifics needed to implement the recovery plan, which improves the flexibility of the recovery plan. The RIS will be adaptable, with new information on actions incorporated, as needed, without requiring a concurrent revision to the recovery plan, unless changes to the three statutory elements are required.

Draft Recovery Plan

Below, we summarize components from our draft recovery plan. Please reference the draft recovery plan for full details.

The draft recovery plan describes the recovery goal for the Mosquito Range mustard as its long-term viability in the wild. For recovery, the species needs at least 11 (redundant) persistent (resilient) populations across the species' range, where population trends are stable or increasing and ecological and genetic diversity are maintained (representation). This would be achieved by implementing recovery actions, such as protecting, conserving, and monitoring known populations, surveying for additional populations, and coordinating with stakeholders.

The draft recovery plan includes recovery criteria for delisting. The delisting criteria include:

(1) Maintaining population trends for the Mosquito Range mustard that are stable or increasing, according to objective measures that are described in the draft recovery plan; and

(2) Maintaining existing regulatory mechanisms or other conservation plans that currently provide protections for Mosquito Range mustard and including protections in any new or amended land management plans on Federal lands.

Peer Review

In accordance with our July 1, 1994, peer review policy (59 FR 34270; July 1, 1994); our August 22, 2016, Director's Memo on the Peer Review Process; and the Office of Management and Budget's December 16, 2004, Final Information Quality Bulletin for Peer Review (revised June 2012), we will seek the expert opinion of at least three appropriate and independent specialists regarding scientific data and interpretations contained in the species biological report and the draft recovery plan. We will send copies of both documents to the peer reviewers immediately following publication of this notice in the **Federal Register**. We will ensure that the opinions of peer reviewers are objective and unbiased by following the guidelines set forth in the Director's Memo, which updates and clarifies Service policy on peer review (U.S. Fish and Wildlife Service 2016). The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analysis. Accordingly, our final species biological report and recovery plan may differ from the draft documents. We will post the results of this structured peer review process on our website at *https://www.fws.gov/mountain-prairie/science/peerReview.php.* We also submitted our biological report to our Federal and State partners for their scientific review. The biological report is the scientific foundation for the draft recovery plan.

Request for Public Comments

All comments we receive by the date specified (see **DATES**) will be considered prior to approval of the recovery plan. Written comments and materials regarding the recovery plan should be sent via one of the means in the **ADDRESSES** section.

We will consider all information we receive during the public comment period, and particularly look for comments that provide scientific rationale or factual background. The Service and other Federal agencies and partners will take these comments into consideration in the course of implementing an approved final recovery plan. We are specifically seeking comments and suggestions on the following questions:

- Understanding that the time and cost presented in the draft recovery plan will be fine-tuned when localized recovery implementation strategies are developed, do you think that the estimated time and cost to recovery are realistic? Is the estimate reflective of the time and cost of actions that may have already been implemented by Federal, State, county, or other agencies? Please provide suggestions or methods for determining a more accurate estimation.
- Do the draft recovery criteria provide clear direction to partners on what is needed to recover Mosquito Range mustard? How could they be improved for clarity?
- Are the draft recovery criteria both objective and measurable given the information available for Mosquito Range mustard now and into the future? Please provide suggestions.
- Understanding that specific, detailed, and area-specific recovery actions will be developed in the RIS, do you think that the draft recovery actions presented in the draft recovery plan generally cover the types of actions necessary to meet the recovery criteria? If not, what general actions are missing? Are any of the draft recovery actions unnecessary for achieving recovery? Have we prioritized the actions appropriately?

Public Availability of Comments

We will summarize and respond to the issues raised by the public in an appendix to the approved final recovery plan. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. You may request at the top of your comment that we withhold this information from public review; however, we cannot guarantee that we will be able to do so.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Matthew Hogan,

Deputy Regional Director, Lakewood, Colorado.

[FR Doc. 2021–14464 Filed 7–6–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–ES–2021–N166; FXHC11140900000–212–FF09E33000; OMB Control Number 1018–0148]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Land-Based Wind Energy Guidelines

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before August 6, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0148 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service

Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance. You may also view the information collection request (ICR) at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

On December 22, 2020, we published in the **Federal Register** (85 FR 83607) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on February 22, 2021. We received two comments in response to that notice:

Comment 1: Comment received via email on December 29, 2020, from V. Weeks, which stated any data collection should be mandatory in order to have viable information.

Agency Response to Comment 1: The Service does not have regulatory authority to require this information collection. Therefore, we decline to make the requested change. The viability of data received under this collection is related to the methods and metrics used and relevance to inform decision-making.

Comment 2: Comment received via email on March 22, 2021, from Tom Vinson, Vice President, Policy & Regulatory Affairs, American Clean Power Association (ACP). The ACP provided several comments and suggestions, numbered below and responded to below with corresponding numbering.

1. The Land–Based Wind Energy Guidelines (WEGs) continue to form a practical approach to assess and minimize wind energy impacts to wildlife. The tiered development framework in the WEGs is fully integrated into the land-based wind energy development process.

2. Depending on the available information at each Tier, the Service has noted that the tiered approach does not require that every Tier, or every element within each Tier, be implemented for every project. The American Clean Power Association (ACP) agrees with this statement. For example, if a project is an additional phase to an existing project that has already gone through relevant Tiers, and the geography and habitat are similar, repeating Tiers on this new phase likely will not be necessary.

3. ACP agrees with statements made by Service that the WEGs ''promote effective communication among wind energy developers and Federal, State, Tribal, and local conservation agencies. When used in concert with appropriate regulatory tools, the Guidelines are the best practical approach for conserving species of concern.''

4. ACP believes the estimate of the ''annual number of respondents'' in the Information Collection notice and the correlated total annual burden hours are low based on the number of wind facilities placed into service, under construction, or in an advanced phase of development as of the end of 2020. For every project constructed, there are 5–10 projects that are cancelled for one reason or another (wildlife or otherwise). Those projects have likely utilized Tier 1, potentially Tier 2, and in some cases, Tier 3. Also, projects may be built in phases with each phase being a separate entity, and the extent to which individual entities use the WEGs for individual project phases, or for a portfolio of phases within a geographic area, may differ. Thus, even though one set of WEG Tiers was applied, it may have covered up to five or six separate projects.

5. The number of wind projects going into service or starting development in any given year will continue to grow. Based on discussions with members, ACP believes a majority of wind facilities will continue to adhere to the WEGs. Therefore, ACP suggests that the assumption on the number of projects each year going through WEG Tiers 1–4 is too low. Tiers 1–2 should be increased to include at least all projects put into service each year (90 in 2020) and then increase that number by a factor of 5 or 10. Tiers 3–4 should also be increased to include all the projects placed into service in a given year.

6. ACP provided an attachment that provides an estimate of the paperwork and respondent burden required for the wind industry to collect the data associated with the WEGs on a per project basis, based on discussions with project developers and consultants. Actual costs vary based on project details, company, consultant, regulatory requirements etc., however, ACP believes these updated estimates are a more accurate reflection of the costs necessary to adhere to the WEGs. ACP respectfully requested that the Service utilize these estimates, combined with other assumed costs (*e.g.,* government agency costs) in this and any other analysis of the WEGs going forward.

Agency Response to Comment 2: The Service provides the following responses corresponding to the comment number above:

1. The Service appreciates this feedback on the utility of the WEGs and integration of these voluntary guidelines into wind industry development practices. No action necessary.

2. The Service appreciates this feedback on the flexibility of the WEGs. We also note that use of the WEGs is voluntary, and when a developer decides to follow the tiered process outlined in the voluntary guidelines, decisions as to which Tiers are applicable at an individual project should be made in communication and coordination with the Service. No action necessary.

3. The Service appreciates this feedback on the role of the WEGs. No action necessary.

4. The Service will consider the data supplied by ACP regarding the annual number of respondents and make adjustments as appropriate.

5. The Service appreciates the information provided by ACP regarding the anticipated increase in wind energy development in the U.S., and the feedback from the wind industry indicating that the WEGs will continue to be implemented by a majority of developers and operators in the U.S. We will adjust the number of respondents for each Tier of the WEGs as appropriate based on the information you have provided.

6. The Service thanks ACP for compiling this information and will use the figures provided to adjust our estimates as appropriate.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: As wind energy production increased, both developers and wildlife agencies recognized the need for a system to evaluate and address the potential negative impacts of wind energy projects on species of concern. As a result, the Service worked with the wind energy industry, conservation nongovernmental organizations, Federal and State agencies, Tribes, and academia to develop the voluntary Land-Based Wind Energy Guidelines (Guidelines; *http://www.fws.gov/windenergy*) to provide a structured, scientific process for addressing wildlife conservation concerns at all stages of land-based wind energy development. Released in 2012, the Guidelines promote effective communication among wind energy developers and Federal, State, Tribal, and local conservation agencies. When used in concert with appropriate regulatory tools, the Guidelines are the best practical approach for conserving species of concern.

The Guidelines discuss various risks to species of concern from wind energy projects, including collisions with wind turbines and associated infrastructure; loss and degradation of habitat from turbines and infrastructure; fragmentation of large habitat blocks into smaller segments that may not support sensitive species; displacement and behavioral changes; and indirect effects such as increased predator populations or introduction of invasive plants. The Guidelines assist developers in identifying species of concern that may potentially be affected by proposed projects, including but not limited to:

- Migratory birds;
- Bats;
- Bald and golden eagles, and other birds of prey;
- Prairie chickens and sage grouse; and
- Species that have been identified as candidates, or proposed or listed under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

The Guidelines follow a tiered approach. The wind energy developer begins at Tier 1 or Tier 2, which entails the gathering of existing data to help identify any potential risks to wildlife and their habitats at proposed wind energy project sites. The developer then proceeds through subsequent tiers, as appropriate, to collect information in increasing detail until the level of risk is adequately ascertained to inform the developer's decision on whether or not to develop the site. Many projects may not proceed beyond Tier 1 or 2, when developers become aware of potential barriers, including high risks to wildlife. Developers would only have an interest in adhering to the Guidelines for those projects that proceed beyond Tier 1 or 2.

At each tier, wind energy developers and operators should retain documentation to provide to the Service. Such documentation may include copies of correspondence with the Service, results of pre- and post-construction studies conducted at project sites, bird and bat conservation strategies, or any other record that supports a developer's adherence to the Guidelines. The extent of the documentation will depend on the conditions of the site being developed. Sites with greater risk of impacts to wildlife and habitats will likely involve more extensive communication with the Service and longer durations of pre- and post-construction studies than sites with little risk.

Distributed or community-scale wind energy projects are unlikely to have significant adverse impacts to wildlife and their habitats. The Guidelines recommend that developers of these small-scale projects conduct the desktop analysis described in Tier 1 or Tier 2 using publicly available information to determine whether they should communicate with the Service. Since such project designs usually include a single turbine associated with existing development, conducting a Tier 1 or Tier 2 analysis for distributed or community-scale wind energy projects should incur limited non-hour burden costs. For such projects, if there is no potential risk identified, a developer will have no need to communicate with the Service regarding the project or to conduct studies described in Tiers 3, 4, and 5.

Adherence to the Guidelines is voluntary. Following the Guidelines does not relieve any individual, company, or agency of the responsibility to comply with applicable laws and regulations (*i.e.,* species protected by the Endangered Species Act and/or Bald and Golden Eagle Protection Act (16 U.S.C. 668–668c)).

This information collection was first approved by OMB in 2012 and subsequently renewed twice, in 2015 and 2018.

Title of Collection: Land-Based Wind Energy Guidelines.

OMB Control Number: 1018–0148.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Developers and operators of wind energy facilities.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $73,697,500. Costs will depend on the size and complexity of issues associated with each project. These expenses may include, but are not limited to: Travel expenses for site visits, studies conducted, and meetings with the Service and other Federal and State agencies; training in survey methodologies; data management; special transportation, such as all-terrain vehicles or helicopters; equipment needed for acoustic, telemetry, or radar monitoring; and carcass storage.

Requirement	Annual number of respondents	Number of responses each	Total annual responses	Completion time per response (hours)	Total annual burden hours
Tier 1 (Desktop Analysis)	630	1	630		
Reporting				52.5	33,075
Recordkeeping				1	630

Requirement	Annual number of respondents	Number of responses each	Total annual responses	Completion time per response (hours)	Total annual burden hours
Tier 2 (Site characterization)					
Reporting	473	1	473	210	99,330
Recordkeeping				3	1,419
Tier 3 (Pre-construction studies)					
Reporting	90	1	90	2,695	242,550
Recordkeeping				5	450
Tier 4 (Post-construction fatality monitoring and habitat studies)					
Reporting	90	1	90	3,600	324,000
Recordkeeping				5	450
Tier 5 (Other post-construction studies)					
Reporting	5	1	5	2,100	10,500
Recordkeeping				5	25
Totals	1,288		1,288		712,429

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2021–14410 Filed 7–6–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2021–N022; FXES11130400000C2–201–FF04E00000]

Endangered and Threatened Wildlife and Plants; Draft Recovery Plan for Agave eggersiana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the draft recovery plan for the *Agave eggersiana,* a plant listed as endangered under the Endangered Species Act. We request review and comment on this draft recovery plan from local, State, and Federal agencies; nongovernmental organizations; and the public.

DATES: We must receive comments by September 7, 2021.

ADDRESSES:

Obtaining documents: You may obtain a copy of the plan by contacting Maritza Vargas, by mail at U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office, P.O. Box 491, Boquerón, PR 00622; by telephone at 787–851–7297; by the Federal Relay Service (TTY) at 1–800–877–8339. Alternatively, you may obtain a copy at *http://www.fws.gov/southeast/caribbean.*

Submitting comments: If you wish to comment, you may submit your comments by mail to the Caribbean Ecological Services Field Office, at the above address, or you may email comments to *maritza_vargas@fws.gov.* Please include ''*Agave eggersiana* Draft Recovery Plan Comments'' in the email subject line.

For additional information about submitting comments, see Public Comments below.

FOR FURTHER INFORMATION CONTACT: Maritza Vargas at 787–851–7297.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability for public review and comment of the draft recovery plan for *Agave eggersiana,* a plant listed as endangered under the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*). The draft recovery plan includes specific recovery objectives and criteria we have identified to better assist us in determining when the species has recovered to the point that it may be reclassified as threatened, or that the protections of the ESA are no longer necessary. We request review and comment on this draft recovery plan from local, State, and Federal agencies; nongovernmental organizations; and the public.

Background

Agave eggersiana (no common name) is a flowering plant of the Agavaceae family (century plant family). The species is restricted to six natural populations, and seven additional populations established in different areas known to be part of its historical range. These populations occur in small, disjunct areas on the northern and southern coasts of St. Croix in the U.S. Virgin Islands. *Agave eggersiana* commonly occurs on coastal cliffs with rocky formations covered with sparse vegetation and dry coastal scrubland vegetation communities that occur within the subtropical dry forest life zone.

The ESA states that a species may be listed as endangered or threatened based on one or more of the five factors outlined in section 4(a)(1) of the ESA. The greatest threats to *Agave eggersiana* are loss or degradation of habitat in unstable coastal cliffs (Listing Factor A) and competition with non-native vegetation for light and space via succession (Listing Factor E). The species' severely restricted range and small population increase the likelihood of stochastic events causing extirpation of stands or populations. As a result of these threats, *Agave eggersiana* was listed as endangered under the ESA on September 9, 2014 (79 FR 53303). Approximately 20.5 hectares (ha) (50.6 acres (ac)), distributed among 6 units on the northern and southern coasts of St. Croix, were designated as critical habitat on September 9, 2014 (79 FR 53315).

Recovery Plan

Section 4(f)(1) of the ESA requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species. The purpose of a recovery plan is to provide an effective and feasible roadmap for a species' recovery, with the goal of improving its status and managing its threats to the point where the protections of the ESA are no longer needed. The ESA requires that, to the maximum extent practicable, recovery plans incorporate the following:

1. Objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered;

2. Site-specific management actions necessary to achieve the plan's goal for conservation and survival of the species; and

3. Estimates of the time required and costs to implement recovery plans.

Recovery plans provide important guidance to the Service, States, other partners, and the general public on methods for minimizing threats to listed species, as well as objectives against which to measure the progress towards recovery. A recovery plan identifies, organizes, and prioritizes recovery actions and is an important guide that ensures sound scientific decision-making throughout the recovery process, which can take decades.

Section 4(f)(4) of the ESA requires us to provide public notice and an opportunity for public review and comment during recovery plan development. We will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. We and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

The draft recovery plan describes actions necessary for the recovery of *Agave eggersiana,* establishes criteria for its delisting, and estimates the time and cost for implementing specific measures needed to recover the species. The ultimate goal of this draft recovery plan is to ensure the long-term viability of the *Agave eggersiana* in the wild to the point that it can be removed from the Federal List of Endangered and Threatened Plants in title 50 of the Code of Federal Regulations (50 CFR 17.12).

Recovery Criteria

The draft recovery plan proposes that the *Agave eggersiana* will be considered for delisting when:

1. The six existing natural populations on St. Croix (South Shore, Cane Garden Bay, Manchenil Bay, Protestant Cay, Great Pond, and West Vagthus Point) are protected through long-term conservation mechanisms (addresses Factors A, B, and E).

2. The six existing natural populations on St. Croix (South Shore, Cane Garden Bay, Manchenil Bay, Protestant Cay, Great Pond, and West Vagthus Point) show a stable or increasing trend, evidenced by natural recruitment and multiple age classes (addresses Factors A and E).

3. Ten new populations have been established on protected areas within the historical range of the species, showing a stable or increasing population trend, evidenced by natural recruitment and multiple age classes (addresses Factors A, C, and E).

4. Threats have been addressed and/or managed to the extent that the species will remain viable into the foreseeable future (addresses Factors A, B, C, D, and E).

Public Comments

We request written comments on the draft recovery plan. We will consider all comments we receive by the date specified in **DATES** prior to final approval of the plan.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Leopoldo Miranda-Castro,

Regional Director.

[FR Doc. 2021–14304 Filed 7–6–21; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1567–1569 (Preliminary)]

Acrylonitrile-Butadiene Rubber From France, Korea, and Mexico; Institution of Anti-Dumping Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping duty investigations No. 731–TA–1567–1569 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of acrylonitrile-butadiene rubber from France, Korea, and Mexico, provided for in subheading 4002.59.00 of the Harmonized Tariff Schedule of the United States, that is alleged to be sold in the United States at less than fair value. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping duty investigations in 45 days, or in this case by August 16, 2021. The Commission's views must be transmitted to Commerce within five business days thereafter, or by August 23, 2021.

DATES: June 30, 2021.

FOR FURTHER INFORMATION CONTACT: Kristina Lara ((202) 205–3386), 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 these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), in response to a petition filed on June 30, 2021, by Zeon Chemicals L.P. and Zeon GP, LLC (collectively ''Zeon''), Louisville, Kentucky.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons,

or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission is conducting the staff conference through video conferencing on Wednesday, July 21, 2021. Requests to appear at the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before July 19, 2021. Please provide an email address for each conference participant in the email. Information on conference procedures will be provided separately and guidance on joining the video conference will be available on the Commission's Daily Calendar. A nonparty who has testimony that may aid the Commission's deliberations may request permission to participate by submitting a short statement.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 26, 2021, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties shall file written testimony and supplementary material in connection with their presentation at the conference no later than noon on July 20, 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,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the 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.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations 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 any information that it submits to the Commission during these investigations 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 these or related investigations or reviews, 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.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: July 1, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–14403 Filed 7–6–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1534 (Final)]

Methionine From France

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of methionine from France, provided for in subheadings 2930.40.00 and 2930.90.46 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV'').[2] [3]

Background

The Commission instituted this investigation effective July 29, 2020, following receipt of a petition filed with the Commission and Commerce by Novus International, Inc., St. Charles, Missouri. The Commission scheduled the final phase of the investigation following notification of a preliminary determination by Commerce that imports of methionine from France were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be 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** of March 9, 2021 (86 FR 13585). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its hearing by video conference on May 11, 2021. All persons who requested the opportunity were permitted to participate.

The Commission made this determination pursuant to § 735(b) of the Act (19 U.S.C. 1673d(b)). It completed and filed its determination in this investigation on June 30, 2021. The views of the Commission are contained in USITC Publication 5206 (June 2021),

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 86 FR 26697 (May 17, 2021).

[3] The Commission also finds that imports subject to Commerce's affirmative critical circumstances determination are not likely to undermine seriously the remedial effect of the antidumping duty order on France.

entitled *Methionine from France: Investigation No. 731–TA–1534 (Final).*

By order of the Commission.

Issued: June 30, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–14428 Filed 7–6–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–473 and 731–TA–1173 (Second Review)]

Potassium Phosphate Salts From China

Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the countervailing duty order and antidumping duty order on potassium phosphate salts from China would be likely to lead to continuation or recurrence of material injury to U.S. industries producing dipotassium phosphate and tetrapotassium pyrophosphate within a reasonably foreseeable time.

Background

The Commission instituted these reviews on November 2, 2020 (85 FR 69352, November 2, 2020) and determined on February 5, 2021 that it would conduct expedited reviews (86 FR 29288, June 1, 2021).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on June 30, 2021. The views of the Commission are contained in USITC Publication 5208 (June 2021), entitled *Potassium Phosphate Salts China: Inv. Nos. 701–TA–473 and 731–TA–1173 (Second Review).*

By order of the Commission.

Issued: June 30, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–14402 Filed 7–6–21; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 21–044]

Name of Information Collection: Generic Clearance for the NASA Office of STEM Engagement Performance Measurement and Evaluation (Testing)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by August 6, 2021.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Claire Little, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 202–358–2375 or email *claire.a.little@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract: NASA's founding legislation, the Space Act of 1958, as amended, directs the agency to expand human knowledge of Earth and space phenomena and to preserve the role of the United States as a leader in aeronautics, space science, and technology. The NASA Office of STEM Engagement administers the agency's national education activities in support of the Space Act, including the performance measurement and evaluation of educational projects and programs. This generic clearance will allow the NASA Office of STEM Engagement to continue to test and pilot with subject matter experts, secondary students, higher education students, educators, and interested parties new and existing information collection forms and assessment instruments for the purposes of improvement and establishing validity and reliability characteristics of the forms and instruments. Existing information collections include the NASA Intern Survey (Retrospective Survey), NASA Internship Applicants and Awardees Survey (Retrospective Survey), STEM Challenges Impact Surveys (Educator Feedback Retrospective Survey), STEM Challenges Impact Surveys (Parent Survey), and STEM Challenges Impact Surveys (Student Retrospective Survey). Forms and instruments to be tested include program application forms, customer satisfaction questionnaires, focus group protocols, and project activity survey instruments. Methodological testing will include focus group discussions, pilot surveys to test new individual question items as well as the complete form and instrument. In addition, test-retest and similar protocols will be used to determine reliability characteristics of the forms and instruments. Methodological testing will assure that forms and instruments accurately and consistently collect and measure what they are intended to measure and that data collection items are interpreted precisely and consistently, all towards the goal of accurate Agency reporting while improving the execution of NASA STEM Engagement activities.

II. Methods of Collection: Electronic, paper, and focus group interviews.

III. Data

Title: Generic Clearance for the NASA Office of Education Performance Measurement and Evaluation (Testing).

OMB Number: 2700–0159.

Type of Review: Renewal of an existing collection.

Affected Public: Individuals and Households.

Estimated Annual Number of Activities: 8.

Estimated Number of Respondents per Activity: 2,800.

Annual Responses: 1.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 5,600.

Estimated Total Annual Cost: $54,082.

IV. Request for Comments: Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2021–14458 Filed 7–6–21; 8:45 am]

BILLING CODE 7510–13–P

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy

Application of Equity in U.S. National Drug Control Policy

AGENCY: Office of National Drug Control Policy.

ACTION: Request for information.

SUMMARY: The Office of National Drug Control Policy (ONDCP) is seeking comments from the public on whether and to what extent ONDCP's policy development process, drug budget review and certification processes of the 18 National Drug Control Program Agencies, and Grant Administration Programs perpetuate systemic barriers to opportunities for underserved communities and individuals from those communities. ONDCP is also seeking comments from the public regarding how its future proposed policies, budgets, regulations, grants, or programs might be more effective in advancing equity.

DATES: ONDCP encourages and will accept public comments on or before August 6, 2021.

ADDRESSES: Written comments may be submitted by members of the general public and stakeholder organizations by email to *OGC@ondcp.eop.gov.*

SUPPLEMENTARY INFORMATION: ONDCP seeks input according to the processes outlined by Executive Order (E.O.) 13985, that requires agencies to select certain agency programs and policies and assess whether underserved communities and their members, face systemic barriers in accessing benefits and opportunities available pursuant to those policies and programs.

E.O. 13985 defines ''equity'' as the consistent and systematic fair, just, and impartial treatment of all individuals, including 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. It defines ''underserved communities'' as populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the preceding definition of ''equity.''

The E.O. requires agencies 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. Such assessments will better equip agencies to develop policies and programs that deliver resources and benefits equitably to all. The E.O. also requires agencies to study strategies for allocating Federal resources, consistent with applicable law, in a manner that increases investment in underserved communities, and individuals from those communities, to address the historic failure to ensure investments are sufficient, just, and equal. However, many Federal datasets are not disaggregated by race, ethnicity, gender, disability, income, veteran status, or other key demographic variables. Furthermore, in carrying out the E.O., agencies shall consult with members of communities that have been historically underrepresented in the Federal Government and underserved by, or subject to discrimination in, Federal policies and programs. The head of each agency shall evaluate opportunities, consistent with applicable law, to increase coordination, communication, and engagement with community-based organizations and civil rights organizations.

ONDCP is the agency in the Executive Office of the President primarily responsible for leading and coordinating the nation's drug control policy through the development and oversight of the National Drug Control Strategy and the National Drug Control Budget. ONDCP recently released the Biden-Harris Administration's Drug Policy Priorities for the Administration's first year. The seven priorities propose specific and targeted actions to reduce overdoses and promote recovery, including advancing racial equity in our approach to drug policy, expanding access to quality treatment, reducing the supply of illicit substances, and enhancing evidence-based harm reduction services that engage and build trust with people who use drugs, among others. The priorities emphasize several cross-cutting facets of the overdose epidemic, namely by advancing racial equity in drug policy and promoting harm-reduction efforts.

While ONDCP employs experts in policy, public health, and public safety, the agency also organizes formal consultations with key external stakeholders. These external perspectives are crucial to help develop national drug control policy. ONDCP seeks to incorporate more perspectives from a wide array of backgrounds, including those most impacted by United States' drug policies.

Through budget review and certification processes, ONDCP aligns funding resources for 18 Federal government agencies and departments with the National Drug Control Strategy. The President's Fiscal Year (FY) 2022 budget request, included a $41.0 billion investment for national drug program agencies, representing a $669.9 million increase over the FY 2021 enacted level. The largest increases in funding are for critical public health interventions like treatment and prevention services. Each spring, ONDCP's policy and budget staff develop and share budget guidance letters with these agencies. Agencies then review the budget guidance letters and submit preliminary budget proposals to ONDCP. ONDCP reviews the budget proposals to ensure they meet the guidance requirements and, based on the outcome of the review, certifies agency budgets. Key information about where drug budget investments are directed and the impact for different demographic groups (*e.g.,* by race, ethnicity, gender, disability, income, veteran status, and more) is not fully known.

Request for Comments: Pursuant to E.O. 13985, ONDCP is issuing this request for information (RFI), to gather data on whether and to what extent ONDCP's policy development process, drug budget review and certification processes, and Grant Administration Programs perpetuate systemic barriers to opportunities for underserved communities and individuals from those communities. In addition, ONDCP is issuing this RFI to gather information as to how its future proposed policies, budgets, regulations, grants, or programs might be more effective in advancing equity. Public input, information, and recommendations will help ONDCP develop an approach to advance equity in drug policy.

The work of advancing equity requires a holistic assessment of ONDCP practices and policies. The agency welcomes submissions that provide resources, tools, and examples of how

the agency might perform an effective assessment on its Grant Administration Programs, ONDCP's policy development process, and ONDCP's drug budget review and certification processes, with the goal of embedding equity throughout agency practices and policies. Submissions might consider questions such as:

- Jurisdictions at the State, local, Tribal, and territorial levels have implemented equity assessment tools to inform their policymaking or budgetary processes. What are the lessons these jurisdictions have learned from implementing or interacting with those tools?
- Formal consultations for the National Drug Control Strategy often involve direct relationships between ONDCP and the consulting group, organization, or subject matter expert. What are recommendations on how the agency can broaden its formal consultations to gain broader perspectives earlier in the policy development process?
- How might research examine equity in the context of law enforcement actions against drug trafficking or transnational criminal organizations? Are there existing applicable research frameworks that might be applied to ONDCP's Grant Administration Programs or other multi-jurisdictional task forces?
- What nationally representative private health, drug or crime databases or systems might be leveraged to provide information about equitable application of U.S. drug policy and how might access to such databases improve equitable responses? Please provide specific contact information for follow-up with those in a position to authorize dataset access.
- Provide recommendations for ONDCP to involve people who use drugs, especially those not typically included in household surveys, in the development of National drug control policy.
- What would be your recommendations for short-term and long-term goals that ONDCP should take into account to measure progress towards equity in drug policy?

(Authority: E.O. 13985, signed by the President on January 20, 2021.)

Robert Kent,

General Counsel.

[FR Doc. 2021–14365 Filed 7–6–21; 8:45 am]

BILLING CODE 3280–F5–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Submission for OMB Review, Comment Request, Proposed Collection: 2022–2024 IMLS Grants to States Program State Program Reporting (SPR) System Forms

AGENCY: Institute of Museum and Library Services, National Foundation for the Arts and the Humanities.

ACTION: Submission for OMB review, comment request.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. 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. This Notice proposes the clearance of the IMLS Grants to States Program State Program Reporting (SPR) System electronic data collection, which supports both the financial and performance reporting for all grantees. 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 below on or before August 4, 2021.

OMB is particular interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this Notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Institute of Museum and Library Services'' under ''Currently Under Review;'' then check ''Only Show ICR for Public Comment'' checkbox. Once you have found this information collection request, select ''Comment,'' and enter or upload your comment and information. Alternatively, please mail your written comments to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, or call (202) 395–7316.

FOR FURTHER INFORMATION CONTACT: Teresa DeVoe, Associate Deputy Director—State Programs, Office of Library Services, State Programs, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Ms. DeVoe can be reached by telephone at 202–653–4778, or by email at *tdevoe@imls.gov.* Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays. Persons who are deaf or hard of hearing (TTY users) can contact IMLS via Federal Relay at 800–877–8339.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services (IMLS) is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. To learn more, visit *www.imls.gov.*

Current Actions: This Notice proposes renewal of the clearance of the forms and instructions for the IMLS Grants to States Program State Program Reporting (SPR) System electronic data collection for the next three years. These include State Program Reporting Requirements; State Program Reporting Requirements Appendices; SPR Reporting System User Documentation; State Financial Status Report; Quick Reference Sheet for State Program Report Outcomes Qs; State Legal Officer's Certification of Authorized Certifying Official; Internet Safety Certification for Applicant Public Libraries, Public Elementary and Secondary School Libraries, and Consortia with Public and/or Public School Libraries; Internet Safety Certification for a State Library

Administrative Agency that Carries Out Services as a Public Library, and Assurances Provided in Support of Five-Year Plan.

The 60-Day Notice was published in the **Federal Register** on April 21, 2021 (86 FR 20743). One/No comment was received.

Agency: Institute of Museum and Library Services.

Title: 2022–2024 IMLS Grants to States Program State Program Reporting System Forms.

OMB Number: 3137–0071.

Frequency: 1 time per year.

Affected Public: State Library Administrative Agencies (SLAAs).

Number of Respondents: 59.

Estimated Average Burden per Response in Hours: 47.83.

Estimated Total Annual Burden in Hours: 2,821.97.

Total Annualized Capital/Startup Costs: n/a.

Total Annual Costs: $86,239.40.

Total Annual Federal Costs: $39,863.06.

Dated: June 30, 2021.

Kim Miller,

Senior Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2021–14366 Filed 7–6–21; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; NSF Research Experience and Mentoring Survey

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 no comments were received. NSF is forwarding the proposed 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.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Copies of the submission may be obtained by calling 703–292–7556.

SUPPLEMENTARY INFORMATION: NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Title of Collection: NSF Research Experience and Mentoring Survey.

OMB Number: 3145–NEW.

Type of Request: Intent to seek approval to establish an information collection.

Abstract: The Research Experience and Mentoring (REM) Program supports the active involvement of research participants (RPs) that include high school students, Science, Technology, Engineering and Mathematics (STEM) teachers, undergraduate STEM students, faculty, and veterans, in hands-on research in order to bring participants into contact with STEM mentors and expose them to a summer research experience. Research participants are recruited as cohorts in order to facilitate mentoring and research activities, community building, and provide mutual student support.

The main goals of the REM Program are to provide research experiences and mentored opportunities to STEM students and/or educators that may ultimately enhance their career and academic trajectories while enhancing NSF research projects by the Emerging Frontiers in Research and Innovation (EFRI) program and the Engineering Research Centers (ERC). The REM Program may also enable the building of long-term collaborative partnerships among EFRI- and ERC-supported researchers, community colleges, local four-year colleges, and local school districts.

A REM supplement of maximum of $110,000 over a 1-year period. Activities that are innovative and site-specific are encouraged. Effective REM programs typically have many of the following characteristics, which are provided here as general guidelines: Mentorship training for researchers and affiliated graduate students or postdoctoral researchers; Well-designed, introductory training for RPs; Six to ten weeks of summer research (full time); Continued mentorship of RPs throughout the academic year; Participation of RPs in research team meetings and topic-related conferences or workshops; and Guidance for RPs in co-authoring publications and/or posters.

NSF is requesting OMB approval for the REM program to collect information from past and present research participants. The REM program seeks to collect data from research participants and to: (1) *Inform REM programming* (*e.g.,* to identify areas of growth); and (2) *conduct retrospective analysis of the REM program* to assess the success of REM historically.

Use of the Information: The information collected is primarily for the use of the NSF REM program to assess the success of the program and for informing decisions NSF will make regarding future programming and support provided to research participants.

Estimate of Burden: Estimated at 180 hours for a one-time collection.

Respondents: All REM research participants will be invited to respond to the survey. The REM research participants include high school students, STEM teachers, undergraduate STEM students, and faculty.

Estimated Number of Responses: 540 (representing a 60% response rate).

Dated: June 30, 2021.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2021–14466 Filed 7–6–21; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance for this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the

submission requesting OMB clearance of this collection for no longer than three years.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by September 7, 2021, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Room W18253, Alexandria, VA 22314, or by email to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: DUE Project Data Form.

OMB Control No.: 3145–0201.

Expiration Date of Approval: December 31, 2021.

Abstract: The Division of Undergraduate Education (DUE) Project Data Form is a component of all grant proposals submitted to NSF's Division of Undergraduate Education. This form collects information needed to direct proposals to appropriate reviewers and to report the estimated collective impact of proposed projects on institutions, students, and faculty members. Requested information includes the discipline of the proposed project, collaborating organizations involved in the project, the academic level on which the project focuses (*e.g.,* lower-level undergraduate courses, upper-level undergraduate courses), characteristics of the organization submitting the proposal, special audiences (if any) that the project would target (*e.g.,* women, underrepresented minorities, persons with disabilities), strategic foci (if any) of the project (*e.g.,* research on teaching and learning, international activities, integration of research and education), and the number of students and faculty at different educational levels who would benefit from the project.

Respondents: Investigators who submit proposals to NSF's Division of Undergraduate Education.

Estimated Number of Annual Respondents: 2,550.

Burden on the Public: 20 minutes (per response) for an annual total of 850 hours.

Dated: June 30, 2021.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2021–14396 Filed 7–6–21; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–456 and 50–457; NRC–2021–0128]

Exelon Generation Company, LLC; Braidwood Station, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Renewed Facility Operating License Nos. NPF–72 and NPF–77, that were issued to Exelon Generation Company, LLC, (licensee) for operation of the Braidwood Station, Units 1 and 2. The proposed amendments are contained in the licensee's letter dated May 27, 2021, and would change technical specifications (TSs) surveillance requirement (SR) 3.7.9.2 to allow an ultimate heat sink (UHS) temperature of less than or equal to 102.8 degrees Fahrenheit (°F) until September 30, 2021.

DATES: The environmental assessment and finding of no significant impact referenced in this document are available on July 7, 2021.

ADDRESSES: Please refer to Docket ID NRC–2021–0128 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0128. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.
- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Briana Arlene, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–1042; email: *Briana.Arlene@nrc.gov;* and Joel Wiebe, Office of Nuclear Reactor Regulation, telephone: 301–415–6606, email: *Joel.Wiebe@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of amendments to Renewed Facility Operating License Nos. NPF–72 and NPF–77, that were issued to Exelon Generation Company, LLC, (Exelon) for operation of the Braidwood Station, Units 1 and 2, located in Will County, Illinois. Exelon submitted its license amendment request in accordance with Section 50.90 of title 10 of the *Code of Federal Regulation* (10 CFR), by letter dated May 27, 2021. If approved, the license amendments would revise technical specification SR in TS 3.7.9.2 to allow a temporary increase in the allowable UHS average temperature of less than or equal to (≤) 102.8 °F (39.3 degrees Celsius (°C)) through September 30, 2021. Therefore, as required by 10

CFR 50.21, the NRC performed an environmental assessment (EA). Based on the results of the EA that follows, the NRC has determined not to prepare an environmental impact statement for the proposed amendments and is issuing a finding of no significant impact (FONSI).

II. Environmental Assessment

Plant Site and Environs

Braidwood is in Will County, Illinois approximately 50 miles (mi); 80 kilometers (km) southwest of the Chicago Metropolitan Area and 20 mi (32 km) south-southwest of Joliet. The Kankakee River is approximately 5 mi (8 km) east of the eastern site boundary. An onsite 2,540-acre (ac); 1,030-hectare (ha) cooling pond provides condenser cooling. Cooling water is withdrawn from the pond through the lake screen house, which is located at the north end of the pond. Heated water returns to the cooling pond through a discharge canal west of the lake screen house intake that is separated from the intake by a dike. The pond typically holds 22,300 acre-feet (27.5 million cubic meters) of water at any given time. The cooling pond includes both ''essential'' and ''non-essential'' areas. The essential cooling pond is the portion of the cooling pond that serves as the UHS for emergency core cooling, and it consists of a 99-ac (40-ha) excavated area of the pond directly in front of the lake screen house. The essential cooling pond's principal functions are to dissipate residual heat after reactor shutdown and to dissipate heat after an accident. It is capable of supplying Braidwood's cooling system with water for 30 days of station operation without additional makeup water. For clarity, use of the term ''UHS'' in this EA refers to the 99-ac (40-ha) essential cooling pond, and use of the term ''cooling pond'' or ''pond'' describes the entire 2,540-ac (1,030-ha) area, which includes both the essential and non-essential areas.

The cooling pond is part of the Mazonia-Braidwood State Fish and Wildlife Area, which encompasses the majority of the non-UHS area of the cooling pond as well as Illinois Department of Natural Resources (IDNR) owned lands adjacent to the Braidwood site to the south and southwest of the cooling pond. Exelon and the IDNR have jointly managed the cooling pond as part of the Mazonia-Braidwood State Fish and Wildlife Area since 1991 pursuant to a long-term lease agreement. Under the terms of the agreement, the public has access to the pond for fishing, waterfowl hunting, fossil collecting, and other recreational activities.

The cooling pond is a wastewater treatment works as defined by Section 301.415 of Title 35 of the *Illinois Administrative Code* (35 IAC 301.415). Under this definition, the cooling pond is not considered waters of the State under Illinois Administrative Code (35 IAC 301.440) or waters of the United States under the Federal Clean Water Act (40 CFR 230.3(s)), and so the cooling pond is not subject to State water quality standards. The cooling pond can be characterized as a managed ecosystem where IDNR fish stocking and other human activities primarily influence the species composition and population dynamics.

Since the beginning of the lease agreement between Exelon and IDNR, the IDNR has stocked the cooling pond with a variety of game fish, including largemouth bass (*Micropterus salmoides*), smallmouth bass (M. *dolomieu*), blue catfish (*Ictalurus furcatus*), striped bass (*Morone saxatilis*), crappie (*Pomoxis* spp.), walleye (*Sander vitreum*), and tiger muskellunge (*Esox masquinongy* x *lucius*). IDNR performs annual surveys to determine which fish to stock based on fishermen preferences, fish abundance, different species' tolerance to warm waters, predator and prey dynamics, and other factors. Because of the warm water temperatures experienced in the summer months, introductions of warm-water species, such as largemouth bass and blue catfish, have been more successful than introductions of cool-water species, such as walleye and tiger muskellunge. Since annual surveys began in 1980, IDNR has collected 47 species in the cooling pond. In recent years, bluegill (*Lepomis macrochirus*), channel catfish (*Ictalurus punctatus*), threadfin shad (*Dorosoma petenense*), and common carp (*Cyprinus carpio*) have been among the most abundant species in the cooling pond. Gizzard shad (*Dorosoma cepedianum*), one of the most frequently affected species during periods of elevated pond temperatures, have decreased in abundance dramatically in recent years, while bluegills, which can tolerate high temperatures with relatively high survival rates, have noticeably increased in relative abundance. IDNR-stocked warm water game species, such as largemouth bass and blue catfish, continue to persist in small numbers, while cooler water stocked species, such as walleye and tiger muskellunge, no longer appear in IDNR survey collections. No federally listed species or designated critical habitats protected under the Endangered Species Act (ESA) occur within or near the cooling pond.

The Kankakee River serves as the source of makeup water for the cooling pond. The river also receives continuous blowdown from the cooling pond. Water is withdrawn from a small river screen house located on the Kankakee River, and liquid effluents from Braidwood are discharged into the cooling pond blowdown line, which subsequently discharges into the Kankakee River.

The plant site and environs are described in greater detail in Chapter 3 of the NRC's November 2015, Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Braidwood Station, Units 1 and 2, Final Report (NUREG–1437, Supplement 55) (herein referred to as the ''Braidwood FSEIS'' (Final Supplemental Environment Impact Statement)). Figure 3–5 on page 3–7 of the Braidwood FSEIS depicts the Braidwood plant layout, and Figure 3–4 on page 3–6 depicts the cooling pond, including the portion of the pond that constitutes the essential cooling pond (or UHS) and the blowdown line to the Kankakee River.

Description of the Proposed Action

The proposed action would revise the Braidwood TS to allow a temporary increase in the allowable average temperature of water withdrawn from the UHS and supplied to the plant for cooling from ≤102 °F (38.9 °C) to ≤102.8 °F (39.3 °C) until September 30, 2021. Specifically, the proposed action would revise TS SR 3.7.9.2, which currently states, ''Verify average water temperature of UHS is ≤102.8 °F until September 30, 2020. After September 30, 2020, verify average water temperature of UHS is ≤102 °F'' to state ''Verify average water temperature of UHS is ≤102.8 °F until September 30, 2021. After September 30, 2021, verify average water temperature of UHS is ≤102 °F.''

Under the current TS, if the average UHS temperature as measured at the discharge of the operating essential service water system pumps is greater than 102 °F (38.9 °C), TS 3.7.9 Required Actions A.1 and A.2 would be entered concurrently and would require the licensee to place Braidwood in hot standby (Mode 3) within 12 hours and cold shutdown (Mode 5) within 36 hours. The proposed action would allow Braidwood to continue to operate during times when the UHS indicated average water temperature exceeds 102 °F (38.9 °C) but is less than or equal to 102.8 °F (39.3 °C) until September 30, 2021. The current TS's UHS average

water temperature limit of 102 °F (38.9 °C) would remain applicable to all other time periods beyond September 30, 2021.

The proposed action is nearly identical to previously approved license amendments that allowed for the average water temperature of the UHS to be ≤102.8 °F until September 30, 2020. The NRC issued an EA for the 2020 UHS amendments in the **Federal Register** on September 10, 2020, (85 FR 55863) and the NRC issued the amendments on September 24, 2020. The only difference between the previously approved amendments to SR 3.7.9.2 and the proposed action is that the proposed action would replace ''2020'' with ''2021.'' The proposed action is in accordance with the licensee's application dated May 27, 2021.

Need for the Proposed Action

The licensee has requested the proposed amendments in connection with historical meteorological and atmospheric conditions that have resulted in the TS UHS temperature being challenged. These conditions included elevated air temperatures, high humidity, and low wind speed. Specifically, from July 4, 2020, through July 9, 2020, northern Illinois experienced high air temperatures and drought conditions, which caused sustained elevated UHS temperatures. In response to these conditions in 2020, the licensee submitted license amendment requests contained in the licensee's letter dated July 15, 2020, as supplemented by letter dated August 14, 2020. The NRC subsequently granted Exelon's request in September 2020. The licensee projects that similar conditions are likely this year.

The proposed action would provide the licensee with operational flexibility until September 30, 2021, during which continued high UHS temperatures are likely so that the plant shutdown criteria specified in the TS are not triggered.

Environmental Impacts of the Proposed Action

Regarding radiological impacts, the proposed action would not result in any changes in the types of radioactive effluents that may be released from the plant offsite. No significant increase in the amount of any radioactive effluent released offsite or significant increase in occupational or public radiation exposure is expected from the proposed action. Separate from this EA, the NRC staff is evaluating the licensee's safety analyses of the potential radiological consequences of an accident that may result from the proposed action. The results of the NRC staff's safety analysis will be documented in a safety evaluation (SE). If the NRC staff concludes in the SE that all pertinent regulatory requirements related to radiological effluents are met by the proposed UHS temperature limit increase, then the proposed action would result in no significant radiological impact to the environment. The NRC staff's SE will be issued with the license amendments, if approved by the NRC. If the NRC staff concludes that all pertinent regulatory requirements are not met by the proposed UHS temperature limit increase, the requested amendment would not be issued.

Regarding potential non-radiological impacts, temporarily raising the maximum allowable UHS temperature from ≤102 °F (38.9 °C) to ≤102.8 °F (39.3 °C) could cause increased cooling pond water temperatures until September 30, 2021. Because the proposed action would not affect Braidwood's licensed thermal power level, the temperature rise across the condensers as cooling water travels through the cooling system would remain constant. Thus, if water in the UHS were to rise to 102.8 °F (39.3 °C), heated water returning to the cooling pond through the discharge canal, which lies west of the river screen house, would also experience a corresponding 0.8 °F (0.4 °C) increase. That additional heat load would dissipate across some thermal gradient as discharged water travels down the discharge canal and through the 99-ac (40-ha) UHS.

Fish kills are likely to occur when cooling pond temperatures rise above 95 °F (35 °C), the temperature at which most fish in the cooling pond are thermally stressed. For example, Section 3.7.4 of the Braidwood FSEIS describes six fish kill events for the period of 2001 through 2015. The fish kill events, which occurred in July 2001, August 2001, June 2005, August 2007, June 2009, and July 2012, primarily affected threadfin shad and gizzard shad, although bass, catfish, carp, and other game fish were also affected. Reported peak temperatures in the cooling pond during these events ranged from 98.4 °F (36.9 °C) to over 100 °F (37.8 °C), and each event resulted in the death of between 700 to as many as 10,000 fish. During the July 2012 event, cooling pond temperatures exceeded 100 °F (37.8 °C), which resulted in the death of approximately 3,000 gizzard shad and 100 bass, catfish, and carp. This event coincided with the NRC's granting of Enforcement Discretion to allow Braidwood to continue to operate above the TS limit of ≤100 °F (37.8 °C). The IDNR attributed this event, as well as four of the other fish kill events, to high cooling pond temperatures resulting from Braidwood operation. Appendix B, Section 4.1 of the Braidwood renewed facility operating licenses, requires Exelon to report to the NRC the occurrence of unusual or important environmental events, including fish kills, causally related to plant operation. Since the issuance of the Braidwood FSEIS in November 2015, Exelon has not reported any additional fish kill events to the NRC. Although not causally related to plant operation, fish kills have occurred since this time, the most recent of which occurred in August 2018 and July 2020.

In Section 4.7.1.3 of the Braidwood FSEIS, the NRC staff concluded that thermal impacts associated with continued operation of Braidwood during the license renewal term would result in SMALL to MODERATE impacts to aquatic resources in the cooling pond. MODERATE impacts would primarily be experienced by gizzard shad and other non-stocked and low-heat tolerant species. As part of its conclusion, the NRC staff also noted that because the cooling pond is a highly managed system, any cascading effects that result from the loss of gizzard shad (such as reduction in prey for stocked species, which in turn could affect those stocked species' populations) could be mitigated through IDNR's annual stocking and continual management of the pond. At that time, the UHS TS limit was ≤100 °F (37.8 °C).

In 2016, the NRC granted license amendments that increased the allowable UHS average water temperature TS limit from ≤100 °F (37.8 °C) to ≤102.0 °F (38.9 °C). In the EA associated with these amendments, the NRC staff concluded that increasing the TS limit to ≤102.0 °F (38.9 °C) would have no significant environmental impacts, and the NRC issued a FONSI with the EA.

In 2020, the NRC granted license amendments that temporarily increased the allowable UHS average water temperature TS limit from ≤102.0 °F (38.9 °C) to ≤102.8 °F (39.3 °C) until September 30, 2020. In the EA associated with these amendments, the NRC staff concluded that temporarily increasing the TS limit to ≤102.8 °F (39.3 °C) would have no significant environmental impacts, and the NRC issued a FONSI with the EA.

The NRC staff finds that the proposed action would not result in significant impacts to aquatic resources in the cooling pond for the same reasons that the NRC staff made this conclusion regarding the 2020 amendments. The

staff's justification for this conclusion follows.

The proposed increase in the allowable UHS average water temperature limit by 0.8 °F (0.4 °C) would not increase the likelihood of a fish kill event attributable to high cooling pond temperatures because the current TS limit for the UHS of 102.0 °F (38.9 °C) already allows cooling pond temperatures above those at which most fish species are thermally stressed (95 °F (35 °C)). In effect, if the UHS temperature rises to the current TS limit, fish within or near the discharge canal, within the flow path between the discharge canal and UHS, or within the UHS itself would have already experienced thermal stress and possibly died. Thus, an incremental increase in the allowable UHS water temperature by 0.8 °F (0.4 °C) and the corresponding temperature increases within and near the discharge canal and within the flow path between the discharge canal and UHS would not significantly affect the number of fish kill events experienced in the cooling pond. Additionally, the proposed action would only increase the allowable UHS average water temperature until September 30, 2021. Thus, any impacts to the aquatic community of the cooling pond, if experienced, would be temporary in nature, and fish populations would likely recover relatively quickly.

While the proposed action would not affect the likelihood of a fish kill event occurring during periods when the average UHS water temperature approaches the TS limit, the proposed action could increase the number of fish killed per high temperature event. For fish with thermal tolerances at or near 95 °F (35 °C), there would likely be no significant difference in the number of affected fish per high temperature event because, as already stated, these fish would have already experienced thermal stress and possibly died and the additional temperature increase would not measurably affect the mortality rate of these individuals. For fish with thermal tolerances above 95 °F (35 °C), such as bluegill, increased mortality is possible, as described in this notice.

The available scientific literature provides conflicting information as to whether incremental temperature increases would cause a subsequent increase in mortality rates of bluegill or other high-temperature-tolerant fish when temperatures exceed 100 °F (37.8 °C). For instance, in laboratory studies, Banner and Van Arman (1973) demonstrated 85 percent survival of juvenile bluegill after 24 hours of exposure to 98.6 °F (37.0 °C) water for stock acclimated to 91.2 °F (32.9 °C). At 100.0 °F (37.8 °C), survival decreased to 25 percent, and at 100.4 °F (38.0 °C) and 102.0 °F (38.9 °C), no individuals survived. Even at one hour of exposure to 102.0 °F (38.9 °C) water, average survival was relatively low at between 40 to 67.5 percent per replicate. However, in another laboratory study, Cairns (1956 in Banner and Van Arman 1973) demonstrated that if juvenile bluegill were acclimated to higher temperatures at a 3.6 °F (2.0 °C) increase per day, individuals could tolerate water temperatures up to 102.6 °F (39.2 °C) with 80 percent survival after 24 hours of exposure.

Although these studies provide inconsistent thermal tolerance limits, information from past fish kill events indicates that Cairns' results better describe the cooling pond's bluegill population because Exelon has not reported bluegill as one of the species that has been affected by past high temperature events. Thus, bluegills are likely acclimating to temperature rises at a rate that allows those individuals to remain in high temperature areas until temperatures decrease or that allows individuals time to seek refuge in cooler areas of the pond. Alternately, if Banner and Van Arman's results were more predictive, 75 percent or more of bluegill individuals in high temperature areas of the cooling pond could be expected to die at temperatures approaching or exceeding 100 °F (37.8 °C) for 24 hours, and shorter exposure time would likely result in the death of some reduced percentage of bluegill individuals.

Under the proposed action, fish exposure to temperatures approaching the proposed UHS TS average water temperature limit of 102.8 °F (39.3 °C) and those exposed to the associated discharge, which would be 0.8 °F (0.4 °C) higher than under the current TS limit, for at least one hour would result in observable deaths. However, as stated previously, Exelon has not reported bluegill as one of the species that has been affected during past fish kills. Consequently, the NRC staff assumes that bluegill and other high-temperature-tolerant species in the cooling pond would experience effects similar to those observed in Cairn's study. Based on Cairn's results, the proposed action's incremental and short-term increase of 0.8 °F (0.4 °C) could result in the death of some additional high-temperature-tolerant individuals, especially in cases where cooling pond temperatures rise dramatically over a short period of time (more than 3.6 °F (2.0 °C) in a 24-hour period).

Nonetheless, the discharge canal, flow path between the discharge canal and the UHS, and the UHS itself is a small portion of the cooling pond. Thus, while the incremental increase would likely increase the area over which cooling pond temperatures would rise, most of the cooling pond would remain at tolerable temperatures, and fish would be able to seek refuge in those cooler areas. Therefore, only fish within or near the discharge canal, within the flow path between the discharge canal and UHS, or within the UHS itself at the time of elevated temperatures would likely be affected, and fish would experience such effects to lessening degrees over the thermal gradient that extends from the discharge canal. This would not result in a significant difference in the number of fish killed per high temperature event resulting from the proposed action when compared to current operations for those species with thermal tolerances at or near 95 °F (35 °C) and an insignificant increase in the number of individuals affected for species with thermal tolerances above 95 °F (35 °C), such as bluegill. Additionally, the cooling pond is a managed ecosystem in which fish stocking, fishing pressure, and predator-prey relationships constitute the primary population pressures.

Fish populations affected by fish kills generally recover quickly, and thus, fish kills do not appear to significantly influence the fish community structure. This is demonstrated by the fact that the species that are most often affected by high temperature events (threadfin shad and gizzard shad) are also among the most abundant species in the cooling pond. Managed species would continue to be assessed and stocked by the IDNR on an annual basis in accordance with the lease agreement between Exelon and IDNR. Continued stocking would mitigate any minor effects resulting from the proposed action.

Based on the foregoing analysis, the NRC staff concludes that the proposed action would not result in significant impacts to aquatic resources in the cooling pond.

Some terrestrial species, such as birds or other wildlife, rely on fish or other aquatic resources from the cooling pond as a source of food. The NRC staff does not expect any significant impacts to birds or other wildlife because, if a fish kill occurs, the number of dead fish would be a small proportion of the total population of fish in the cooling pond. Furthermore, during fish kills, birds and other wildlife could consume many of the floating, dead fish. Additionally, and as described previously, the NRC staff does not expect that the proposed

action would result in a significant difference in the number or intensity of fish kill events or otherwise result in significant impacts on aquatic resources in the cooling pond.

With respect to water resources and ecological resources along and within the Kankakee River, the Illinois Environmental Protection Agency imposes regulatory controls on Braidwood's thermal effluent through Title 35, Environmental Protection, Section 302, ''Water Quality Standards,'' of the Illinois Administrative Code (35 IAC 302) and through the National Pollutant Discharge Elimination System (NPDES) permitting process pursuant to the Clean Water Act. Section 302 of the Illinois Administrative Code stipulates that ''[t]he maximum temperature rise shall not exceed 2.8 °C (5 °F) above natural receiving water body temperatures,'' (35 IAC 302.211(d)) and that ''[w]ater temperature at representative locations in the main river shall at no time exceed 33.7 °C (93 °F) from April through November and 17.7 °C (63 °F) in other months'' (35 IAC 302.211(e)). Additional stipulations pertaining to the mixing zone further protect water resources and biota from thermal effluents. The Braidwood NPDES permit contains special conditions that mirror these temperature requirements and that stipulate more detailed temperature requirements at the edge of the mixing zone. Under the proposed action, Braidwood thermal effluent would continue to be limited by the Illinois Administrative Code and the Braidwood NPDES permit to ensure that Braidwood operations do not create adverse effects on water resources or ecological resources along or within the Kankakee River. Occasionally, Exelon has applied for a provisional variance to allow higher-than-permitted temperatures at the edge of the discharge mixing zone. For instance, Exelon applied for and the IEPA granted one provisional variance in 2012 during a period of extremely warm weather and little to no precipitation. Exelon reported no fish kills or other events to the IEPA or the NRC that would indicate adverse environmental effects resulting from the provisional variance. The details of this provisional variance are described in Section 4.7.1.3 of the Braidwood FSEIS.

Under the proposed action, Exelon would remain subject to the regulatory controls described in this notice. The NRC staff finds it reasonable to assume that Exelon's continued compliance with, and the State's continued enforcement of, the Illinois Administrative Code and the Braidwood NPDES permit would ensure that Kankakee River water and ecological resources are protected. Further, the proposed action would not alter the types or amount of effluents being discharged to the river as blowdown. Therefore, the NRC staff does not expect any significant impacts to water resources or ecological resources within and along the Kankakee River from temporarily increasing the allowable UHS average water temperature TS limit.

With respect to federally listed species, the NRC staff consulted with the U.S. Fish and Wildlife Service (FWS) pursuant to section 7 of the ESA during its license renewal environmental review for Braidwood. During that consultation, the NRC staff found that the sheepnose (*Plethobasus cyphyus*) and snuffbox (*Epioblasma triquetra*) mussels had the potential to occur in the areas that would be directly or indirectly affected by license renewal (*i.e.,* the action area). In September 2015, Exelon transmitted the results of a mussel survey to the NRC and FWS. The survey documented the absence of federally listed mussels near the Braidwood discharge site in the Kankakee River. Based on this survey and other information described in the Braidwood FSEIS, the NRC concluded that the license renewal may affect, but is not likely to adversely affect the sheepnose mussel, and the NRC determined that license renewal would have no effect on the snuffbox mussel. The FWS concurred with the NRC's ''not likely to adversely affect'' determination in a letter dated October 20, 2015. The results of the consultation are further summarized in the Record of Decision for Braidwood license renewal.

As previously described, impacts of the proposed action would be confined to the cooling pond and would not affect water resources or ecological resources along and within the Kankakee River. The NRC's previous ESA section 7 consultation confirmed that no federally listed aquatic species occur within or near the cooling pond. The NRC has not identified any information indicating the presence of federally listed species in the area since that consultation concluded, and the FWS has not listed any new aquatic species that may occur in the area since that time. The proposed action would not result in any disturbance or other impacts to terrestrial habitats, and thus, no federally listed terrestrial species would be affected. Accordingly, the NRC staff concludes that the proposed action would have no effect on federally listed species or designated critical habitat. Consultation with the FWS for the proposed action is not necessary because Federal agencies are not required to consult with the FWS if the agency determines that an action will have no effect on listed species or critical habitat.

The NRC staff has identified no foreseeable land use, visual resource, noise, or waste management impacts given that the proposed action would not result in any physical changes to Braidwood facilities or equipment or changes any land uses on or off site. The NRC staff has identified no air quality impacts given that the proposed action would not result in air emissions beyond what would be experienced during current operations. Additionally, there would be no socioeconomic, environmental justice, or historic and cultural resource impacts associated with the proposed action since no physical changes would occur beyond the site boundaries and any impacts would be limited to the cooling pond.

Based on the foregoing analysis, the NRC staff concludes that the proposed action would have no significant environmental impacts.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered the denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the proposed action would result in no changes to the current TS. Thus, under the proposed action, the licensee would continue to be required to place Braidwood in hot standby (Mode 3) if average UHS water temperatures exceed 102 °F (38.9 °C) for the temporary period of July 2021 through September 2021. The no-action alternative would result in no change in current environmental conditions or impacts at Braidwood.

Alternative Use of Resources

There are no unresolved conflicts concerning alternative uses of available resources under the proposed action.

Agencies and Persons Consulted

No additional agencies or persons were consulted regarding the environmental impact of the proposed action.

III. Finding of No Significant Impact

The NRC is considering issuing amendments for Renewed Facility Operating License Nos. NPF–72 and NPF–77, issued to Exelon for operation of Braidwood that would revise the TS for the plant to temporarily increase the allowable average temperature of the UHS.

On the basis of the EA included in Section II and incorporated by reference

in this finding, the NRC concludes that the proposed action would not have significant effects on the quality of the human environment. The NRC's evaluation considered information provided in the licensee's application as well as the NRC's independent review of other relevant environmental documents. Section IV lists the environmental documents related to the proposed action and includes information on the availability of these documents. Based on its finding, the NRC has decided not to prepare an environmental impact statement for the proposed action.

This FONSI and other related environmental documents are available for public inspection and are accessible online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by email to *pdr.resource@nrc.gov*.

IV. Availability of Documents

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

Document	ADAMS Accession No.
License Amendment Request	
Exelon Generation Company, LLC License Amendment to Braidwood Station, Units 1 and 2, Technical Specification 3.7.9, ''Ultimate Heat Sink.'' Dated May 27, 2021.	ML21147A543
Other Referenced Documents	
Cairns J. 1956. Effects of heat on fish. *Industrial Wastes,* 1 :180–183	n/a [1]
Banner A, Van Arman JA. 1973. Thermal effects on eggs, larvae and juveniles of bluegill sunfish. Washington, DC: U.S. Environmental Protection Agency. EPA–R3–73–041.	n/a [1]
Ecological Specialists, Inc Final Report: Five Year Post-Construction Monitoring of the Unionid Community Near the Braidwood Station Kankakee River Discharge. Dated September 29, 2015.	ML15274A093 (Package)
Exelon Generation Company, LLC Byron and Braidwood Stations, Units 1 and 2, License Renewal Application, Braidwood Station Applicant's Environmental Report, Responses to Requests for Additional Information, Environmental RAIs AQ–11 to AQ–15. Dated April 30, 2014.	ML14339A044
U.S. Fish and Wildlife Service Concurrence Letter Concluding Informal Consultation with the NRC for Braidwood License Renewal. Dated October 20, 2015.	ML15299A013
Exelon Generation Company, LLC License Amendment to Braidwood Station, Units 1 and 2, Technical Specification 3.7.9, ''Ultimate Heat Sink.'' Dated July 15, 2020.	ML20197A434
Exelon Generation Company, LLC Supplement to License Amendment to Braidwood Station, Unit 1 and 2, Technical Specification 3.7.9, ''Ultimate Heat Sink.'' Dated August 14, 2020.	ML20227A375
U.S. Nuclear Regulatory Commission Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Braidwood Station, Units 1 and Final Report (NUREG–1437, Supplement 55). Dated November 30, 2015.	ML15314A814
U.S. Nuclear Regulatory Commission Exelon Generation Company, LLC; Docket No. STN 50–456; Braidwood Station, Unit 1 Renewed Facility Operating License. Issued on January 27, 2016.	ML053040362
U.S. Nuclear Regulatory Commission Exelon Generation Company, LLC; Docket No. STN 50–457; Braidwood Station, Unit 2 Renewed Facility Operating License. Issued on January 27, 2016.	ML053040366
U.S. Nuclear Regulatory Commission Record of Decision; U.S. Nuclear Regulatory Commission; Docket Nos. 50–456 and 560–457; License Renewal Application for Braidwood Station, Units 1 and 2. Dated January 27, 2016.	ML15322A317
U.S. Nuclear Regulatory Commission Environmental Assessment and Finding of No Significant Impact Related to Ultimate Heat Sink Modification. Dated July 18, 2016.	ML16181A007
U.S. Nuclear Regulatory Commission Braidwood Station, Units 1 and 2—Issuance of Amendments Re: Ultimate Heat Sink Temperature Increase. Dated July 26, 2016.	ML16133A438
U.S. Nuclear Regulatory Commission Environmental Assessment and Finding of No Significant Impact Related to Temporary Revision of Technical Specifications for the Ultimate Heat Sink. Dated September 3, 2020.	ML20231A469
U.S. Nuclear Regulatory Commission Braidwood Station, Units 1 and 2—Issuance of Amendments Re: Temporary Revision of Technical Specifications for the Ultimate Heat Sink. Dated September 24, 2020.	ML20245E419

[1] These references are subject to copyright laws and are, therefore, not reproduced in ADAMS.

Dated: June 30, 2021.

For the Nuclear Regulatory Commission.

Joel S. Wiebe,

Senior Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2021–14456 Filed 7–6–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0266]

Replacement Energy Cost Estimates for Nuclear Power Plants: 2020–2030

AGENCY: Nuclear Regulatory Commission.

ACTION: NUREG; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing NUREG–2242, ''Replacement Energy Cost Estimates for Nuclear Power Plants: 2020–2030.'' This report updates previous estimates of replacement energy costs for potential shutdowns of U.S. nuclear electricity-generating units due to a temporary power reactor outage to implement safety modifications or the loss of generation associated with a possible severe reactor accident. The final NUREG largely, is unchanged from the draft issued for public comment but has been revised to reflect the recent change to retirement dates for Byron Units 1 and 2, and Dresden Units 2 and 3.

DATES: NUREG–2242 is available on July 7, 2021.

ADDRESSES: Please refer to Docket ID NRC–2020–0266 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0266. Address questions about Docket IDs to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Pamela Noto, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6795, email: *Pamela.Noto@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC has developed new replacement energy cost estimates for both short and long-term nuclear power plant outages. This NUREG–2242, ''Replacement Energy Cost Estimates for Nuclear Power Plants: 2020–2030'' (ADAMS Accession No. ML21174A176), updates and replaces the replacement energy cost estimate information in NUREG/CR–4012, Volume 4, ''Replacement Energy Costs for Nuclear Electricity-Generating Units in the United States: 1997–2001,'' and NUREG/CR–6080, ''Replacement Energy, Capacity, and Reliability Costs for Permanent Nuclear Reactor Shutdowns'' (ADAMS Accession Nos. ML20073J435 and ML20076F500).

This report provides replacement energy costs that have been estimated for the U.S. electricity wholesale market regions with nuclear electricity-generating units, over the 2020–2030 period. These estimates were developed to assist the NRC in evaluating proposed regulatory actions that (1) require safety modifications that might necessitate temporary reactor outages and (2) reduce the potential for extended outages resulting from a severe reactor accident. Estimates were calculated using ABB's PROMOD model and ICF's Integrated Planning Model for North America. The models simulate dispatching a collection of generating units in merit order (*i.e.,* lowest to highest incremental cost of dispatch) until the regional power demand is met. Each generating unit is characterized by the technology and fuel it uses to generate electricity, the unit's heat rate, and the variable and fixed costs incurred in owning and operating the unit. To estimate the replacement energy cost, the report models a Reference Case, in which all operational nuclear power plants are generating, and an Alternative Case, in which a nuclear generating unit is taken offline so that the next unit in merit order is dispatched to replace the lost generation. The difference in market clearing prices between the two cases is the replacement energy cost.

The resulting wholesale power price projections capture the dynamics and economics of the U.S. electricity markets that provide short and long-term replacement energy cost estimates on a market area basis. Factors that affect replacement energy costs include load growth, replacement sources of generation, fuel prices, air emission requirement outlooks and seasonal variations.

II. Public Outreach

Following development of the updated report, the NRC posted the draft NUREG–2242 to the Federal Rulemaking website at *https://www.regulations.gov* for a 60-day public comment period (85 FR 82528; December 18, 2020). The comment period closed on February 16, 2021. The NRC received no comments on the draft NUREG. The NRC staff held a Category 3 public meeting on November 18, 2020 to discuss the updated replacement energy cost estimates. The NRC presentation can be found in ADAMS under Accession No. ML20322A003, and the meeting summary can be found in ADAMS under Accession No. ML20336A181.

III. Backfitting, Forward Fitting, and Issue Finality

The NRC's issuance and use of this report do not constitute backfitting as that term is defined in Section 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests''; do not affect the issue finality of an approval under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants'' and do not constitute forward fitting as that term is defined and described in MD 8.4.

Dated: June 30, 2021.

For the Nuclear Regulatory Commission.

Kevin A. Coyne,

Deputy Director, Division of Rulemaking, Environmental, and Financial Support.

[FR Doc. 2021–14364 Filed 7–6–21; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Locating and Paying Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval, with modifications.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, with modifications, to a collection of information (OMB Control Number 1212–0055; expires October 31, 2021) under the Paperwork Reduction Act. The purpose of the information collection is to enable PBGC to pay benefits to participants and beneficiaries. This notice informs the public of PBGC's request and solicits public comment on the collection, as modified.

DATES: Comments must be received on or before August 6, 2021 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

A copy of the request will be posted on PBGC's website at *https://www.pbgc.gov/prac/laws-and-regulation/federal-register-notices-open-for-comment.* It may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC, 1200 K Street NW, Washington, DC 20005–4026; faxing a request to 202–326–4042; or, calling 202–326–4040 during normal business hours (TTY users may call the Federal Relay Service toll-free at 800–877–8339 and ask to be connected to 202–326–4040). The Disclosure Division will email, fax, or mail the information to you, as you request.

FOR FURTHER INFORMATION CONTACT: Melissa Rifkin (*rifkin.melissa@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026; 202–229–6563. (TTY users may call the Federal Relay Service toll-free at 800–877–8339 and ask to be connected to 202–229–6563.)

SUPPLEMENTARY INFORMATION: This information collection is needed to pay participants and beneficiaries who may be entitled to pension benefits from plans that have terminated. Participants and beneficiaries are asked to provide information in connection with an application for benefits. This includes requests to individuals to provide identifying information so that PBGC may determine whether the individuals are entitled to benefits. All requested information is needed so that PBGC may determine benefit entitlements and make appropriate payments.

This information collection includes My Pension Benefit Account (MyPBA), an application on PBGC's website, *http://www.pbgc.gov,* through which plan participants and beneficiaries may conduct electronic transactions with PBGC, including applying for pension benefits, designating a beneficiary, electing or changing federal income tax withholding from periodic payments, changing contact information, and applying for or changing electronic direct deposit.

PBGC is proposing to eliminate one form (the Form 709), add four forms (form 700RN, form 700RSC, form 703RBD and form 703RBD–MP) and revise several other forms in this collection, specifically Forms: 700, 701, 702, 707, 708, 710, 711, 715, and 717. The proposed revisions include the following.

- PBGC is proposing the addition of four new forms: Form 700RN, Form 700RSC, Form 703RBD and Form 703RBD–MP. Each is intended to improve customer service.

(1) Form 700RN and Form 700RSC will be used in rare situations when participants who are already receiving benefits are given the opportunity to choose to elect a retroactive annuity starting date with a decrease to the annuity benefit. Form 700RN will be used by participants when spousal consent is not required, and Form 700RSC will be used by participants when spousal consent is required. PBGC will use this information to change the annuity starting date and reimburse the underpayment resulting from the retroactive annuity payment.

(2) Form 703RBD and Form 703RBD–MP will be used in rare situations by participants who have reached their required beginning date (RBD) and are eligible to elect a lump sum payment in lieu of an annuity. Form 703RBD will be used for trusteed plan participants. Form 703RBD–MP will be used for participants claiming benefits under the Missing Participants Program and requires notarization of the participant's signature as a fraud prevention measure. PBGC is separating participants who have reached their RBD from other participants able to elect a lump sum payment to ensure that appropriate information is communicated to participants who have reached their RBD.

- To Form 700, PBGC is proposing to remove the question that asks participants to designate beneficiaries for amounts owed at death and collect this information only on Form 707. This change is intended to reduce errors with customers completing Form 700.
- To Form 701, PBGC is proposing to add a question asking for the gender of the participant's spouse. PBGC uses this information for actuarial calculations required to operate the single-employer insurance program.
- To Forms 701, 702, 707, and 708, PBGC is proposing to clarify the requested information about beneficiaries owed benefits upon the participant's death.
- To Forms 701and 710, PBGC is proposing to eliminate a question and information about Electronic Transfer Accounts (ETA), as this Department of the Treasury sponsored program ended.
- To Form 711, PBGC is proposing to add a question for notarized spousal consent to the change in a beneficiary for a certain and continuous annuity. This change is intended to comply with applicable requirements under the Internal Revenue Code.
- To Form 715, PBGC is proposing to clarify the instructions to improve customer service.
- To Form 717, PBGC is proposing to eliminate questions asking for gender, the branch or division where the employee worked, lump sum amount and date paid, whether the lump sum was rolled over to an individual retirement account (IRA), and whether the employee is currently receiving retirement benefits. PBGC is proposing to add requests for the last dates of employment, information on the type of retirement plan, and information appearing on SSA Form L–99–C1. This addition will decrease the need for PBGC to follow up with customers for additional, required information and increase processing efficiency.

PBGC is making editorial and formatting changes as well, including changing the design and appearance of MyPBA. PBGC believes these revisions will provide greater clarity to customers and improve their experience with the online system.

The existing collection of information was approved under OMB control number 1212–0055 (expires October 31, 2021). On March 9, 2021, PBGC published in the **Federal Register** (at 86 FR 13590) a notice informing the public of its intent to request an extension of

this collection of information, as modified. No comments were received. PBGC is requesting that OMB extend its approval (with modifications) for three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC estimates that it will receive 170,521 benefit application or information forms annually. The total annual burden associated with this collection of information is estimated to be 58,376 hours and an estimated $58,682, which is the total average maximum cost of notary services for participants' or participants' spouses' signatures on applicable forms.

Issued in Washington, DC, by

Stephanie Cibinic,

Deputy Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2021–14440 Filed 7–6–21; 8:45 am]

BILLING CODE 7709–02–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2021–106 and CP2021–108]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 8, 2021.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. Docket No(s).: MC2021–106 and CP2021–108; Filing Title: USPS Request to Add Priority Mail Contract 709 to Competitive Product List and Notice of Filing Materials Under Seal; Filing Acceptance Date: June 30, 2021; Filing Authority: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; Public Representative: Kenneth R. Moeller; Comments Due: July 8, 2021.

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2021–14414 Filed 7–6–21; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., July 21, 2021.

PLACE: Members of the public wishing to attend the open portion of the meeting must submit a written request at least 24 hours prior to the meeting to receive dial-in information. All requests must be sent to *SecretarytotheBoard@rrb.gov.*

STATUS: The initial part of this meeting will be open to the public. The rest of the meeting will be closed to the public.

Portions Open to the Public

(1) Budget Briefing
(2) Enterprise Risk Management
(3) Legislative Briefing
(4) Status of Appeals
(5) Agency Operations

Portions Closed to the Public

(1) Personnel Matter

CONTACT PERSON FOR MORE INFORMATION: Stephanie Hillyard, Secretary to the Board, (312) 751–4920.

Authority: 5 U.S.C. 552b

Dated: July 2, 2021.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2021–14595 Filed 7–2–21; 4:15 pm]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92300; File No. SR–NASDAQ–2021–053]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Transaction Credits and Charges at Equity 7, Section 118(a)

June 30, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 22, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's transaction credits and charges at Equity 7, Section 118(a), as described further below. The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's schedule of credits and charges, at Equity 7, Section 118(a). Specifically, the Exchange proposes to: (1) Add a new credit of $0.0028 per share executed for members that add at least a certain threshold volume of liquidity in securities in Tape B; (2) add a new credit of $0.0030 per share executed for members that add and remove liquidity, including adding at least a certain threshold volume of liquidity in securities in midpoint orders or Midpoint Extended Life Orders (''M–ELOs'') [3] for securities in any Tape; (3) raise the qualifying threshold for an existing credit of $0.00305 per share executed for members that add and remove liquidity, including a certain volume of liquidity in midpoint orders or M–ELOs in securities in any Tape; (4) add new $0.0026 and $0.0027 per share executed credits for members that provide liquidity, grow their liquidity adding activity relative to a benchmark month, and achieve certain ratios of NBBO liquidity [4] to displayed liquidity provided; (5) add two new supplemental credits for certain midpoint orders of $0.0001 or $0.0002 per share executed for members that provide at least certain thresholds of midpoint liquidity and grow their midpoint adding liquidity relative to a benchmark month; and (6) amend the applicability of two existing charges for members with orders that execute upon utilizing the ''RTFY'' routing option.[5]

New Credit for Adding Liquidity in Tape B Securities

The Exchange proposes to add a new credit of $0.0028 per share executed to a member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.45% or more of Consolidated Volume [6] during the month, which includes shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE (''Tape B Securities'') that represent 0.10% or more of Consolidated Volume.

The Exchange notes that it presently offers three similarly structured credits, ranging from $0.0029 to $0.0030 per share executed, to members with orders that add liquidity to the Exchange representing more than certain threshold percentages of Consolidated Volumes (0.625% to 1.25%), including shares of liquidity provided with respect to securities in Tape B that represent at least certain threshold percentages of Consolidated Volume (0.15% to 0.40%).

The proposal will add to this series of credits a new lower credit for members that add corresponding lower threshold volumes of liquidity to the Exchange, and lower threshold volumes in securities in Tape B. In doing so, the Exchange intends to expand opportunities for participants to receive a credit if they add significant liquidity to the Exchange, including significant liquidity in Tape B. For those members that engage in significant liquidity adding activity on the Exchange, but do not have sufficient activity to qualify for the existing credits, the new credit may be more readily attainable. If so, then such members may seek to qualify for the new credit by increasing their liquidity adding activity on the Exchange. To the extent that they do so, the quality of the market will improve, to the benefit of all participants.

New and Amended Credits for Adding and Removing Liquidity and Executing Midpoint and M–ELO Orders

The Exchange proposes to add a new credit of $0.0030 per share executed to a member: (i) With shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.875% or more of Consolidated Volume during the month; (ii) that executes 0.25% or more of Consolidated Volume during the month through providing midpoint orders and through MELO; and (iii) that removes at least 1.35% of Consolidated Volume during the month.

The proposed new credit will be situated between two similarly-structured credits that the Exchange presently provides to its members: (1) A $0.00295 per share executed credit to a member that adds liquidity representing 0.70% or more of Consolidated Volume during the month, executes 0.20% or more of Consolidated Volume in midpoint and M–ELO Orders, and removes at least 1.10% of Consolidated Volume during the month; and (2) a $0.00305 per share executed credit to a member that adds liquidity representing 1.20% or more of Consolidated Volume during the month, executes 0.40% or more of Consolidated Volume in midpoint and M–ELO Orders, and removes at least 1.10% of Consolidated Volume during the month. As to the $0.00305 credit, the Exchange proposes

[3] Pursuant to Equity 4, Rule 4702(b)(14), a ''Midpoint Extended Life Order'' is an Order Type with a Non-Display Order Attribute that is priced at the midpoint between the NBBO and that will not be eligible to execute until a minimum period of 10 milliseconds has passed after acceptance of the Order by the System.

[4] As defined in Equity 7, Section 114(g), ''NBBO liquidity provided'' means liquidity provided from orders (other than Designated Retail Orders, as that term is defined in Equity 7, Section 118), that establish the NBBO, and display a quantity of at least one round lot at the time of execution.

[5] Pursuant to Equity 4, Section 4758(a)(1)(A)(v)(b), ''RTFY'' is a routing option available for an order that qualifies as a Designated Retail Order under which orders check the System for available shares only if so instructed by the entering firm and are thereafter routed to destinations on the System routing table. If shares remain unexecuted after routing, they are posted to the Nasdaq Book. Once on the Nasdaq Book, should the order subsequently be locked or crossed by another market center, the Nasdaq System will not route the order to the locking or crossing market center. RTFY is designed to allow orders to participate in the opening, reopening and closing process of the primary listing market for a security.

[6] Equity 7, Section 118(a) defines ''Consolidated Volume'' to mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity the date of the annual reconstitution of the Russell Investments Indexes is excluded from both total Consolidated Volume and the member's trading activity.

to raise the liquidity removal threshold from 1.10% to 1.45% of Consolidated Volume.

The Exchange intends for the new proposed credit to be more challenging for members to achieve than the existing $.00295 credit, but not quite as challenging to achieve as the $0.00305 credit. If members that currently qualify for $0.00295 credit assess that the new $0.0030 credit is readily attainable, whereas the $0.00305 is not so, then they may increase their liquidity adding and removing activities on the Exchange to qualify for it, and the quality of the market will improve, to the benefit of all participants.

Meanwhile, the proposal to increase the liquidity removal requirement for the $0.00305 credit from 1.10% to 1.45% of Consolidated Volume will encourage those participants that already qualify for the credit to increase the extent of their liquidity removal activity on the Exchange in order to continue to qualify for it. From time to time, the Exchange believes it is reasonable to recalibrate the criteria for credits such as this one to ensure that the credits remain appropriately challenging for participants to attain in light of changes to their levels of activity on the Exchange.

New Growth Tiers for Adding Displayed Liquidity

The Exchange proposes to add two new credits that will encourage its members to add and grow the extent to which they add significant volumes on liquidity to the Exchange, including liquidity that establishes the NBBO. First, the Exchange proposes to provide a $0.0026 per share executed credit to a member that, through one or more of its Nasdaq Market Center MPIDs: (i) Provides shares of liquidity in all securities that represent equal to or greater than 0.15% of Consolidated Volume during the month; (ii) increases the extent to which it provides liquidity in all securities by 20% or more as a percentage of Consolidated Volume during the month relative to the month of May 2021; and (iii) has a ratio of at least 50% NBBO liquidity provided to liquidity provided by displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) during the month. Second, the Exchange proposes to provide a higher credit to a member that engages in higher levels of this same activity. Namely, the Exchange proposes to provide a $0.0027 per share executed credit to a member that, through one or more of its Nasdaq Market Center MPIDs: (i) Provides shares of liquidity in all securities that represent equal to or greater than 0.20% of Consolidated Volume during the month; (ii) increases the extent to which it provides liquidity in all securities by 35% or more as a percentage of Consolidated Volume during the month relative to the month of May 2021; and (iii) has a ratio of at least 60% NBBO liquidity provided to liquidity provided by displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) during the month.

Again, the Exchange intends for these new credits to improve market quality by encouraging members to add significant volumes of liquidity during the month, by growing such activity over time, and by providing liquidity that is valued by participants because it sets the NBBO.

Supplemental Credits for Midpoint Orders

The Exchange proposes to provide two new supplemental credits for midpoint orders (excluding buy (sell) orders with Midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO) that provide liquidity to the Exchange. These credits will be in addition to other credits otherwise available to members for adding non-displayed liquidity to the Exchange, but a member's activity will qualify it to receive only one of the two new supplemental credits at a time, meaning that they are not cumulative. Additionally, members that receive a supplemental credit will be entitled to a combined credit (regular and supplemental) up to a maximum of $0.0027 per share executed, meaning that if a member is entitled to a regular credit of $0.0026 per share executed as well as the $0.002 [sic] per share executed supplemental credit, the total combined credit provided to the member will be $0.0027 per share executed, rather than the full $0.0028 per share executed.

Specifically, the Exchange proposes to provide supplemental credits for midpoint orders (excluding buy (sell) orders with Midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO) as follows: (1) $0.0001 per share executed if the member, during the month (i) provides at least 15 million shares of midpoint liquidity per day during the month; and (ii) increases providing liquidity through midpoint orders by 10% or more relative to the member's May 2021 average daily volume provided through midpoint orders; or (2) $0.0002 per share executed if the member, during the month (i) provides at least 15 million shares of midpoint liquidity per day during the month; and (ii) increases providing liquidity through midpoint orders by 30% or more relative to the member's May 2021 average daily volume provided through midpoint orders.

The purpose of these new credits is to provide extra incentives to members that provide non-displayed liquidity to the Exchange to do so through midpoint orders, as well as to grow substantially the extent to which they provide midpoint orders to the Exchange relative to a recent benchmark month. The Exchange believes that if such incentives are effective, then any ensuing increase in midpoint liquidity to the Exchange will once again improve market quality, to the benefit of all participants.

The Exchange notes that it proposes to cap combined regular and supplemental credits at $0.0027 per share executed to manage the costs to the Exchange of providing these incentives. The Exchange has only limited resources available to it for incentive programs, and it must ensure that it allocates such resources appropriately to optimize their intended impacts.

Amend Applicability of Existing Charges for Routed Orders Using RTFY

Additionally, the Exchange proposes to amend the applicability of two of its existing transaction fees. First, it proposes to amend the existing $0.0030 per share executed fee that it assesses to members that use the RTFY order routing option to execute orders which remove more than 4 million shares of liquidity from the Exchange or execute in a venue with a protected quotation under Regulation NMS other than Nasdaq. Second, it proposes to amend the $0.00 per share executed fee that it applies to members that use the RTFY order routing option to execute orders which remove up to 4 million shares of liquidity from the Exchange or execute in a venue with a protected quotation under Regulation NMS other than Nasdaq. The Exchange proposes to amend these charges by stating that it will not count RTFY-routed shares that execute in so-called ''taker-maker'' venues when it calculates whether a member has exceeded the 4 million share threshold that applies to both charges. The Exchange also proposes to exclude taker-maker RTFY executions from any fees that a member incurs for RTFY executions to the extent that the member exceeds the 4 million share threshold through executions at non-taker-maker venues.

The Exchange proposes to exclude RTFY-routed shares executed at taker-maker venues from the fee qualification

calculations and from the fees themselves because taker-maker venues typically do not charge fees to Nasdaq for RTFY to access their liquidity, whereas maker-taker venues do so. In other words, the Exchange charges a fee to participants that use RTFY to execute large volumes of shares at venues other than Nasdaq to help Nasdaq to recover the costs it incurs for when such shares access liquidity at maker-taker venues. Because taker-maker venues do not contribute substantially to Nasdaq's RTFY routing costs, Nasdaq believes that it is reasonable to exclude RTFY shares that execute on taker-maker venues from Nasdaq's determination as to whether a participant's RTFY activity during a month meets the 4 million share threshold to incur the $0.0030 per share executed fee. For the same reason, it is also reasonable to exclude RTFY shares executed on taker-maker venues from any RTFY execution fees otherwise incurred.

2. Statutory Basis

The Exchange believes that its proposals are consistent with Section 6(b) of the Act,[7] in general, and further the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[8] in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposals are also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

The Proposals Are Reasonable

The Exchange's proposals are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [9]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [10]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. Within the foregoing context, the proposals represent reasonable attempts by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes that it is reasonable to establish new transaction credits, at Equity 7, Section 118(a), because each of these new credits will encourage the addition of and/or growth in the addition of various types of displayed and non-displayed liquidity to the Exchange, including M–ELO, midpoint, Tape B securities, and NBBO-setting liquidity, as well as the removal of liquidity in one instance.

First, the proposed new credit of $0.0028 per share executed—which will apply to members that add liquidity representing 0.45% or more of Consolidated Volume during the month, and add shares of liquidity in Tape B Securities of 0.10% or more of Consolidated Volume—will provide a new opportunity to members to earn a credit for providing significant volumes of liquidity to the Exchange without having to meet the more stringent qualifying criteria that apply to existing similarly-structured $0.00295 and $0.0030 per share credits. Similarly, the proposed new credit of $0.0030 per share executed—which will apply to members that (i) add liquidity to the Exchange representing 0.875% or more of Consolidated Volume during the month, (ii) execute 0.25% or more of Consolidated Volume during the month in providing midpoint or M–ELO Orders, and (iii) remove from the Exchange liquidity representing at least 1.35% of Consolidated Volume during the month—will encourage members that currently qualify for an existing $0.00295 per share executed credit for providing a significant amount of liquidity to the Exchange, including midpoint and M–ELO orders, and for removing a significant amount of liquidity from the Exchange, to further increase the extent of these activities on the Exchange to earn a higher $0.0030 credit, particularly if they deem the criteria for the new credit to be more readily achievable than are the criteria to qualify for the existing $0.00305 per share executed credit.

Meanwhile, the proposal to increase the liquidity removal requirement for the $0.00305 credit from 1.10% to 1.45% of Consolidated Volume will encourage those participants that already qualify for the credit to increase the extent of their liquidity removal activity on the Exchange in order to continue to qualify for it. From time to time, the Exchange believes it is reasonable to recalibrate the criteria for credits such as this one to ensure that the credits remain appropriately challenging for participants to attain in light of changes to their levels of activity on the Exchange.

It is also reasonable for the Exchange to establish $0.0026 and $0.0027 per share executed credits to members that: (i) Provide liquidity greater than certain threshold percentages of Consolidated Volume during the month; (ii) increase their liquidity providing activity in all securities by specified percentages of Consolidated Volume during the month relative to the month of May 2021; and (iii) achieve specified ratios of NBBO liquidity provided to liquidity provided by displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) during the month. These two new credits will encourage its members to add and grow the extent to which they add significant volumes of

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[10] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

liquidity to the Exchange, including liquidity that establishes the NBBO.

Next, the Exchange believes it is reasonable to establish two new supplemental credits for midpoint orders (other than buy (sell) orders with Midpoint Pegging that receive execution prices that are lower (higher) than the midpoint of the NBBO) as follows: (1) $0.0001 per share executed if the member, during the month (i) provides at least 15 million shares of midpoint liquidity per day during the month; and (ii) increases providing liquidity through midpoint orders by 10% or more relative to the member's May 2021 average daily volume provided through midpoint orders; or (2) $0.0002 per share executed if the member, during the month (i) provides at least 15 million shares of midpoint liquidity per day during the month; and (ii) increases providing liquidity through midpoint orders by 30% or more relative to the member's May 2021 average daily volume provided through midpoint orders. These proposals are reasonable because they will provide extra incentives to members that provide non-displayed liquidity to the Exchange to do so through midpoint orders, as well as to grow substantially the extent to which they provide midpoint orders to the Exchange relative to a recent benchmark month. The Exchange believes that if such incentives are effective, then any ensuing increase in midpoint liquidity to the Exchange will once again improve market quality, to the benefit of all participants.

The Exchange believes that it is reasonable to exclude from the supplemental credits orders with Midpoint Pegging which execute at prices less aggressive than the midpoint of the NBBO because such orders already receive price improvements, such that members do not require additional inducements to enter these orders on the Exchange.

Furthermore, the Exchange believes that it is reasonable to cap the amount of combined regular and supplemental credits it proposes to offer members under this program to $0.0027 per share executed. This cap will allow the Exchange to manage its costs of providing these incentives. The Exchange has only limited resources available to it for incentive programs, and it must ensure that it allocates such resources appropriately to optimize their intended impacts.

Finally, the Exchange believes that it is reasonable to exclude RTFY-routed shares that are executed at taker-maker venues from its calculations for determining whether RTFY participants will incur a $0.0030 per share executed fee when their shares execute at away venues as well as from the fee itself, to the extent it is otherwise applicable to a member. Taker-maker venues typically do not charge fees to Nasdaq for RTFY to access their liquidity, whereas maker-taker venues do so. The Exchange charges a fee to participants that use RTFY to execute large volumes of shares at venues other than Nasdaq to help Nasdaq to recover the costs it incurs for such shares to access liquidity at maker-taker venues. Because taker-maker venues do not contribute substantially to Nasdaq's RTFY routing costs, Nasdaq believes that it is reasonable to exclude RTFY shares that execute on taker-maker venues from Nasdaq's determination as to whether a participant's RTFY activity during a month meets the 4 million share threshold to incur the $0.0030 per share executed fee. For the same reason, it is also reasonable to exclude RTFY shares executed on taker-maker venues from any RTFY execution fees otherwise incurred.

The Exchange notes that those market participants that are dissatisfied with the proposals are free to shift their order flow to competing venues that offer more generous pricing or less stringent qualifying criteria.

The Proposals Are Equitable Allocations of Credits

The Exchange believes that it is an equitable allocation to establish new transaction credits and otherwise modify the eligibility requirements for its transaction credits because the proposals will encourage members to increase the extent to which they add liquidity to or remove liquidity from the Exchange. To the extent that the Exchange succeeds in increasing the levels of liquidity addition or removal activity on the Exchange, including in categories of liquidity for which there is an observed need or demand, such as midpoint, M–ELO, and Tape B securities, and NBBO-setting liquidity, then the Exchange will experience improvements in its market quality, which stands to benefit all market participants. The Exchange also believes it is equitable to recalibrate existing criteria for its credits to ensure that the credits remain appropriately challenging for participants to attain in light of changes to their levels of activity on the Exchange.

Finally, the Exchange believes that it is equitable to exclude RTFY-routed shares that are executed at taker-maker venues from the Exchange's determinations as to whether RTFY participants will incur a $0.0030 per share executed fee when their shares execute at away venues, as well as from the fee itself, to the extent that it is otherwise applicable to a member. Taker-maker venues typically do not charge fees to Nasdaq for RTFY to access their liquidity, whereas maker-taker venues do so. Because taker-maker venues do not contribute substantially to Nasdaq's RTFY routing costs, which the $0.0030 fee exists to defray, Nasdaq believes that it is equitable to exclude shares that execute on taker-maker venues from Nasdaq's determination as to whether a participant's RTFY activity during a month meets the 4 million share threshold to incur the $0.0030 per share executed fee. For the same reason, it is also equitable to exclude RTFY shares executed on taker-maker venues from any RTFY execution fees otherwise incurred.

Any participant that is dissatisfied with the proposals is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

The Proposals Are Not Unfairly Discriminatory

The Exchange believes that its proposals are not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries—from co-branded credit cards to grocery stores to cellular telephone data plans—that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

The Exchange believes that its proposals to adopt new credits or otherwise amend the qualifying criteria for its transaction credits are not unfairly discriminatory because these credits are available to all members. Moreover, these proposals stand to improve the overall market quality of the Exchange, to the benefit of all market participants, by incentivizing members to increase the extent of their liquidity adding or removal activity on the Exchange, including in categories of liquidity for which there is an observed need or demand, such as midpoint, M–ELO, and Tape B securities, and NBBO-setting liquidity. The Exchange also

believes it is not unfairly discriminatory to recalibrate existing criteria for its credits to ensure that the credits remain appropriately challenging for participants to attain in light of changes to their levels of activity on the Exchange.

Meanwhile, the Exchange's proposal is not unfairly discriminatory to exclude RTFY-routed shares that are executed at taker-maker venues from the Exchange's determination as to whether RTFY participants will incur a $0.0030 per share executed fee when their shares execute at away venues, as well as from the fee itself, to the extent it is otherwise applicable to a member. Although the proposal stands to benefit RTFY participants that execute large volumes of shares at taker-maker venues, insofar as such participants will no longer stand to pay a routing fee because of such execution activity, the Exchange believes it is fair to provide this benefit because taker-maker venues typically do not charge fees to Nasdaq for RTFY to access their liquidity, whereas maker-taker venues do so. Because taker-maker venues do not contribute substantially to Nasdaq's RTFY routing costs, which the $0.0030 fee exists to defray, Nasdaq believes that it is fair to exclude shares that execute on taker-maker venues from Nasdaq's determination as to whether a participant's RTFY activity during a month meets the 4 million share threshold to incur the $0.0030 per share executed fee. For the same reason, it is also not unfairly discriminatory to exclude RTFY shares executed on taker-maker venues from any RTFY execution fees otherwise incurred.

Any participant that is dissatisfied with the proposals is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that its proposals will place any category of Exchange participant at a competitive disadvantage.

As noted above, Nasdaq's proposals to add and amend its transaction credits are intended to have market-improving effects, to the benefit of all members. Any member may elect to achieve the levels of liquidity required in order to qualify for the new or amended credits.

Likewise, the Exchange's proposal will not duly burden competition to exclude RTFY-routed shares that are executed at taker-maker venues from the Exchange's determinations as to whether RTFY participants will incur a $0.0030 per share executed routing fee, and from the fee itself, to the extent that it is otherwise applicable to a member. Although the proposal stands to benefit RTFY participants that execute large volumes of shares at taker-maker venues, insofar as such participants will no longer stand to pay a routing fee because of such execution activity, the Exchange believes it is fair to provide this benefit because taker-maker venues typically do not charge fees to Nasdaq for RTFY to access their liquidity, whereas maker-taker venues do so. Because taker-maker venues do not substantially contribute to Nasdaq's RTFY routing costs, which the $0.0030 fee exists to defray, Nasdaq believes that it is fair to exclude shares that execute on taker-maker venues from Nasdaq's determination as to whether a participant's RTFY activity during a month meets the 4 million share threshold to incur the $0.0030 per share executed fee. For the same reason, it is also fair to exclude RTFY shares executed on taker-maker venues from any RTFY execution fees otherwise incurred.

The Exchange notes that its members are free to trade on other venues to the extent they believe that the proposed qualification criteria for or amounts of these credits or fees are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. The Exchange notes that its pricing tier structure is consistent with broker-dealer fee practices as well as the other industries, as described above.

Intermarket Competition

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its credits and fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own credits and fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credit or fee changes in this market may impose any burden on competition is extremely limited.

The proposed new and amended credits and fees are reflective of this competition because, even as one of the largest U.S. equities exchanges by volume, the Exchange has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprises upwards of 44% of industry volume.

The Exchange's proposals to add new and amend its transaction credits are pro-competitive in that the Exchange intends for them to increase liquidity addition or removal activity on the Exchange, thereby rendering the Exchange a more attractive and vibrant venue to market participants. Meanwhile, the Exchange's proposal to exclude from the RTFY routing fees and fee calculation shares executed in taker-maker venues is pro-competitive in that it will render the Exchange's RTFY routing option more attractive to participants.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2021–053 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2021–053. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2021–053 and should be submitted on or before July 28, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–14388 Filed 7–6–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92301; File No. SR-CboeBYX–2021–014]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Content of the Cboe One Feed Under Rule 11.22(i) To Identify the Current Day Consolidated High and Low Prices

June 30, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on June 17, 2021, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (''BYX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend the content of the Cboe One Feed under Rule 11.22(i) to identify the current day consolidated high and low prices. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/byx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to enhance the content of the Cboe One Feed under Rule 11.22(i) to identify the current day consolidated high and low price for all listed equity securities.

The Cboe One Feed is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer (''BBO'') of all displayed orders for securities traded on BYX and its affiliated exchanges.[5] Among other things, the Cboe One Feed also includes consolidated volume for all listed equity securities regardless of where the transaction was executed, the Cboe One Opening Price and the Cboe One Closing Price,[6] and the primary listing market's official opening and closing price.

Now, in addition to the information currently provided in the Cboe One Feed, the Exchange is proposing to

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] BYX's affiliated exchanges are the Cboe BZX Exchange, Inc. (''BZX''), Cboe EDGA Exchange, Inc. (''EDGA''), and Cboe EDGX Exchange, Inc. (''EDGX'', and together with BZX, BYX, and EDGA, the ''Cboe Equity Exchanges''). *See* Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR–EDGX–2014–25; SR–EDGA–2014–25; SR–BATS–2014–055; SR–BYX–2014–030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Cboe (formerly Bats) One Feed) (''Cboe One Approval Order'').

[6] For securities listed on Cboe BZX Exchange, Inc. (''BZX''), the Cboe One Opening Price shall be the BZX Official Opening Price as defined in BZX Rule 11.23(a)(5) and the Cboe One Closing Price shall be the BZX Official Closing Price as defined in BZX Rule 11.23(a)(3). For securities not listed on BZX, the Cboe One Opening Price shall be the first last sale eligible trade that occurred on the Exchange or any of its affiliates after 9:30 a.m. Eastern Time, and the Cboe One Closing Price shall be the final last sale eligible trade to occur on the Exchange or any of its affiliates prior to 4:00 p.m. Eastern Time. *See* Exchange Rule 11.22(i).

include the current day consolidated high and low price for all listed equity securities as obtained directly from the securities information processors (''SIPs''). The consolidated high and low price for all listed equity securities would be disseminated via the Cboe One Feed after the Consolidated Tape Association (''CTA'') and Unlisted Trading Privileges (''UTP'') Plan SIP delay period, which is currently 15 minutes.

Such information would provide Cboe One Feed users with a static benchmark against which to compare price movements shown on Cboe One using high and low prices in the consolidated market. The Exchange's proposal is in response to requests by Members using the Cboe One Feed, and also partly in response to recent changes by a competitor exchange to their end of day messages.[7]

The Exchange proposes that this change become operative on July 16, 2021. To ensure consistency across the Cboe Equity Exchanges, BZX, EDGA, and EDGX will be filing companion proposals to reflect these changes in their respective rulebooks. The Exchange is not proposing any change to the Cboe One Feed fee as a result of this modification.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule changes are consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also believes that the proposed rule changes are consistent with Section 11(A) of the Act[10] in that it supports (1) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (2) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule changes are consistent with Rule 603 of Regulation NMS,[11] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data products to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The proposed change to Exchange Rule 11.22(i) is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system by identifying the consolidated high and low price for all listed equity securities as obtained directly from the SIPs. Such information would provide Cboe One Feed users with a static benchmark against which to compare price movements shown on the Cboe One Feed using high and low prices in the consolidated market. Therefore, the consolidated high and low price for listed equity securities would provide meaningful information to investors. The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with new options for receiving such information. As noted above, another exchange currently provides consolidated high and low price information in their competing market data products.[12] Therefore, the Exchange believes the proposed rule change removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest as it would provide an additional avenue for investors to receive this information from a competing product. The proposal would not permit unfair discrimination because the consolidated high and low price will be available to all of the Exchange's customers and market data vendors on an equivalent basis. In addition, any customer that wishes to receive this information via a different source will be able to do so.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed change to Rule 11.22(i) will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposed rule change will enhance competition because it would enable the Exchange to include the consolidated high and low price as part of the Cboe One Feed, thereby enabling it to better compete with similar market data products currently offered by another exchange that includes such information.[13] The Exchange is not the exclusive distributor of the consolidated high and low price for all listed equity securities, and a vendor seeking to offer a similar product that includes this information would be able to do so on the same terms as the Exchange. Specifically, a competing vendor could receive the consolidated high and low price from the SIPs and include that information as part of their market data products to be disseminated to customers pursuant to the same terms and policies as the Exchange.[14]

The Exchange believes the proposal will have no impact on intramarket competition as the proposal is not targeted at, or expected to be limited in its applicability to, any particular segment of market participants and no segment of retail investors, the general investing public, or any other market participant is expected to benefit more than any other. Therefore, the Exchange believes the inclusion of the consolidated high and low price in the Cboe One Feed would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

[7] *See e.g.,* Securities Exchange Act No. 91241 (March 2, 2021) 86 FR 13427 (March 8, 2021) (SR–NASDAQ–2021–010) (amending the content of the Nasdaq Last Sale (''NLS'') Plus to identify the high, low and closing price published by the SIPs).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k–1.

[11] *See* 17 CFR 242.603.

[12] *Supra* note 7.

[13] *Id.*

[14] *See* CTA Consolidated Volume Display Policy with FAQ at *https://www.ctaplan.com/publicdocs/ctaplan/notifications/trader-update/CTA%20Consolidated%20Volume%20Policy%20FAQ.pdf.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6) [17] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [18] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has proposed to implement this proposed rule change on July 16, 2021 and has asked the Commission to waive the 30-day operative delay for this filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will provide an additional option for investors to receive consolidated high and low price information, which the Exchange states is meaningful information for investors, on the proposed implementation date of July 16, 2021. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–CboeBYX–2021–014 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR-CboeBYX–2021–014. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-CboeBYX–2021–014, and should be submitted on or before July 28, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

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[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92294; File No. SR–CboeBZX–2021–046]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Content of the Cboe One Feed Under Rule 11.22(j) To Identify the Current Day Consolidated High and Low Prices

June 30, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on June 17, 2021, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend the content of the Cboe One Feed under Rule 11.22(j) to identify the current day consolidated high and low prices. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to enhance the content of the Cboe One Feed under Rule 11.22(j) to identify the current day consolidated high and low price for all listed equity securities.

The Cboe One Feed is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer (''BBO'') of all displayed orders for securities traded on BZX and its affiliated exchanges.[5] Among other things, the Cboe One Feed also includes consolidated volume for all listed equity securities regardless of where the transaction was executed, the Cboe One Opening Price and the Cboe One Closing Price,[6] and the primary listing market's official opening and closing price.

Now, in addition to the information currently provided in the Cboe One Feed, the Exchange is proposing to include the current day consolidated high and low price for all listed equity securities as obtained directly from the securities information processors (''SIPs''). The consolidated high and low price for all listed equity securities would be disseminated via the Cboe One Feed after the Consolidated Tape Association (''CTA'') and Unlisted Trading Privileges (''UTP'') Plan SIP delay period, which is currently 15 minutes.

Such information would provide Cboe One Feed users with a static benchmark against which to compare price movements shown on Cboe One using high and low prices in the consolidated market. The Exchange's proposal is in response to requests by Members using the Cboe One Feed, and also partly in response to recent changes by a competitor exchange to their end of day messages.[7]

The Exchange proposes that this change become operative on July 16, 2021. To ensure consistency across the Cboe Equity Exchanges, BYX, EDGA, and EDGX will be filing companion proposals to reflect these changes in their respective rulebooks. The Exchange is not proposing any change to the Cboe One Feed fee as a result of this modification.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule changes are consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also believes that the proposed rule changes are consistent with Section 11(A) of the Act[10] in that it supports (1) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (2) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule changes are consistent with Rule 603 of Regulation NMS,[11] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data products to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The proposed change to Exchange Rule 11.22(j) is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system by identifying the consolidated high and low price for all listed equity securities as obtained directly from the SIPs. Such information would provide Cboe One Feed users with a static benchmark against which to compare price movements shown on the Cboe One Feed using high and low prices in the consolidated market. Therefore, the consolidated high and low price for listed equity securities would provide meaningful information to investors. The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with new options for receiving such information. As noted above, another exchange currently provides consolidated high and low price information in their competing market data products.[12] Therefore, the Exchange believes the proposed rule change removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest as it would provide an additional avenue for investors to receive this information from a competing product. The proposal would not permit unfair discrimination because the consolidated high and low

[5] BZX's affiliated exchanges are the Cboe BYX Exchange, Inc. (''BYX''), Cboe EDGA Exchange, Inc. (''EDGA''), and Cboe EDGX Exchange, Inc. (''EDGX'', and together with BZX, BYX, and EDGA, the ''Cboe Equity Exchanges''). *See* Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR–EDGX–2014–25; SR–EDGA–2014–25; SR–BATS–2014–055; SR–BYX–2014–030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Cboe (formerly Bats) One Feed) (''Cboe One Approval Order'').

[6] For securities listed on Cboe BZX Exchange, Inc. (''BZX''), the Cboe One Opening Price shall be the BZX Official Opening Price as defined in BZX Rule 11.23(a)(5) and the Cboe One Closing Price shall be the BZX Official Closing Price as defined in BZX Rule 11.23(a)(3). For securities not listed on BZX, the Cboe One Opening Price shall be the first last sale eligible trade that occurred on the Exchange or any of its affiliates after 9:30 a.m. Eastern Time, and the Cboe One Closing Price shall be the final last sale eligible trade to occur on the Exchange or any of its affiliates prior to 4:00 p.m. Eastern Time. *See* Exchange Rule 11.22(j).

[7] *See e.g.,* Securities Exchange Act No. 91241 (March 2, 2021) 86 FR 13427 (March 8, 2021) (SR–NASDAQ–2021–010) (amending the content of the Nasdaq Last Sale (''NLS'') Plus to identify the high, low and closing price published by the SIPs).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k–1.

[11] *See* 17 CFR 242.603.

[12] *Supra* note 7.

price will be available to all of the Exchange's customers and market data vendors on an equivalent basis. In addition, any customer that wishes to receive this information via a different source will be able to do so.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed change to Rule 11.22(j) will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposed rule change will enhance competition because it would enable the Exchange to include the consolidated high and low price as part of the Cboe One Feed, thereby enabling it to better compete with similar market data products currently offered by another exchange that includes such information.[13] The Exchange is not the exclusive distributor of the consolidated high and low price for all listed equity securities, and a vendor seeking to offer a similar product that includes this information would be able to do so on the same terms as the Exchange. Specifically, a competing vendor could receive the consolidated high and low price from the SIPs and include that information as part of their market data products to be disseminated to customers pursuant to the same terms and policies as the Exchange.[14]

The Exchange believes the proposal will have no impact on intramarket competition as the proposal is not targeted at, or expected to be limited in its applicability to, any particular segment of market participants and no segment of retail investors, the general investing public, or any other market participant is expected to benefit more than any other. Therefore, the Exchange believes the inclusion of the consolidated high and low price in the Cboe One Feed would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

[13] *Id.*

[14] *See* CTA Consolidated Volume Display Policy with FAQ at *https://www.ctaplan.com/publicdocs/ctaplan/notifications/trader-update/CTA%20Consolidated%20Volume%20Policy%20FAQ.pdf.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6) [17] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [18] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has proposed to implement this proposed rule change on July 16, 2021 and has asked the Commission to waive the 30-day operative delay for this filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will provide an additional option for investors to receive consolidated high and low price information, which the Exchange states is meaningful information for investors, on the proposed implementation date of July 16, 2021. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–CboeBZX–2021–046 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–CboeBZX–2021–046. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CboeBZX–2021–046, and should be submitted on or before July 28, 2021.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–14385 Filed 7–6–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92295; File No. SR–CboeEDGX–2021–029]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Content of the Cboe One Feed Under Rule 13.8(b) To Identify the Current Day Consolidated High and Low Prices

June 30, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on June 17, 2021, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (''EDGX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend the content of the Cboe One Feed under Rule 13.8(b) to identify the current day consolidated high and low prices. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to enhance the content of the Cboe One Feed under Rule 13.8(b) to identify the current day consolidated high and low price for all listed equity securities.

The Cboe One Feed is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer (''BBO'') of all displayed orders for securities traded on EDGX and its affiliated exchanges.[5] Among other things, the Cboe One Feed also includes consolidated volume for all listed equity securities regardless of where the transaction was executed, the Cboe One Opening Price and the Cboe One Closing Price,[6] and the primary listing market's official opening and closing price.

Now, in addition to the information currently provided in the Cboe One Feed, the Exchange is proposing to include the current day consolidated high and low price for all listed equity securities as obtained directly from the securities information processors (''SIPs''). The consolidated high and low price for all listed equity securities would be disseminated via the Cboe One Feed after the Consolidated Tape Association (''CTA'') and Unlisted Trading Privileges (''UTP'') Plan SIP delay period, which is currently 15 minutes.

Such information would provide Cboe One Feed users with a static benchmark against which to compare price movements shown on Cboe One using high and low prices in the consolidated market. The Exchange's proposal is in response to requests by Members using the Cboe One Feed, and also partly in response to recent changes by a competitor exchange to their end of day messages.[7]

The Exchange proposes that this change become operative on July 16, 2021. To ensure consistency across the Cboe Equity Exchanges, BZX, BYX, and EDGA will be filing companion proposals to reflect these changes in their respective rulebooks. The Exchange is not proposing any change to the Cboe One Feed fee as a result of this modification.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule changes are consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also believes that the proposed rule changes are consistent with Section 11(A) of the Act[10] in that it supports (1) fair competition among brokers and dealers, among exchange

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] EDGX's affiliated exchanges are the Cboe BZX Exchange, Inc. (''BZX''), Cboe BYX Exchange, Inc. (''BYX''), and Cboe EDGA Exchange, Inc. (''EDGA'', and together with BZX, EDGA, and BYX, the ''Cboe Equity Exchanges''). *See* Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR–EDGX–2014–25; SR–EDGA–2014–25; SR–BATS–2014–055; SR–BYX–2014–030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Cboe (formerly Bats) One Feed) (''Cboe One Approval Order'').

[6] For securities listed on Cboe BZX Exchange, Inc. (''BZX''), the Cboe One Opening Price shall be the BZX Official Opening Price as defined in BZX Rule 11.23(a)(5) and the Cboe One Closing Price shall be the BZX Official Closing Price as defined in BZX Rule 11.23(a)(3). For securities not listed on BZX, the Cboe One Opening Price shall be the first last sale eligible trade that occurred on the Exchange or any of its affiliates after 9:30 a.m. Eastern Time, and the Cboe One Closing Price shall be the final last sale eligible trade to occur on the Exchange or any of its affiliates prior to 4:00 p.m. Eastern Time. *See* Exchange Rule 13.8(b).

[7] *See e.g.,* Securities Exchange Act No. 91241 (March 2, 2021) 86 FR 13427 (March 8, 2021) (SR–NASDAQ–2021–010) (amending the content of the Nasdaq Last Sale (''NLS'') Plus to identify the high, low and closing price published by the SIPs).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k–1.

markets, and between exchange markets and markets other than exchange markets and (2) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule changes are consistent with Rule 603 of Regulation NMS,[11] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data products to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The proposed change to Exchange Rule 13.8(b) is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system by identifying the consolidated high and low price for all listed equity securities as obtained directly from the SIPs. Such information would provide Cboe One Feed users with a static benchmark against which to compare price movements shown on the Cboe One Feed using high and low prices in the consolidated market. Therefore, the consolidated high and low price for listed equity securities would provide meaningful information to investors. The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with new options for receiving such information. As noted above, another exchange currently provides consolidated high and low price information in their competing market data products.[12] Therefore, the Exchange believes the proposed rule change removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest as it would provide an additional avenue for investors to receive this information from a competing product. The proposal would not permit unfair discrimination because the consolidated high and low price will be available to all of the Exchange's customers and market data vendors on an equivalent basis. In addition, any customer that wishes to receive this information via a different source will be able to do so.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed change to Rule 13.8(b) will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposed rule change will enhance competition because it would enable the Exchange to include the consolidated high and low price as part of the Cboe One Feed, thereby enabling it to better compete with similar market data products currently offered by another exchange that includes such information.[13] The Exchange is not the exclusive distributor of the consolidated high and low price for all listed equity securities, and a vendor seeking to offer a similar product that includes this information would be able to do so on the same terms as the Exchange. Specifically, a competing vendor could receive the consolidated high and low price from the SIPs and include that information as part of their market data products to be disseminated to customers pursuant to the same terms and policies as the Exchange.[14]

The Exchange believes the proposal will have no impact on intramarket competition as the proposal is not targeted at, or expected to be limited in its applicability to, any particular segment of market participants and no segment of retail investors, the general investing public, or any other market participant is expected to benefit more than any other. Therefore, the Exchange believes the inclusion of the consolidated high and low price in the Cboe One Feed would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6)[17] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[18] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has proposed to implement this proposed rule change on July 16, 2021 and has asked the Commission to waive the 30-day operative delay for this filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will provide an additional option for investors to receive consolidated high and low price information, which the Exchange states is meaningful information for investors, on the proposed implementation date of July 16, 2021. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule

[11] *See* 17 CFR 242.603.

[12] *Supra* note 6.

[13] *Id.*

[14] *See* CTA Consolidated Volume Display Policy with FAQ at *https://www.ctaplan.com/publicdocs/ctaplan/notifications/trader-update/CTA%20Consolidated%20Volume%20Policy%20FAQ.pdf.*

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–CboeEDGX–2021–029 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–CboeEDGX–2021–029. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CboeEDGX–2021–029, and should be submitted on or before July 28, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–14386 Filed 7–6–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92296; File No. SR–CboeEDGA–2021–016]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Content of the Cboe One Feed Under Rule 13.8(b) To Identify the Current Day Consolidated High and Low Prices

June 30, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on June 17, 2021, Cboe EDGA Exchange, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (''EDGA'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend the content of the Cboe One Feed under Rule 13.8(b) to identify the current day consolidated high and low prices. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to enhance the content of the Cboe One Feed under Rule 13.8(b) to identify the current day consolidated high and low price for all listed equity securities.

The Cboe One Feed is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer (''BBO'') of all displayed orders for securities traded on EDGA and its affiliated exchanges.[5] Among other things, the Cboe One Feed also includes consolidated volume for all listed equity securities regardless of where the transaction was executed, the Cboe One Opening Price and the Cboe One Closing Price,[6] and the primary listing market's official opening and closing price.

Now, in addition to the information currently provided in the Cboe One Feed, the Exchange is proposing to include the current day consolidated high and low price for all listed equity

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] EDGA's affiliated exchanges are the Cboe BZX Exchange, Inc. (''BZX''), Cboe BYX Exchange, Inc. (''BYX''), and Cboe EDGX Exchange, Inc. (''EDGX'', and together with BZX, EDGA, and BYX, the ''Cboe Equity Exchanges''). *See* Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR–EDGX–2014–25; SR–EDGA–2014–25; SR–BATS–2014–055; SR–BYX–2014–030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Cboe (formerly Bats) One Feed) (''Cboe One Approval Order'').

[6] For securities listed on Cboe BZX Exchange, Inc. (''BZX''), the Cboe One Opening Price shall be the BZX Official Opening Price as defined in BZX Rule 11.23(a)(5) and the Cboe One Closing Price shall be the BZX Official Closing Price as defined in BZX Rule 11.23(a)(3). For securities not listed on BZX, the Cboe One Opening Price shall be the first last sale eligible trade that occurred on the Exchange or any of its affiliates after 9:30 a.m. Eastern Time, and the Cboe One Closing Price shall be the final last sale eligible trade to occur on the Exchange or any of its affiliates prior to 4:00 p.m. Eastern Time. *See* Exchange Rule 13.8(b).

securities as obtained directly from the securities information processors (''SIPs''). The consolidated high and low price for all listed equity securities would be disseminated via the Cboe One Feed after the Consolidated Tape Association (''CTA'') and Unlisted Trading Privileges (''UTP'') Plan SIP delay period, which is currently 15 minutes.

Such information would provide Cboe One Feed users with a static benchmark against which to compare price movements shown on Cboe One using high and low prices in the consolidated market. The Exchange's proposal is in response to requests by Members using the Cboe One Feed, and also partly in response to recent changes by a competitor exchange to their end of day messages.[7]

The Exchange proposes that this change become operative on July 16, 2021. To ensure consistency across the Cboe Equity Exchanges, BZX, BYX, and EDGX will be filing companion proposals to reflect these changes in their respective rulebooks. The Exchange is not proposing any change to the Cboe One Feed fee as a result of this modification.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule changes are consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also believes that the proposed rule changes are consistent with Section 11(A) of the Act[10] in that it supports (1) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (2) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule changes are consistent with Rule 603 of Regulation NMS,[11] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data products to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The proposed change to Exchange Rule 13.8(b) is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system by identifying the consolidated high and low price for all listed equity securities as obtained directly from the SIPs. Such information would provide Cboe One Feed users with a static benchmark against which to compare price movements shown on the Cboe One Feed using high and low prices in the consolidated market. Therefore, the consolidated high and low price for listed equity securities would provide meaningful information to investors. The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with new options for receiving such information. As noted above, another exchange currently provides consolidated high and low price information in their competing market data products.[12] Therefore, the Exchange believes the proposed rule change removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest as it would provide an additional avenue for investors to receive this information from a competing product. The proposal would not permit unfair discrimination because the consolidated high and low price will be available to all of the Exchange's customers and market data vendors on an equivalent basis. In addition, any customer that wishes to receive this information via a different source will be able to do so.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed change to Rule 13.8(b) will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposed rule change will enhance competition because it would enable the Exchange to include the consolidated high and low price as part of the Cboe One Feed, thereby enabling it to better compete with similar market data products currently offered by another exchange that includes such information.[13] The Exchange is not the exclusive distributor of the consolidated high and low price for all listed equity securities, and a vendor seeking to offer a similar product that includes this information would be able to do so on the same terms as the Exchange. Specifically, a competing vendor could receive the consolidated high and low price from the SIPs and include that information as part of their market data products to be disseminated to customers pursuant to the same terms and policies as the Exchange.[14]

The Exchange believes the proposal will have no impact on intramarket competition as the proposal is not targeted at, or expected to be limited in its applicability to, any particular segment of market participants and no segment of retail investors, the general investing public, or any other market participant is expected to benefit more than any other. Therefore, the Exchange believes the inclusion of the consolidated high and low price in the Cboe One Feed would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

[7] *See e.g.,* Securities Exchange Act No. 91241 (March 2, 2021) 86 FR 13427 (March 8, 2021) (SR–NASDAQ–2021–010) (amending the content of the Nasdaq Last Sale (''NLS'') Plus to identify the high, low and closing price published by the SIPs).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k–1.

[11] *See* 17 CFR 242.603.

[12] *Supra* note 7.

[13] *Id.*

[14] *See* CTA Consolidated Volume Display Policy with FAQ at *https://www.ctaplan.com/publicdocs/ctaplan/notifications/trader-update/CTA%20Consolidated%20Volume%20Policy%20FAQ.pdf.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6) [17] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [18] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has proposed to implement this proposed rule change on July 16, 2021 and has asked the Commission to waive the 30-day operative delay for this filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will provide an additional option for investors to receive consolidated high and low price information, which the Exchange states is meaningful information for investors, on the proposed implementation date of July 16, 2021. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–CboeEDGA–2021–016 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–CboeEDGA–2021–016. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CboeEDGA–2021–016, and should be submitted on or before July 28, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

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[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92303; File No. SR–FICC–2020–017]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving a Proposed Rule Change To Modify the Calculation of the MBSD VaR Floor To Incorporate a Minimum Margin Amount

June 30, 2021.

On November 20, 2020, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2020–017 (''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The Proposed Rule Change was published for comment in the **Federal Register** on December 10, 2020.[3] On December 30, 2020, pursuant

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 90568 (December 4, 2020), 85 FR 79541 (December 10, 2020) (SR–FICC–2020–017) (''Notice''). FICC also filed the proposal contained in the Proposed Rule Change as advance notice SR–FICC–2020–804 (''Advance Notice'') with the Commission pursuant to Section 806(e)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act''). 12 U.S.C. 5465(e)(1); 17 CFR 240.19b–4(n)(1)(i). Notice of filing of the Advance Notice was published for comment in the **Federal Register** on January 6, 2021. Securities Exchange Act Release No. 90834 (December 31, 2020), 86 FR 584 (January 6, 2021) (File No. SR–FICC–2020–804) (''Notice of Filing''). Upon publication of the Notice of Filing, the Commission extended the review period of the Advance Notice for an additional 60 days because the Commission determined that the Advance Notice raised novel and complex issues. On March 12, 2021, the Commission issued a request for information regarding the Advance Notice. *See* Commission's Request for Additional Information, *available at https://www.sec.gov/comments/sr-ficc-2020-804/srficc2020804-8490035-229981.pdf.* On April 16, 2021, FICC submitted its response thereto. *See* Response to Commission's Request for Additional Information, *available at https://www.sec.gov/comments/sr-ficc-2020-804/srficc2020804-8685526-235624.pdf;* Letter from James Nygard, Director and Assistant General Counsel, FICC (April 16, 2021), *available at https://www.sec.gov/comments/sr-ficc-2020-804/srficc2020804-8679555-235605.pdf.* The proposal contained in the Proposed Rule Change and the Advance Notice shall not take effect until all regulatory actions required with respect to the proposal are completed.

to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.[5] On February 16, 2021, the Commission instituted proceedings to determine whether to approve or disapprove the Proposed Rule Change.[6] On June 11, 2021, pursuant to Section 19(b)(2) of the Act,[7] the Commission extended the period for the conclusion of proceedings to determine whether to approve or disapprove the Proposed Rule Change.[8]

The Commission received comment letters on the Proposed Rule Change.[9] In addition, the Commission received a letter from FICC responding to the public comments.[10] For the reasons discussed below, the Commission is approving the Proposed Rule Change.

I. Description of the Proposed Rule Change

A. Background

FICC, through MBSD, serves as a central counterparty (''CCP'') and provider of clearance and settlement services for the mortgage-backed securities (''MBS'') markets. A key tool that FICC uses to manage its respective credit exposures to its members is the daily collection of margin from each member. The aggregated amount of all members' margin constitutes the Clearing Fund, which FICC would access should a defaulted member's own margin be insufficient to satisfy losses to FICC caused by the liquidation of that member's portfolio.

Each member's margin consists of a number of applicable components, including a value-at-risk (''VaR'') charge (''VaR Charge'') designed to capture the potential market price risk associated with the securities in a member's portfolio. The VaR Charge is typically the largest component of a member's margin requirement. The VaR Charge is designed to provide an estimate of FICC's projected liquidation losses with respect to a defaulted member's portfolio at a 99 percent confidence level.

To determine each member's daily VaR Charge, FICC generally uses a model-based calculation designed to quantify the risks related to the volatility of market prices associated with the securities in a member's portfolio.[11] As an alternative to this calculation, FICC also uses a haircut-based calculation to determine the ''VaR Floor,'' which replaces the model-based calculation to become a member's VaR Charge in the event that the VaR Floor is greater than the amount determined by the model-based calculation.[12] Thus, the VaR Floor currently operates as a minimum VaR Charge.

During the period of extreme market volatility in March and April 2020, FICC's current model-based calculation and the VaR Floor haircut-based calculation generated VaR Charge amounts that were not sufficient to mitigate FICC's credit exposure to its members' portfolios at a 99 percent confidence level. Specifically, during the period of extreme market volatility, FICC observed that its margin collections yielded backtesting deficiencies beyond FICC's risk tolerance.[13] FICC states that these deficiencies arose from a particular aspect of its margin methodology with respect to MBS (particularly, higher coupon TBAs [14]), *i.e.,* that current prices may reflect higher mortgage prepayment risk than FICC's margin methodology currently takes into account during periods of extreme market volatility. In the Proposed Rule Change, FICC proposes to revise the margin methodology in its Rules [15] and its quantitative risk model [16] to better address the risks posed by member portfolios holding TBAs during such volatile market conditions.

B. Minimum Margin Amount

FICC proposes to introduce a new minimum margin amount into its margin methodology. Under the proposal, FICC would revise the existing definition of the VaR Floor, which acts as the minimum margin requirement, to mean the greater of (1) the current haircut-based calculation, as described above, and (2) the proposed minimum margin amount, which would use a dynamic haircut method based on observed TBA price moves. Application of the minimum margin amount would increase FICC's margin collection during periods of extreme market volatility, particularly when TBA price changes would otherwise significantly exceed those projected by either the model-based calculation or the current VaR Floor calculation.

Specifically, the minimum margin amount would serve as a minimum VaR Charge for net unsettled positions, calculated using the historical market price changes of certain benchmark TBA securities.[17] FICC proposes to calculate

[4] 15 U.S.C. 78s(b)(2).

[5] Securities Exchange Act Release No. 90794 (December 23, 2020), 85 FR 86591 (December 30, 2020) (SR–FICC–2020–017).

[6] Securities Exchange Act Release No. 91092 (February 9, 2021), 86 FR 9560 (February 16, 2021) (SR–FICC–2020–017).

[7] 15 U.S.C. 78s(b)(2)(B)(ii)(II).

[8] Securities Exchange Act Release No. 92117 (June 7, 2021), 86 FR 31354 (June 11, 2021) (SR–FICC–2020–017).

[9] Comments on the Proposed Rule Change are *available at https://www.sec.gov/comments/sr-ficc-2020-017/srficc2020017.htm.* Comments on the Advance Notice are *available at https://www.sec.gov/comments/sr-ficc-2020-804/srficc2020804.htm.* Because the proposals contained in the Advance Notice and the Proposed Rule Change are the same, all comments received on the proposal were considered regardless of whether the comments were submitted with respect to the Advance Notice or the Proposed Rule Change.

[10] *See* Letter from Timothy J. Cuddihy, Managing Director of Depository Trust & Clearing Corporation Financial Risk Management, (March 5, 2021) (''FICC Letter'').

[11] The model-based calculation, often referred to as the sensitivity VaR model, relies on historical risk factor time series data and security-level risk sensitivity data. Specifically, for TBAs, the model-based calculation incorporates the following risk factors: (1) Key rate, which measures the sensitivity of a price change to changes in interest rates; (2) convexity, which measures the degree of curvature in the price/yield relationship of key interest rates; (3) spread, which is the yield spread added to a benchmark yield curve to discount a TBA's cash flows to match its market price; (4) volatility, which reflects the implied volatility observed from the swaption market to estimate fluctuations in interest rates; (5) mortgage basis, which captures the basis risk between the prevailing mortgage rate and a blended Treasury rate; and (6) time risk factor, which accounts for the time value change (or carry adjustment) over an assumed liquidation period. *See* Securities Exchange Act Release No. 79491 (December 7, 2016), 81 FR 90001, 90003–04 (December 13, 2016) (File No. SR–FICC–2016–007).

[12] FICC uses the VaR Floor to mitigate the risk that the model-based calculation does not result in margin amounts that accurately reflect FICC's applicable credit exposure, which may occur in certain member portfolios containing long and short positions in different asset classes that share a high degree of historical price correlation.

[13] Backtesting is an ex-post comparison of actual outcomes (*i.e.,* the actual margin collected) with expected outcomes derived from the use of margin models. *See* 17 CFR 240.17Ad–22(a)(1). FICC conducts daily backtesting to determine the adequacy of its margin assessments. MBSD's monthly backtesting coverage ratio with respect to margin amounts was 86.6 percent in March 2020 and 94.2 percent in April 2020. *See* Notice, *supra* note 3 at 79543.

[14] The vast majority of agency MBS trading occurs in a forward market, on a ''to-be-announced'' or ''TBA'' basis. In a TBA trade, the seller agrees on a sale price, but does not specify which particular securities will be delivered to the buyer on settlement day. Instead, only a few basic characteristics of the securities are agreed upon, such as the MBS program, maturity, coupon rate, and the face value of the bonds to be delivered.

[15] The MBSD Clearing Rules are *available at https://www.dtcc.com/legal/rules-and-procedures.aspx.*

[16] As part of the Proposed Rule Change, FICC filed Exhibit 5B—Proposed Changes to the Methodology and Model Operations Document MBSD Quantitative Risk Model (''QRM Methodology''). Pursuant to 17 CFR 240.24b–2, FICC requested confidential treatment of Exhibit 5B.

[17] FICC would consider the MBSD portfolio as consisting of four programs: Federal National Mortgage Association (''Fannie Mae'') and Federal Home Loan Mortgage Corporation (''Freddie Mac'') conventional 30-year mortgage-backed securities

Continued

the minimum margin amount per member portfolio.[18] The proposal would allow offsetting between short and long positions within TBA securities programs since the TBAs aggregated in each program exhibit similar risk profiles and can be netted together to calculate the minimum margin amount to cover the observed market price changes for each portfolio.

The proposal would allow a lookback period for those historical market price moves and parameters of between one and three years, and FICC would set the initial lookback period for the minimum margin amount at two years.[19] FICC states that the minimum margin amount would improve the responsiveness of its margin methodology during periods of market volatility because it would have a shorter lookback period than the model-based calculation, which reflects a ten-year lookback period.[20]

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act [21] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. After carefully considering the Proposed Rule Change, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to FICC. In particular, the Commission finds that the Proposed Rule Change is consistent with Sections 17A(b)(3)(F) [22] and (b)(3)(I) [23] of the Act and Rules 17Ad–22(e)(4)(i), (e)(6)(i), and (e)(23)(ii) thereunder.[24]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act [25] requires that the rules of a clearing agency, such as FICC, be designed to, among other things, (i) promote the prompt and accurate clearance and settlement of securities transactions, (ii) assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and (iii) protect investors and the public interest.

As described above in Section I.B., FICC proposes to introduce the minimum margin amount into its margin methodology to help ensure that FICC collects sufficient margin to manage its potential loss exposure during periods of extreme market volatility, particularly when TBA price changes would otherwise significantly exceed those projected by the current model-based calculation and the current VaR Floor calculation (*i.e.,* during periods of extreme market volatility, similar to that which occurred in March and April 2020). The minimum margin amount calculation would use a dynamic haircut method based on observed TBA price moves.[26] FICC states that the minimum margin amount would improve the responsiveness of its margin methodology during periods of market volatility because it would have a shorter lookback period (two years, initially) than the model-based calculation (ten years).[27]

As described above in Section I.A., FICC provided backtesting data to demonstrate that during the period of extreme market volatility in March and April 2020, FICC's current model-based calculation and VaR Floor haircut generated VaR Charge amounts that were not sufficient to mitigate FICC's credit exposure to its members' portfolios at a 99 percent confidence level.

FICC designed the minimum margin amount calculation to better address the risks posed by member portfolios holding TBAs during such periods of extreme market volatility. As described in the Notice, FICC has provided data demonstrating that if the minimum margin amount had been in place, overall margin backtesting coverage (based on 12-month trailing backtesting) would have increased from approximately 99.3% to 99.6% through January 31, 2020 and approximately 97.3% to 98.5% through June 30, 2020.[28] The Commission has reviewed FICC's data and analysis (including detailed information regarding the impact of the proposed change on the portfolio of each FICC member over various time periods), and agrees that its results indicate that the proposed minimum margin amount would generate margin levels that should better enable FICC to cover the credit exposure arising from its members' portfolios. Moreover, the Commission believes that adding the minimum margin amount to FICC's margin methodology should allow FICC to collect margin that better reflects the risks and particular attributes of its members' portfolios during periods of extreme market

(''CONV30''), Government National Mortgage Association (''Ginnie Mae'') 30-year mortgage-backed securities (''GNMA30''), Fannie Mae and Freddie Mac conventional 15-year mortgage-backed securities (''CONV15''), and Ginnie Mae 15-year mortgage-backed securities (''GNMA15''). Each program would, in turn, have a default benchmark TBA security.

FICC would map 10-year and 20-year TBAs to the corresponding 15-year TBA security benchmark. As of August 31, 2020, 20-year TBAs account for less than 0.5%, and 10-year TBAs account for less than 0.1%, of the positions in MBSD clearing portfolios. FICC states that these TBAs were not selected as separate TBA security benchmarks due to the limited trading volumes in the market. *See* Notice, *supra* note 3 at 79543.

[18] The specific calculation would involve the following: FICC would first calculate risk factors using historical market prices of the benchmark TBA securities. FICC would then calculate each member's portfolio exposure on a net position across all products and for each securitization program (*i.e.,* CONV30, GNMA30, CONV15 and GNMA15). Finally, FICC would multiply a ''base risk factor'' by the absolute value of the member's net position across all products, plus the sum of each risk factor spread to the base risk factor multiplied by the absolute value of its corresponding position, to determine the minimum margin amount.

To determine the base risk factor, FICC would calculate an ''outright risk factor'' for GNMA30 and CONV30, which constitute the majority of the TBA market and of positions in MBSD portfolios. For each member's portfolio, FICC would assign the base risk factor based on whether GNMA30 or CONV30 constitutes the larger absolute net market value in the portfolio. If GNMA30 constitutes the larger absolute net market value in the portfolio, the base risk factor would be equal to the outright risk factor for GNMA30. If CONV30 constitutes the larger absolute net market value in the portfolio, the base risk factor would be equal to the outright risk factor for CONV30.

For a detailed example of the minimum margin amount calculation, *see* Notice, *supra* note 3 at 79544.

[19] FICC would be permitted to adjust the lookback period within the range in accordance with FICC's model risk management practices and governance procedures set forth in the Clearing Agency Model Risk Management Framework. *See* Securities Exchange Act Release No. 81485 (August 25, 2017), 82 FR 41433 (August 31, 2017) (SR–DTC–2017–008; SR–FICC–2017–014; SR–NSCC–2017–008); Securities Exchange Act Release No. 84458 (October 19, 2018), 83 FR 53925 (October 25, 2018) (SR–DTC–2018–009; SR–FICC–2018–010; SR–NSCC–2018–009); Securities Exchange Act Release No. 88911 (May 20, 2020), 85 FR 31828 (May 27, 2020) (SR–DTC–2020–008; SR–FICC–2020–004; SR–NSCC–2020–008).

[20] Notice, *supra* note 3 at 79543–44.

[21] 15 U.S.C. 78s(b)(2)(C).

[22] 15 U.S.C. 78q–1(b)(3)(F).

[23] 15 U.S.C. 78q–1(b)(3)(I).

[24] 17 CFR 240.17Ad–22(e)(4)(i), (e)(6)(i), and (e)(23)(ii).

[25] 15 U.S.C. 78q–1(b)(3)(F).

[26] *See supra* note 17.

[27] Notice, *supra* note 3 at 79543–44. VaR calculations typically rely on historical data over a specified lookback period to estimate the probability distribution of potential market prices. The length of the lookback period is designed to reflect the market movements over the lookback period, and calculate margin levels accordingly. A VaR calculation that utilizes a relatively short lookback period would therefore respond with a sharper increase to a period of market volatility than a VaR calculation that utilizes a longer lookback period. Similarly, a VaR calculation that utilizes a short lookback period would respond with a sharper decrease once the period of market volatility recedes beyond lookback period. As a result, while a longer lookback period typically produces more stable VaR estimates over time, a shorter lookback period is typically more responsive to recent market events. *See, e.g.,* Securities Exchange Act Release No. 80341 (March 30, 2017), 82 FR 16644 (April 5, 2017) (SR–FICC–2017–801).

[28] *See* Notice, *supra* note 3 at 79545.

volatility. For these reasons, the Commission believes that implementing the minimum margin amount should help ensure that, in the event of a member default, FICC's operation of its critical clearance and settlement services would not be disrupted because of insufficient financial resources. Accordingly, the Commission finds that the minimum margin amount should help FICC to continue providing prompt and accurate clearance and settlement of securities transactions in the event of a member default, consistent with Section 17A(b)(3)(F) of the Act.

Moreover, as described above in Section I.A., FICC would access the mutualized Clearing Fund should a defaulted member's own margin be insufficient to satisfy losses to FICC caused by the liquidation of that member's portfolio. The minimum margin amount should help ensure that FICC has collected sufficient margin from members, thereby limiting non-defaulting members' exposure to mutualized losses. The Commission believes that by helping to limit the exposure of FICC's non-defaulting members to mutualized losses, the minimum margin amount should help FICC assure the safeguarding of securities and funds which are in its custody or control, consistent with Section 17A(b)(3)(F) of the Act.

The Commission believes that the Proposed Rule Change should also help protect investors and the public interest by mitigating some of the risks presented by FICC as a CCP. Because a defaulting member could place stresses on FICC with respect to FICC's ability to meet its clearance and settlement obligations upon which the broader financial system relies, it is important for FICC to maintain a robust margin methodology to limit FICC's credit risk exposure in the event of a member default. As described above in Section I.B., the proposed minimum margin amount likely would function as the VaR Charge during periods of extreme market volatility, particularly when TBA price changes could otherwise significantly exceed those projected by the model-based calculation and the current VaR Floor calculation. When applicable, the minimum margin amount would increase FICC's margin collection during periods of extreme market volatility. The minimum margin amount should help improve FICC's ability to collect sufficient margin amounts commensurate with the risks associated with its members' portfolios during periods of extreme market volatility. By enabling FICC to collect margin that more accurately reflects the risk characteristics of mortgage-backed securities and market conditions, FICC would be in a better position to absorb and contain the spread of any losses that might arise from a member default. Therefore, the minimum margin amount should reduce the possibility that FICC would need to utilize resources from non-defaulting members due to a member default, which could cause liquidity stress to non-defaulting members and inhibit their ability to facilitate securities transactions. Accordingly, because the minimum margin amount should help mitigate some of the risks presented by FICC as a CCP, the Commission believes that the proposal is designed to protect investors and the public interest, consistent with Section 17A(b)(3)(F) of the Act.

Several commenters suggest that FICC's implementation of the minimum margin amount would not be in the public interest because it would burden markets in times of stress and force members to maintain additional reserve funding capacity.[29] More specifically, commenters suggest that due to potentially increased margin requirements, small- and mid-sized broker-dealers will be forced to scale back their offerings of risk management tools and services to smaller originators, who will then turn to larger institutions for these tools and services. They suggest that this would result in a more concentrated market, or that smaller originators would not be able to obtain these tools and services, putting the smaller originators in a position in which they could not implement their desired risk management approaches or fully serve their customer bases.[30]

In response, FICC states that the Proposed Rule Change is not intended to advantage or disadvantage capital formation in any particular market segment.[31] Instead, FICC states that the Proposed Rule Change focuses entirely on managing the clearance and settlement risk associated with TBAs.[32]

The Commission acknowledges that the minimum margin amount could increase the margin required from some members, which may, in turn, cause such members to incur additional costs to access the liquidity needed to meet elevated margin requirements. Despite these potential impacts, the Commission believes that FICC has provided sufficient justification for the proposal. Specifically, FICC's backtesting data demonstrates that its current methodology did not generate enough margin during March and April 2020, and the proposed minimum margin amount would generate margin levels that should better enable FICC to cover the credit exposure arising from its members' portfolios.

The Commission also acknowledges the possibility that, as a result of the Proposed Rule Change, some members might pass along some of the costs related to margin requirements such that these costs ultimately are borne, to some degree, by their clients. However, a non-defaulting member's exposure to mutualized losses resulting from a member default, and any consequent disruptions to clearance and settlement absent the Proposed Rule Change, might also increase costs to a member's clients and potentially adversely impact market participation, liquidity, and access to capital. The Proposed Rule Change, by helping to reduce counterparty default risk, would allow the corresponding portion of transaction costs to be allocated to more productive uses by members and their clients who otherwise would bear those costs.[33] Moreover, as discussed above, by helping to limit the exposure of non-defaulting members to mutualized losses, the Proposed Rule Change should help FICC assure the safeguarding of securities and funds of its members that are in FICC's custody or control, consistent with Section 17A(b)(3)(F).

While the Commission acknowledges that the proposal could result in certain FICC members raising the price of liquidity provision (or reducing the amount of liquidity provision) to their mortgage originator clients to account for increased margin requirements, a number of factors could mitigate such effects on market liquidity. First, to the extent that the minimum margin amount might raise margin requirements differently across MBS (*e.g.,* higher coupon TBAs might generate higher margin requirements

[29] *See* Letter from James Tabacchi, Chairman, Independent Dealer and Trade Association, Mike Fratantoni, Chief Economist/Senior Vice President, Mortgage Bankers Association (January 26, 2021) (''IDTA/MBA Letter I'') at 2–3, 5; Letter from Christopher Killian, Managing Director, Securities Industry and Financial Markets Association (January 29, 2021) (''SIFMA Letter I'') at 2, 4; Letter from Christopher Killian, Managing Director, Securities Industry and Financial Markets Association (February 23, 2021) (''SIFMA Letter II'') at 2; Letter from Christopher A. Iacovella, Chief Executive Officer, American Securities Association (January 28, 2021) (''ASA Letter'') at 1–2. The Commission further addresses these comments below in Sections II.C. and II.D. to the extent the comments raise issues related to Rules (e)(4)(i) and (e)(6)(i) under the Exchange Act. 17 CFR 240.17Ad–22(e)(4)(i) and (e)(6)(i).

[30] *See id.*

[31] *See* FICC Letter at 4.

[32] *See id.*

[33] *See* Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786, 70866–67 (October 13, 2016) (S7–03–14) (''CCA Standards Adopting Release'').

than other MBS), market participants, including mortgage originators, could respond by trading more of the securities for which the minimum margin amount would not increase margin or would increase margin less than higher coupon TBAs. Alternatively, mortgage originators could hedge the interest rate risk of their mortgage pipelines by trading in other hedging instruments such as Treasury futures and mortgage option contracts.[34]

Moreover, the Commission does not believe that the impact of the Proposed Rule Change would be that mortgage originators would raise mortgage rates in response to increased costs for liquidity. The ability of mortgage originators to raise mortgage rates depends in part on competition at the local loan market level, which could incentivize mortgage originators to avoid raising mortgage rates in spite of absorbing the costs associated with the minimum margin amount. Because competition between mortgage originators varies across local loan markets,[35] their ability to raise mortgage rates likely also varies across markets. Mortgage originators in more competitive markets likely would have less ability to raise mortgage rates to pass on costs that may be associated with the Proposed Rule Change than mortgage originators in less competitive markets.[36] Thus, it is unclear whether this proposal will have any effect on mortgage rates.

Further, the introduction of cost-saving technologies may lower mortgage origination costs and facilitate the entry of new mortgage originators operating on lower-cost business models.[37] The entry of these new mortgage originators could limit the pricing power of incumbent mortgage originators in a given loan market. Finally, the Federal Reserve's continued commitment to purchasing agency MBS [38] could continue to exert downward pressure on mortgage rates and mitigate an increase in mortgage rates, if any, by mortgage originators in response to Proposed Rule Change. FICC also provided confidential analysis as part of the Proposed Rule Change indicating that there does not appear to be a clear linkage between FICC margin amounts and community lenders' mortgage activity.

Finally, the Commission believes that the impact of the minimum margin amount would be entirely determined by a member's portfolio composition and trading activity rather than the member's size or type. The Proposed Rule Change would calculate the VaR Charge based on the risks presented by positions in the member's portfolio. To the extent a member's VaR Charge would increase under the Proposed Rule Change, that increase would be based on the securities held by the member and FICC's requirement to collect margin to appropriately address the associated risk.

Accordingly, notwithstanding the potential impact that the Proposed Rule Change might indirectly have on small mortgage originators, the Commission believes that such potential impacts are justified by the potential benefits to members and the resulting overall improved risk management at FICC described above (*i.e.,* the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds based on the collection of margin commensurate with the risks presented by TBAs), to render the Proposed Rule Change consistent with the investor protection and public interest provisions of Section 17A(b)(3)(F) of the Act.

For the reasons discussed above, the Commission believes that the Proposed Rule Change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.[39]

B. Consistency With Section 17A(b)(3)(I) of the Act

Section 17A(b)(3)(I) of the Act requires that the rules of a clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the Act.[40] This provision does not require the Commission to find that a proposed rule change represents the least anticompetitive means of achieving the goal. Rather, it requires the Commission to balance the competitive considerations against other relevant policy goals of the Act.[41]

The Commission received comments regarding the impacts the Proposed Rule Change might have on competition. One commenter argues that FICC has not explained how the additional margin collected pursuant to the minimum margin amount would be equitably distributed amongst members to avoid an unnecessary burden on competition.[42] Several commenters argued that the proposal would disproportionately affect small- and mid-sized broker-dealer members rather than larger bank-affiliated broker-dealer members.[43] One commenter states that FICC's impact study demonstrates that smaller members would bear a greater burden than larger members if the minimum margin amount were to be adopted.[44] One commenter argues that larger members should bear more of the minimum margin amount burden because their business models likely include subsidiaries that confer an unfair advantage by enabling them to net their exposures.[45]

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[34] *See* Vickery, James I., and Joshua Wright. ''TBA trading and liquidity in the agency MBS market.'' *Economic Policy Review* 19, no. 1 (2013).

[35] *See* Scharfstein, David, and Adi Sunderam. ''Market power in mortgage lending and the transmission of monetary policy.'' *Unpublished working paper, Harvard University* 2 (2016) (showing that county-level competition among mortgage originators, as measured by the market share of the top four mortgage originators concentration, varies across different counties in the U.S.).

[36] *See id.* at 3.

[37] See Buchak, Greg, Gregor Matvos, Tomasz Piskorski, and Amit Seru. ''Fintech, regulatory arbitrage, and the rise of shadow banks.'' *Journal of Financial Economics* 130, no. 3 (2018): 453–483.

[38] In response to the COVID–19 outbreak, the Federal Open Market Committee (''FOMC'') announced that the Federal Reserve would purchase at least $200 billion of agency mortgage-backed securities over the coming months. While the Federal Reserve tapered purchases between April and May 2020, it restarted purchases in June 2020. (*See https://www.federalreserve.gov/newsevents/pressreleases/monetary20200315a.htm*). On December 12, 2020, the FOMC directed the Federal Reserve Bank of New York to continue to purchase $40 billion of agency mortgage-backed securities per month. (*See https://www.newyorkfed.org/markets/opolicy/operating_policy_201216*).

[39] 15 U.S.C. 78q–1(b)(3)(F).

[40] 15 U.S.C. 78q–1(b)(3)(I).

[41] *See* Bradford National Clearing Corp., 590 F.2d 1085, 1105 (D.C. Cir. 1978).

[42] *See* Letter from James Tabacchi, Chairman, Independent Dealer and Trade Association, Mike Fratantoni, Chief Economist/Senior Vice President, Mortgage Bankers Association (February 23, 2021) (''IDTA/MBA Letter II'') at 3.

[43] *See* IDTA/MBA Letter I at 2–4, 6; IDTA/MBA Letter II at 2–3; ASA Letter at 1–2; SIFMA Letter I at 4.

[44] *See* IDTA/MBA Letter II at 2–3. Specifically, the commenter cites FICC's statement that during the impact study period, the largest dollar increase for any member would have been $333 million, or 37% increase in the VaR Charge. The commenter assumes that the member with the largest dollar increase is one of FICC's largest clearing members. The commenter also cites FICC's statement that the largest percentage increase in VaR Charge for any member would have been 146%, or $22 million. The commenter assumes that the member with the largest percentage increase is a smaller member. Thus, the commenter concludes that the minimum margin amount would affect smaller members more dramatically than larger members. Additionally, the commenter cites FICC's statement that the top 10 members based on size of the VaR Charges would have contributed 69.3% of the aggregate VaR Charges had the minimum margin amount been in place; whereas those 10 members only would be responsible for 54% of the additional margin collected pursuant to the minimum margin amount. Therefore, the commenter concludes that FICC's largest members would contribute disproportionately less than FICC's smaller members pursuant to the minimum margin amount.

[45] *See* Letter from James Tabacchi, Chairman, Independent Dealer and Trade Association (February 23, 2021) (''IDTA Letter'') at 2. The commenter also speculates that the business models of larger members that enable them to net their exposures likely increases concentration risk at

In response, FICC states that the Notice addressed concerns that the Proposed Rule Change would impose a burden on competition.[46] Specifically, the Notice acknowledged that based on FICC's impact studies, the minimum margin amount would have increased members' VaR Charges by an average of approximately 42% during the impact study period, and that the Proposed Rule Change could impose a burden on competition.[47] Additionally, the Notice stated that members may be affected disproportionately by the minimum margin amount because members with higher percentages of higher coupon TBAs in their portfolios were more likely to be impacted.[48]

Regarding comments that the minimum margin amount would disproportionately affect smaller members, FICC acknowledges that the minimum margin amount could increase margin requirements as a result of extreme market volatility, and that it may also result in higher margin costs overall for members whose business is concentrated in higher coupon TBAs, relative to other members with more diversified portfolios.[49] However, FICC states that the methodology for computing the minimum margin amount does not take into consideration the member's size or overall mix of business.[50] Any effect the proposal would have on a particular member's margin requirement is solely a function of the default risk posed to FICC by the member's activity at FICC—firm size or business model is not pertinent to the assessment of that risk.[51] Accordingly, FICC believes that the Proposed Rule Change does not discriminate against members or affect them differently on either of those bases.[52]

The Commission acknowledges that the Proposed Rule Change could entail increased margin charges. In considering the costs and benefits of the requirements of Rule 17Ad–22(e)(6), the Commission expressly acknowledged that ''since risk-based initial margin requirements may cause market participants to internalize some of the costs borne by the CCP as a result of large or risky positions, confirming that margin models are well-specified and correctly calibrated with respect to economic conditions will help ensure that the margin requirements continue to align the incentives of a CCP's members with the goal of financial stability.'' [53] Nevertheless, in response to the comments that the Proposed Rule Change would disproportionately affect small- and mid-sized broker-dealer members or those broker-dealer members that are not affiliated with large banks, the Commission believes that the impact of the minimum margin amount would be entirely determined by a member's portfolio composition and trading activity rather than the member's size or type. The Proposed Rule Change would calculate the VaR Charge based on the risks presented by positions in the member's portfolio. To the extent a member's VaR Charge would increase under the Proposed Rule Change, that increase would be based on the securities held by the member and FICC's requirement to collect margin to appropriately address the associated risk.

In addition, as noted above, the Commission acknowledges that the impact of a higher margin requirement may present higher costs on some members relative to others due to a number of factors, such as access to liquidity resources, cost of capital, business model, and applicable regulatory requirements. These higher relative burdens may weaken certain members' competitive positions relative to other members.[54] However, the Commission believes that such burden on competition stemming from a higher impact on some members than on others is necessary and appropriate in furtherance of the Act. FICC is required to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers and produces margin levels commensurate with the risks and particular attributes of each relevant product, portfolio, and market.[55] FICC's members include a large and diverse population of entities with a range of ownership structures.[56] By participating in FICC, each member is subject to the same margin requirements, which are designed to satisfy FICC's regulatory obligation to manage the risks presented by its members. As discussed in more detail in Section II.D. below, the Proposed Rule Change is designed to ensure that FICC collects margin that is commensurate with the risks presented by each member's portfolio resulting from periods of extreme market volatility.

Furthermore, FICC has provided data demonstrating that if the minimum margin amount had been in place, overall margin backtesting coverage (based on 12-month trailing backtesting) would have increased from approximately 99.3% to 99.6% through January 31, 2020 and approximately 97.3% to 98.5% through June 30, 2020.[57] As noted above, the Commission has reviewed FICC's backtesting data and agrees that it indicates that had the minimum margin amount been in place during the study period, it would have generated margin levels that better reflect the risks and particular attributes of the member portfolios and help FICC achieve backtesting coverage closer to FICC's targeted confidence level. In turn, the Commission believes that the Proposed Rule Change would improve FICC's ability to maintain sufficient financial resources to cover its credit exposures to each member in full with a high degree of confidence. By helping FICC to better manage its credit exposure, the Proposed Rule Change would improve FICC's ability to mitigate the potential losses to FICC and its members associated with liquidating a member's portfolio in the event of a member default, in furtherance of FICC's obligations under Section 17A(b)(3)(F) of the Act.

Therefore, for the reasons stated above, the Commission believes that the Proposed Rule Change is consistent with the requirements of Section 17A(b)(3)(I) of the Act [58] because any competitive burden imposed by the Proposed Rule Change is necessary and appropriate in furtherance of the Act.

those members, which the minimum margin amount does not address.

[46] *See* FICC Letter at 3; Notice, *supra* note 3 at 79547–48.

[47] *See id.*

[48] *See id.*

[49] *See* FICC Letter at 3; Notice, *supra* note 3 at 79545, 47.

[50] *See* FICC Letter at 4.

[51] *See id.*

[52] *See id.*

[53] *See* CCA Standards Adopting Release, *supra* note 33, 81 FR at 70870. In addition, when considering the benefits, costs, and effects on competition, efficiency, and capital formation, the Commission recognized that a covered clearing agency, such as FICC, might pass incremental costs associated with compliance on to its members, and that such members may seek to terminate their membership with that CCA. *See id.,* 81 FR at 70865. Moreover, when considering similar comments related to a proposed rule change designed to address a covered clearing agency's liquidity risk, the Commission concluded that the imposition of additional costs did not render the proposal inconsistent with the Act. *See* Securities Exchange Act Release No. 82090 (November 15, 2017), 82 FR 55427, 55438 n. 209 (November 21, 2017) (SR–FICC–2017–002).

[54] These potential burdens are not fixed, and affected members may choose to restructure their liquidity sources, costs of capital, or business model, thereby moderating the potential impact of the Proposed Rule Change.

[55] *See* 17 CFR 240.17Ad–22(e)(6)(i).

[56] *See* FICC MBSD Membership Directory, available at *https://www.dtcc.com/client-center/ficc-mbs-directories.*

[57] *See* Notice, *supra* note 3 at 79545.

[58] 15 U.S.C. 78q–1(b)(3)(I).

C. Consistency With Rule 17Ad–22(e)(4)(i)

Rule 17Ad–22(e)(4)(i) under the Act requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.[59]

Several commenters question whether FICC has adequately demonstrated that the proposed minimum margin amount is consistent with Rule 17Ad–22(e)(4)(i) under the Exchange Act, arguing that there are more effective methods that FICC could use to mitigate the relevant risks. Three commenters argue that the model-based calculation is well-suited to address FICC's credit risk in volatile market conditions, and instead of adding the minimum margin amount to its margin methodology, FICC should enhance this calculation to address periods of extreme market volatility such as occurred in March and April 2020.[60]

In response to these comments, FICC explains that enhancing the model-based calculation would not be an effective approach towards mitigating the risk resulting from periods of extreme market volatility. Although the model-based calculation takes into account risk factors typical to TBAs, the extreme market volatility of March and April 2020 was caused by other factors (*e.g.,* changes in the Federal Reserve purchase program) affecting TBA factors, yet such factors are not accounted for in the model-based calculation.[61] To further demonstrate why the minimum margin amount is necessary, FICC relies upon the results of recent backtesting analyses demonstrating that its existing VaR Charge calculations did not respond effectively to the March and April 2020 levels of market volatility and economic uncertainty such that FICC's margin collections during that period did not meet its 99 percent confidence level.[62]

The Commission believes that the proposed minimum margin amount is consistent with Rule 17Ad–22(e)(4)(i) under the Exchange Act.[63] As described above, FICC's current VaR Charge calculations resulted in margin amounts that were not sufficient to mitigate FICC's credit exposure to its members' portfolios at FICC's targeted confidence level during periods of extreme market volatility, particularly when TBA price changes significantly exceeded those implied by the VaR model risk factors. The Commission believes that adding the minimum margin amount calculation to its margin methodology should better enable FICC to collect margin amounts that are sufficient to mitigate FICC's credit exposure to its members' portfolios.

In reaching this conclusion, the Commission thoroughly reviewed and analyzed the (1) Proposed Rule Change, including the supporting exhibits that provided confidential information on the calculation of the proposed minimum margin amount, impact analyses (including detailed information regarding the impact of the proposed change on the portfolio of each FICC member over various time periods), and backtesting coverage results, (2) comments received, and (3) Commission's own understanding of the performance of the current margin methodology, with which the Commission has experience from its general supervision of FICC, compared to the proposed margin methodology.[64] Specifically, as discussed above, the Commission has considered the results of FICC's backtesting coverage analyses, which indicate that the current margin methodology results in backtesting coverage that does not meet FICC's targeted confidence level. FICC's backtesting data shows that if the minimum margin amount had been in place, overall margin backtesting coverage (based on 12-month trailing backtesting) would have increased from approximately 99.3% to 99.6% through January 31, 2020 and approximately 97.3% to 98.5% through June 30, 2020.[65] The analyses also indicate that the minimum margin amount would result in improved backtesting coverage towards meeting FICC's targeted coverage level. Therefore, the Commission believes that the proposal would provide FICC with a more precise margin calculation, thereby enabling FICC to manage its credit exposures to members by maintaining sufficient financial resources to cover such exposures fully with a high degree of confidence.

In response to the comments regarding enhancing the model-based calculation instead of adding the minimum margin amount, the Commission believes that FICC's model-based calculation takes into account risk factors that are typical TBA attributes, whereas the extreme market volatility of March and April 2020 was caused by other external factors that are less subject to modeling. Thus, the commenters' preferred approach is not a viable alternative that would allow for consideration of such factors.

Accordingly, for the reasons discussed above, the Commission believes that the changes proposed in the Proposed Rule Change are reasonably designed to enable FICC to effectively identify, measure, monitor, and manage its credit exposure to members, consistent with Rule 17Ad–22(e)(4)(i).[66]

D. Consistency With Rules 17Ad–22(e)(6)(i) and (iii)

Rules 17Ad–22(e)(6)(i) and (iii) under the Act require that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market, and calculates margin sufficient to cover its potential future exposure to participants.[67]

One commenter suggests that the minimum margin amount would be inefficient and ineffective at collecting margin amounts commensurate with the risks presented by the securities in member portfolios.[68] Several commenters argue that the proposed minimum margin amount calculation would produce sudden and persistent spikes in margin requirements.[69] One commenter argues that the minimum margin amount would effectively replace FICC's existing model-based calculation with one likely to produce procyclical results by increasing margin requirements at times of increased market volatility.[70] One commenter suggests the March–April 2020 market volatility was so unique that FICC need

[59] 17 CFR 240.17Ad–22(e)(4)(i).

[60] *See* IDTA/MBA Letter I at 4–5; ASA Letter at 1; SIFMA Letter I at 2–3; Letter from Christopher Killian, Managing Director, Securities Industry and Financial Markets Association (February 23, 2021) (''SIFMA Letter II'') at 1–2.

[61] *See* FICC Letter at 2–3.

[62] *See* FICC Letter at 3.

[63] 17 CFR 240.17Ad–22(e)(4)(i).

[64] In addition, because the proposals contained in the Advance Notice and the Proposed Rule Change are the same, all information submitted by FICC was considered regardless of whether the information was submitted with respect to the Advance Notice or the Proposed Rule Change. *See supra* note 9.

[65] *See* Notice, *supra* note 3 at 79545.

[66] 17 CFR 240.17Ad–22(e)(4)(i).

[67] 17 CFR 240.17Ad–22(e)(6)(i) and (iii).

[68] *See id.*

[69] *See* IDTA/MBA Letter I at 5; ASA Letter at 2; SIFMA Letter I at 3–4.

[70] *See* IDTA/MBA Letter I at 5.

not adjust its margin methodology to account for a future similar event.[71]

In addition, one commenter argues that the proposed minimum margin amount is inconsistent with Rule 17Ad–22(e)(6)(i) because the minimum margin amount calculation is not reasonably designed to mitigate future risk due to its reliance on historical price movements that will not generate margin requirements that equate to future protections against market volatility.[72] Two commenters argue that the proposed minimum margin amount calculation is not reasonably designed to mitigate future risks because the calculation relies on historical price movements, which will not necessarily generate margin amounts that will protect against future periods of market volatility.[73] One commenter argues that the minimum margin amount is not necessary despite the March and April 2020 backtesting deficiencies because there were no failures or other events that caused systemic issues.[74]

Several commenters speculate that since the minimum margin amount is typically larger than the model-based calculation, the minimum margin amount will likely become the predominant calculation for determining a member's VaR Charge.[75] One commenter argues that instead of the minimum margin amount, FICC should consider adding concentration charges to its margin methodology to address the relevant risks.[76]

In response, FICC states that any increased margin requirements resulting from the proposed minimum margin amount during periods of extreme market volatility would appropriately reflect the relevant risks presented to FICC by member portfolios holding large TBA positions.[77] FICC also states that the minimum margin amount's reliance on observed price volatility with a shorter lookback period will provide margin that responds quicker during market volatility to limit FICC's exposures.[78] FICC also notes that the margin increases that the minimum margin amount would have imposed following the March–April 2020 market volatility would not have persisted at such high levels indefinitely.[79]

In addition, regarding whether the minimum margin amount will likely become the predominant calculation for determining a member's VaR Charge, FICC states that as the period of extreme market volatility stabilized and the model-based calculation recalibrated to current market conditions, the average daily VaR Charge increase decreased from $2.2 billion (*i.e.,* 42%) to $838 million (*i.e.,* 7%) during the fourth quarter of 2020.[80] Regarding concentration charges, FICC states that concentration charges and the minimum margin amount address separate and distinct types of risk.[81] Whereas the minimum margin amount is designed to cover the risk of market price volatility, concentration charges (*e.g.,* FICC's recently approved Margin Liquidity Adjustment Charge [82]) are designed to mitigate the risk to FICC of incurring additional market impact cost from liquidating a directionally concentrated portfolio.[83]

The Commission believes that the proposal is consistent with Rule 17Ad–22(e)(6)(i). Implementing the proposed minimum margin amount would result in margin requirements that reflect the risks such holdings present to FICC better than FICC's current margin methodology. In reaching this conclusion and considering the comments above, the Commission thoroughly reviewed and analyzed the (1) Proposed Rule Change, including the supporting exhibits that provided confidential information on the calculation of the proposed minimum margin amount, impact analyses, and backtesting coverage results, (2) comments received, and (3) Commission's own understanding of the performance of the current margin methodology, with which the Commission has experience from its general supervision of FICC, compared to the proposed margin methodology. Based on its review and analysis of these materials, including the effect that the minimum margin amount would have on FICC's backtesting coverage, the Commission believes that the proposed minimum margin amount is designed to consider, and collect margin commensurate with, the market risk presented by member portfolios holding TBA positions, specifically during periods of market volatility such as what occurred in March and April 2020. For the same reasons, the Commission disagrees with the comments suggesting that the minimum margin amount calculation is not designed to effectively and efficiently collect margin sufficient to mitigate the risks presented by the securities.

In response to comments regarding the sudden and persistent increases in margin that could arise from the minimum margin amount, the Commission acknowledges that, for some member portfolios in certain market conditions, application of the minimum margin amount calculation would result in an increase in the member's margin requirement based on the potential exposures arising from the TBA positions. The Commission notes that, by design, the minimum margin amount should respond more quickly to heightened market volatility because of its use of historical price data over a relatively short lookback period, as opposed to the model-based calculation which relies on risk factors and uses a longer lookback period.

The Commission also observes, however, based on its review and analysis of FICC's confidential data and analyses, that the increase in margin requirements generated by the minimum margin amount—as compared to the other calculations—would generally only apply during periods of high market volatility and for a time period thereafter.[84] The frequency with which the minimum margin amount would constitute a majority of members' margin requirements decreases as markets become less volatile, and therefore, is not expected to persist indefinitely.[85] The Commission believes that including the minimum margin amount as a potential method of determining a member's margin requirement is appropriate, in light of the potential exposures that could arise in a time of heightened market volatility and the need for FICC to cover those exposures. Therefore, the Commission believes that the proposal would provide FICC with a margin calculation better designed to enable FICC to cover its credit exposures to its members by enhancing FICC's risk-based margin system to produce margin levels commensurate with, the risks and particular attributes of TBAs.

In response to the comments regarding the potential procyclical nature of the minimum margin amount calculation and whether it is

[71] *See* SIFMA Letter I at 3.

[72] *See* IDTA/MBA Letter I at 4.

[73] *See* IDTA/MBA Letter I at 5; SIFMA Letter I at 2.

[74] *See* SIFMA Letter I at 2.

[75] *See* IDTA/MBA Letter I at 4–5; ASA Letter at 1; SIFMA Letter I at 2–3.

[76] *See* IDTA/MBA Letter I at 5.

[77] *See* FICC Letter at 5–6.

[78] *See id.*

[79] *See id.*

[80] *See* FICC Letter at 5.

[81] *See* FICC Letter at 7–8.

[82] *See* Securities Exchange Act Release No. 90182 (October 14, 2020), 85 FR 66630 (October 20, 2020) (SR–FICC–2020–009).

[83] *See* FICC Letter at 7–8.

[84] FICC provided this data as part of its response to the Commission's Request for Additional Information in connection with the Advance Notice. Pursuant to 17 CFR 240.24b–2, FICC requested confidential treatment of its RFI response. *See also* FICC Letter at 5.

[85] *See* FICC Letter at 5.

appropriate for the margin methodology to take into account such extreme market events, the Commission notes that as a general matter, margin floors generally operate to reduce procyclicality by preventing margin levels from falling too low. Moreover, despite the commenters' procyclicality concerns, the Commission understands that the purpose of the minimum margin amount calculation is to ensure that FICC collects sufficient margin in times of heightened market volatility, which means that FICC would, by design, collect additional margin at such times if the minimum margin amount applies. The Commission believes that, because heightened market volatility may lead to increased credit exposure for FICC, it is reasonable for FICC's margin methodology to collect additional margin at such times and to be responsive to market activity of this nature.

In response to the comment that the proposed minimum margin amount is not necessary because the March and April 2020 market volatility did not cause the failure of FICC members or otherwise cause broader systemic problems, the Commission disagrees. Similar to the Commission's analysis above, the relevant standard is not merely for FICC to maintain sufficient financial resources to avoid failures or systemic issues, but for FICC to cover its credit exposures to members with a risk-based margin system that produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.[86] During periods of extreme market volatility, FICC has demonstrated that adding the minimum margin amount to its margin methodology better enables FICC to manage its credit exposures to members by producing margin charges commensurate with the applicable risks. The Commission has reviewed and analyzed FICC's backtesting data, and agrees that the data demonstrate that the minimum margin amount would result in better backtesting coverage and, therefore, less credit exposure of FICC to its members. Accordingly, the Commission believes that the proposed minimum margin amount would enable FICC to better manage its credit risks resulting from periods of extreme market volatility.

In response to the comments regarding the minimum margin amount calculation's reliance on historical price movements, the Commission does not agree that Rule 17Ad–22(e)(6)(i) precludes FICC from implementing a margin methodology that relies, at least in part, on historical price movements or that FICC's margin methodology must generate margin requirements that ''equate to future protections against market volatility.'' FICC's credit exposures are reasonably measured both by events that have actually happened as well as events that could potentially occur in the future. For this reason, a risk-based margin system is necessary for FICC to cover its potential future exposure to members.[87] Potential future exposure is, in turn, defined as the maximum exposure estimated to occur at a future point in time with an established single-tailed confidence level of at least 99 percent with respect to the estimated distribution of future exposure.[88] Thus, to be consistent with its regulatory requirements, FICC must consider potential future exposure, which includes, among other things, losses associated with the liquidation of a defaulted member's portfolio.

In response to the comments regarding enhancing the model-based calculation instead of adding the minimum margin amount, the Commission believes that, as FICC stated in its response, the inputs to FICC's model-based calculation include risk factors that are typical TBA attributes, whereas the extreme market volatility of March and April 2020, which affected the TBA markets, was caused by other external factors that are less subject to modeling. Accordingly, the Commission believes that FICC would more effectively cover its exposure during such periods by including the minimum margin amount as an alternative margin component based on the price volatility in each member's portfolio using observable TBA benchmark prices, using a relatively short lookback period.[89]

In response to the comments regarding whether the minimum margin amount will likely become the predominant calculation for determining a member's VaR Charge, the Commission disagrees. For example, the average daily VaR Charge increase from February 3, 2020 through June 30, 2020 would have been approximately $2.2 billion or 42%, but as the model-based calculation took into account the current market conditions, the average daily increase during Q4 of 2020 would have been approximately $838 million or 7%.[90]

Finally, in response to the comments regarding concentration charges, the Commission notes that there is a distinction between concentration charges and the VaR Charge in that they are generally designed to mitigate different risks. Whereas the VaR Charge is designed to cover the risk of market price volatility, concentration charges are typically designed to mitigate the risk of incurring additional market impact cost from liquidating a directionally concentrated portfolio.[91]

Accordingly, the Commission believes that adding the minimum margin amount to FICC's margin methodology would be consistent with Rules 17Ad–22(e)(6)(i) and (iii) because this new margin calculation should better enable FICC to establish a risk-based margin system that considers and produces relevant margin levels commensurate with the risks associated with liquidating member portfolios in a default scenario, including volatility in the TBA market.[92]

E. Consistency With Rule 17Ad–22(e)(23)(ii)

Rule 17Ad–22(e)(23)(ii) under the Exchange Act requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency.[93]

Several commenters express concerns that the Proposed Rule Change does not provide sufficient information to enable FICC's members to identify and evaluate the minimum margin amount. Two commenters argue that FICC's margin calculations are opaque, which makes liquidity planning difficult for members.[94] In particular, these commenters express concern that the minimum margin amount could trigger sudden margin spikes that could result in forced selling or other market disruptions.[95] One commenter argues that since the Proposed Rule Change

[86] 17 CFR 240.17Ad–22(e)(6)(i).

[87] *See* 17 CFR 240.17Ad–22(e)(6)(iii) (requiring a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, calculates margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default).

[88] 17 CFR 240.17Ad–22(a)(13).

[89] *See* FICC Letter at 3.

[90] *See* FICC Letter at 5. The Commission's conclusion is also based upon information that FICC submitted confidentially regarding member-level impact of the proposal from February through December 2020.

[91] *See* Securities Exchange Act Release No. 34–90182 (October 14, 2020), 85 FR 66630 (October 20, 2020).

[92] 17 CFR 240.17Ad–22(e)(6)(i) and (iii).

[93] 17 CFR 240.17Ad–22(e)(23)(ii).

[94] *See* SIFMA Letter I at 4; ASA Letter at 2.

[95] *See id.*

would set a member's VaR Charge as the greater of the model-based calculation, current VaR Floor haircut, and the minimum margin amount, members would always need to be prepared to fund the minimum margin amount, which makes it difficult for members to identify and evaluate the material costs associated with their trading activities.[96] Two commenters argue that the Proposed Rule Change did not discuss the anticipated impacts on members' cost to do business or disparate impacts between large and small members.[97] One commenter argues that enhancing the model-based calculation would better enable members to understand the causes of increased margin requirements than the minimum margin amount.[98] One commenter claims that at the time of its comment letter, FICC had not yet provided members with updated impact studies demonstrating that as 2020 market volatility stabilized, the minimum margin amount and model-based calculation became more aligned.[99] One commenter claims that FICC has not explained which entities contributed to the March and April 2020 backtesting deficiencies, or how any reduced Backtesting Charges during the impact study period were equitably distributed among members.[100] One commenter states that while the proposed lookback period for the minimum margin amount would be two years, the period FICC appears to have used to determine a deficit in the desired 99 percent coverage ratio is only one month.[101] Finally, one commenter argues that the minimum margin amount is difficult to evaluate because FICC did not discuss whether the minimum margin amount would cause additional member obligations with respect to FICC's Capped Contingency Liquidity Facility (''CCLF'').[102]

In response to the comments, the Commission notes that FICC provided a detailed member-level impact analysis of the minimum margin amount as part of the Proposed Rule Change filing.[103] FICC discussed the impact analysis in the narrative of the Proposed Rule Change in general terms to avoid disclosing confidential member information.[104]

Additionally, FICC responds that it has provided its members with explanations regarding the effects of the minimum margin amount, including updated impact study data through the fourth quarter of 2020.[105] FICC further states that it provides ongoing tools and resources to assist its members to determine their margin requirements and the anticipated impact of the minimum margin amount.[106] Specifically, FICC maintains the Real Time Matching Report Center, Clearing Fund Management System, and FICC Customer Reporting service, which are member-accessible websites for accessing risk reports and other risk disclosures.[107] These websites enable a member to view and download margin requirement information and component details.[108] The reporting enables a member to view, for example, a portfolio breakdown by CUSIP, including the amounts attributable to the model-based calculation.[109] In addition, members are able to view and download spreadsheets that contain market amounts for current clearing positions, and the associated VaR Charge.[110] FICC also maintains the FICC Risk Client Portal, which is a member-accessible website that enables members to view and analyze certain risks related to their portfolios, including daily customer reports and calculators to assess the risk and margin impact of certain activities.[111] FICC maintains the FICC Client Calculator that enables members to enter ''what-if'' position data and recalculate their VaR Charge to determine margin impact before trade execution.[112] Finally, the FICC Client Calculator allows members to see the impact to the VaR Charge if specific transactions are executed, or to anticipate the impact of an increase or decrease to a current clearing position.[113]

Regarding the comment that although the proposed lookback period for the minimum margin amount would be two years, the period FICC appears to have used to determine a deficit in the desired 99 percent coverage ratio is only one month, FICC states that the minimum margin amount lookback period is for the model calibration, whereas the backtesting coverage calculation is based on rolling 12 months.[114]

Finally, regarding CCLF, FICC states margin requirements and CCLF obligations are not directly related, and each is designed to account for different risks.[115] Margin requirements are designed to address the market risk inherent in each member's portfolio and mitigate potential losses to FICC associated with liquidating a member's portfolio in a default scenario. CCLF is a rules-based liquidity tool designed to ensure that MBSD has sufficient liquidity resources to complete settlement in the event of the failure of FICC's largest member (including affiliates). FICC does not believe that CCLF procedures or member obligations would need to be modified as a result of implementing the minimum margin amount.[116]

For the foregoing reasons, the Commission disagrees with the comments stating that the Proposed Rule Change does not provide sufficient information to enable members to identify and evaluate the risks and other material costs they incur by participating in FICC or that the Proposed Rule Change does not allow members to predict the minimum margin amount's impact on their activities. The Commission acknowledges that, as some commenters have noted, the Proposed Rule Change does not provide or specify the actual models or calculations that FICC would use to determine the minimum margin amount. However, when adopting the CCA Standards,[117] the Commission declined to adopt a commenter's view that a covered clearing agency should be required to provide, at least quarterly, its methodology for determining initial margin requirements at a level of detail adequate to enable participants to replicate the covered clearing agency's calculations, or, in the alternative, that the covered clearing agency should be required to provide a computational method with the ability to determine the initial margin associated with changes to each respective participant's portfolio or hypothetical portfolio, participant defaults and other relevant information. The Commission stated that ''[m]andating disclosure of this

[96] *See* SIFMA Letter II at 2.

[97] *See* SIFMA Letter I at 4; ASA Letter at 2.

[98] *See* SIFMA Letter I at 4.

[99] *See* IDTA/MBA Letter I at 3.

[100] *See* IDTA/MBA Letter I at 3; IDTA/MBA Letter II at 3.

[101] *See* SIFMA Letter I at 3.

[102] *See* SIFMA Letter I at 4. CCLF is a rules-based, committed liquidity resource designed to enable FICC to meet its cash settlement obligations in the event of a default of the member or family of affiliated members to which FICC has the largest exposure in extreme but plausible market conditions. *See* MBSD Rule 17, *supra* note 15.

[103] As part of the Proposed Rule Change, FICC filed Exhibit 3—FICC Impact Studies. Pursuant to 17 CFR 240.24b–2, FICC requested confidential treatment of Exhibit 3.

[104] *See* Notice, *supra* note 3 at 79545.

[105] *See* FICC Letter at 6.

[106] *See id.*

[107] *See id.*

[108] *See id.*

[109] *See id.*

[110] *See id.*

[111] *See* FICC Letter at 6–7.

[112] *See* FICC Letter at 7.

[113] *See id.*

[114] *See* FICC Letter 5.

[115] *See* FICC Letter at 7.

[116] *See id.*

[117] 17 CFR 240.17Ad–22(e).

frequency and granularity would be inconsistent with the principles-based approach the Commission is taking in Rule 17Ad–22(e).'' [118] Consistent with that approach, the Commission does not believe that Rule 17Ad–22(e)(23)(ii) would require FICC to disclose its actual margin methodology, so long as FICC has provided sufficient information for its members to understand the potential costs and risks associated with participating in FICC.

For the reasons discussed above, the Commission believes that the Proposed Rule Change would enable FICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide sufficient information to enable members to identify and evaluate the risks, fees, and other material costs they incur as FICC's members, consistent with Rule 17Ad–22(e)(23)(ii).[119]

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [120] and the rules and regulations promulgated thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [121] that proposed rule change SR–FICC–2020–017, be, and hereby is, *approved.*[122]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[123]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–14390 Filed 7–6–21; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act and OMB procedures, SBA is publishing this notice to allow all interested member of the public an additional 30 days to provide comments on the proposed collection of information.

DATES: Submit comments on or before August 6, 2021.

ADDRESSES: Written comments and recommendations for this information collection request should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/*PRAMain. Find this particular information collection request by selecting ''Small Business Administration''; ''Currently Under Review,'' then select the ''Only Show ICR for Public Comment'' checkbox. This information collection can be identified by title and/or OMB Control Number.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the information collection and supporting documents from the Agency Clearance Office at *Curtis.Rich@sba.gov;* (202) 205–7030, or from *www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: On March 27, 2020, the Coronavirus Aid, Relief and Economic Security Act (the CARES Act), Public Law 116–136, was enacted to provide emergency and immediate national economic relief and assistance across the American economy, including to small businesses, workers, families, and the health-care system, to alleviate the severe economic hardships and public health threat created by the 2019 Novel Coronavirus pandemic. Section 1112 of the CARES Act, as set forth in Public Law 116–136, authorizes SBA to pay, for a 6-month period, the principal, interest, and associated fees (subsidy debt relief) to eligible borrowers in the 7(a), 504, and Microloan Programs. Under Section 325 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act), enacted December 27, 2020, Public Law 116–260, Congress amended and extended the Section 1112 subsidy debt relief payments subject to the availability of funds appropriated by Congress.

The purpose of the Section 1112 Gross Loan Payment Template allows SBA to accurately make payments to the lender on behalf of the borrower. Therefore, each SBA participating lender with an eligible loan(s) must submit a request to SBA for each eligible loan with the gross monthly payment due including accrued interest and associated fees due. SBA will reconcile those amounts and transmit the funds electronically to the lender on behalf of the borrower in accordance with the provisions set forth in the CARES Act and Economic Aid Act.

Solicitation of Public Comments: Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Title: CARES Act Section 1112 Gross Loan Payment.

Description of Respondents: 7(a), 504, and Microloan Program Participants.

Estimated Number of Respondents: 2,965.

Estimated Annual Responses: 2,965.

Estimated Annual Hour Burden: 9,142.

Curtis Rich,

Management Analyst.

[FR Doc. 2021–14395 Filed 7–6–21; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2022–2084]

Petition for Exemption; Summary of Petition Received; Double Helix Aviation, LLC.

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before July 27, 2021.

ADDRESSES: Send comments identified by docket number FAA–2021–0356 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

[118] *See* CCA Standards Adopting Release, *supra* note 33, 81 FR at 70845.

[119] 17 CFR 240.17Ad–22(e)(23)(ii).

[120] 15 U.S.C. 78q–1.

[121] 15 U.S.C. 78s(b)(2).

[122] In approving the proposed rule change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). *See also* Sections II.A. and II.B.

[123] 17 CFR 200.30–3(a)(12).

• *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jimeca Callaham, (202) 267–0312, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on June 30, 2021.

James M. Crotty,

Acting Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2021–0356.

Petitioner: Double Helix Aviation, LLC.

Section(s) of 14 CFR Affected: § 91.327(a).

Description of Relief Sought: Double Helix Aviation, LLC is petitioning for an exemption to § 91.327(a), to the extent necessary to allow for compensation of flights for hire to conduct research in support of the Department of Homeland Security's Air Domain Awareness project. Double Helix Aviation, LLC would be supporting that project to assist in demonstrating and verifying detection capabilities to safeguard and secure vital points of entry along the U.S. border.

[FR Doc. 2021–14430 Filed 7–6–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Youth Access to American Jobs in Aviation Task Force; Notice of Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the Youth Access to American Jobs in Aviation Task Force (YIATF).

DATES: The meeting will be held on September 13, 2021, from 9:00 a.m.–3:30 p.m. Eastern Daylight Time.

Requests for accommodations to a disability must be received by August 30, 2021.

Requests to submit written materials to be reviewed during the meeting must be received no later than August 30, 2021.

ADDRESSES: The meeting will be held virtually. Members of the public who wish to observe the virtual meeting may access the event live on the FAA's *Twitter, Facebook* and *YouTube* channels. For copies of meeting minutes along with all other information, please visit the YIATF internet website at *https://www.faa.gov/regulations_policies/rulemaking/committees/documents/index.cfm/committee/browse/committeeID/797.*

FOR FURTHER INFORMATION CONTACT: Ms. Aliah Duckett, Federal Aviation Administration, by email at *S602YouthTaskForce@faa.gov* or phone at 202–267–8361. Any committee-related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The FAA established the Task Force by charter on October 3, 2019, under Public Law 115–254. The Task Force is required by statute to develop and provide independent recommendations and strategies to the FAA Administrator to: (1) Facilitate and encourage high school students in the United States to enroll in and complete career and technical education courses, including science, technology, engineering, and mathematics (STEM), that will prepare them to pursue a course of study related to an aviation career at an institution of higher education, a community college, or trade school; (2) facilitate and encourage these students to enroll in a course of study related to an aviation career, including aviation manufacturing, engineering and maintenance, at an institution of higher education, including a community college or trade school; and (3) identify and develop pathways for students to secure registered apprenticeships, workforce development programs, or careers in the aviation industry of the United States.

II. Agenda

At the meeting, the agenda will cover the following topics:

- Welcome/Opening Remarks
- Approval of Previous Meeting Minutes
- Subcommittee Presentations
- Review of Action Items
- Closing Remarks

A detailed agenda will be posted on the YIATF internet website address listed in the **ADDRESSES** section at least 15 days in advance of the meeting. Copies of the meeting minutes will also be available on the YIATF internet website.

III. Public Participation

The meeting will be open to the public and livestreamed. Members of the public who wish to observe the virtual meeting can access the livestream on the FAA social media platforms listed in the **ADDRESSES** section on the day of the event.

The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

The FAA is not accepting oral presentations at this meeting due to time constraints. However, the public may present written statements to the Task Force by providing a copy to the Designated Federal Officer via the email listed in the **FOR FURTHER INFORMATION CONTACT** section.

Angela O. Anderson,

Director, Regulatory Support Division, Office of Rulemaking, Federal Aviation Administration.

[FR Doc. 2021–14384 Filed 7–6–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2021–2078]

Petition for Exemption; Summary of Petition Received; General Electric Company

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before July 27, 2021.

ADDRESSES: Send comments identified by docket number FAA–2021–0429 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jimeca Callaham, (202) 267–0312, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on June 30, 2021.

James M. Crotty,

Acting Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2021–0429.

Petitioner: General Electric Company.

Section(s) of 14 CFR Affected: 21.6 and 21.9.

Description of Relief Sought: General Electric Company (GE) is petitioning for an exemption from Title 14, Code of Federal Regulations 21.6 and 21.9, to the extent necessary to allow the manufacture of new T700 replacement parts and engines that will be installed on FAA type certificated aircraft in the restricted category that were not declared surplus by the U.S. Armed Forces.

[FR Doc. 2021–14425 Filed 7–6–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions of Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final. The actions relate to the proposed Interstate 105 Express Lanes Project at post mile 105 R0.5/R18.1 and 110 R13.8/R14.8 within the County of Los Angeles, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal Agency Actions on the highway project will be barred unless the claim is filed on or before December 6, 2021. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Thoa Le, Senior Environmental Planner, Division of Environmental Planning, California Department of Transportation—District 7, 100 South Main Street, Los Angeles, CA 90012. Office hours: 8 a.m. to 5 p.m., telephone: (213) 269–0238, email: *105ExpressLanes@dot.ca.gov.* For FHWA, contact David Tedrick at (916) 498- 5024 or email *david.tedrick@dot.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, FHWA assigned, and Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that Caltrans and has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The Los Angeles County Metropolitan Transportation Authority (Metro) and Caltrans propose to convert the existing High Occupancy Vehicle lane on the I–105, from I–405 to Studebaker Road, to two Express Lanes in each direction with nonstandard lane and shoulder widths. The two Express Lanes would be separated from the general-purpose lanes by a 2-foot-wide buffer. The project would also include a new overhead tolling system and signage, dynamic pricing on the Express Lanes, and other improvements to the I–105 Corridor including sound walls and auxiliary lanes. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Report (EIR)/Environmental Assessment (EA) with Finding of No Significant Impact (FONSI) approved on May 21, 2021, and in other documents in the FHWA project records. The Final EIR/EA with FONSI, and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans Final EIR/EA with FONSI can be viewed and downloaded from Reports menu on the project website at: *https://media.metro.net/2021/Final-EIR-EAI-105-ExpressLanes-Project-April-2021.pdf.* This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

(1) National Environmental Policy Act (NEPA) of 1969;

(2) Federal Aid Highway Act of 1970;
(3) U.S. EPA Section 404(b)(1) Guidelines (40 Code of Federal Regulations [CFR] 230);
(4) Clean Air Act Amendments of 1990 (CAAA);
(5) Clean Water Act of 1977 and 1987;
(6) Federal Water Pollution Control Act of 1972 (see Clean Water Act of 1977 & 1987);
(7) Safe Drinking Water Act of 1944, as amended;
(8) Endangered Species Act of 1973;
(9) Executive Order 13112, Invasive Species;
(10) Migratory Bird Treaty Act;
(11) Fish and Wildlife Coordination Act of 1934, as amended;
(12) Coastal Zone Management Act of 1972;
(13) Title VI of the Civil Rights Act of 1964, as amended

(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: 23 U.S.C. 139(l)(1).

Issued on: June 30, 2021.

Rodney Whitfield,

Director, Financial Services, Federal Highway Administration, California Division.

[FR Doc. 2021–14423 Filed 7–6–21; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Publication of Russian Harmful Foreign Activities Directive 1

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of directive.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing a Russian Harmful Foreign Activities Sanctions Directive in the **Federal Register**. The Directive was previously issued on OFAC's website.

DATES: Directive 1 was issued on April 15, 2021 and the prohibitions therein take effect on June 14, 2021.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On April 15, 2021, the President, invoking the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (IEEPA), issued Executive Order (E.O.) 14024 (86 FR 20249, April 19, 2021).

In E.O. 14024, the President found that specified harmful foreign activities of the Government of the Russian Federation—in particular, efforts to undermine the conduct of free and fair democratic elections and democratic institutions in the United States and its allies and partners; to engage in and facilitate malicious cyber-enabled activities against the United States and its allies and partners; to foster and use transnational corruption to influence foreign governments; to pursue extraterritorial activities targeting dissidents or journalists; to undermine security in countries and regions important to United States national security; and to violate well-established principles of international law, including respect for the territorial integrity of states—constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States and declared a national emergency to deal with that threat.

Also on April 15, 2021, the Acting Director of OFAC issued Directive 1 under E.O. 14024, wherein the Acting Director of OFAC, in consultation with the Department of State, determined that the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation are political subdivisions, agencies, or instrumentalities of the Government of the Russian Federation, and that certain activities by U.S. financial institutions that are specified in Directive 1 involving such entities are prohibited as of June 14, 2021. The text of Directive 1 under E.O. 14024 is provided below.

Office of Foreign Assets Control

Directive 1 Under Executive Order of April 15, 2021

Blocking Property With Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation

Pursuant to sections 1(a)(iv), 1(d), and 8 of Executive Order of April 15, 2021, ''Blocking Property with Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation'' (the ''Order''), the Acting Director of the Office of Foreign Assets Control has determined, in consultation with the Department of State, that the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation are political subdivisions, agencies, or instrumentalities of the Government of the Russian Federation, and that the following activities by a U.S. financial institution are prohibited as of June 14, 2021, except to the extent provided by law or unless licensed or otherwise authorized by the Office of Foreign Assets Control:

(1) Participation in the primary market for ruble or non-ruble denominated bonds issued after June 14, 2021 by the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation; and

(2) lending ruble or non-ruble denominated funds to the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation.

For purposes of this Directive, the term ''U.S. financial institution'' means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or other extensions of credit, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. The term includes depository institutions, banks, savings banks, trust companies, securities brokers and dealers, futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

All other activities with the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation, or involving their property or interests in property are permitted, provided such activities are not otherwise prohibited pursuant to

the Order, or any other sanctions program implemented by the Office of Foreign Assets Control.

Except to the extent otherwise provided by law or unless licensed or otherwise authorized by the Office of Foreign Assets Control, the following are also prohibited: (1) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions contained in this Directive; and (2) any conspiracy formed to violate any of the prohibitions in this Directive. April 15, 2021.

Dated: June 30, 2021.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2021–14339 Filed 7–6–21; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Information Collection Tools Relating to the Offshore Voluntary Disclosure Program (OVDP)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning the offshore voluntary disclosure program.

DATES: Written comments should be received on or before September 7, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Offshore Voluntary Disclosure Program (OVDP).

OMB Number: 1545–2241.

Form Number(s): 14452, 14453, 14454, 14457, 14467, 14653, 14654, and 14708.

Abstract: The IRS is offering people with undisclosed income from offshore accounts an opportunity to get current with their tax returns. Taxpayers with undisclosed foreign accounts or entities should make a voluntary disclosure because it enables them to become compliant, avoid substantial civil penalties and generally eliminate the risk of criminal prosecution. The objective is to bring taxpayers that have used undisclosed foreign accounts and undisclosed foreign entities to avoid or evade tax into compliance with United States tax laws.

Current Actions: There is no change in the paperwork burden previously approved by OMB procedure.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 474,569.

Estimated Time per Response: 1 hour, 49 min.

Estimated Total Annual Burden Hours: 863,638.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 30, 2021.

Kerry L. Dennis,

Tax Analyst.

[FR Doc. 2021–14375 Filed 7–6–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request on Reduction of Tax Attributes Due to Discharge of Indebtedness

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the reduction of tax attributes due to discharge of indebtedness.

DATES: Written comments should be received on or before September 7, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Reduction of Tax Attributes Due to Discharge of Indebtedness.

OMB Number: 1545–0046.

Form Number(s): 982.

Abstract: Reduction of Tax Attributes Due to Discharge of Indebtedness. Internal Revenue Code (IRC) section 108 allows taxpayers to exclude from gross income amounts attributable to discharge of indebtedness in title 11 cases, insolvency or a qualified farm indebtedness. Section 1081(b) allows corporations to exclude from gross income amounts attributable to certain transfers of property. The data is used to verify adjustments to basis of property and reduction of tax attributes.

Current Actions: There is no change in the form or paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Businesses or other for profit, Small businesses or organizations.

Estimated Number of Respondents: 667.

Estimated Time per Response: 11 hour, 23 min.

Estimated Total Annual Burden Hours: 7,491.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 29, 2021.

Kerry L. Dennis,

Tax Analyst.

[FR Doc. 2021–14374 Filed 7–6–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Departmental Offices Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, § 10(a)(2), that a meeting will take place via conference call on August 3, 2021 at 10:45 a.m. of the following debt management advisory committee: Treasury Borrowing Advisory Committee.

At this meeting, the Treasury is seeking advice from the Committee on topics related to the economy, financial markets, Treasury financing, and debt management. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, § 10(d) and Public Law 103–202, § 202(c)(1)(B) (31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, § 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, § 202(c)(1)(B).

Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, § 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Fred Pietrangeli, Director for Office of Debt Management (202) 622–1876.

Dated: June 30, 2021.

Frederick E. Pietrangeli,

Director, Office of Debt Management.

[FR Doc. 2021–14394 Filed 7–6–21; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Renewal of the Charter of the Federal Advisory Committee on Insurance

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of charter renewal.

SUMMARY: The charter for the Federal Advisory Committee on Insurance (FACI) has been renewed for a two-year period beginning June 10, 2021.

FOR FURTHER INFORMATION CONTACT: Jigar Gandhi, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, Department of the Treasury, 1500 Pennsylvania Ave. NW, Room 1410 MT, Washington, DC 20220, at (202) 622–3220 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice is hereby given under 41 CFR 102–3.65, pursuant to the Federal Advisory Committee Act (5 U.S.C. Appendix), that the FACI has been renewed for an additional two years beginning June 10, 2021. The purpose of the FACI is to present advice and recommendations to the Federal Insurance Office (FIO) in performing its duties and authorities. The advice and recommendations may cover specific or general insurance topics, processes, studies, and/or reports. The duties of the FACI shall be solely advisory and shall extend only to the submission of advice and recommendations, which shall be non-binding, to FIO. The FACI meets on a periodic basis, and its membership is balanced to include a cross-section of representative views of state and non-government persons having an interest in the duties and authorities of FIO.

Dated: July 1, 2021.

Steven Seitz,

Performing the Delegable Duties of Assistant Secretary for Financial Institutions.

[FR Doc. 2021–14444 Filed 7–6–21; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF THE TREASURY

United States Mint

Renewal for Currently Approved Generic Information Collection Request; Comment Request for Renewal of Customer Satisfaction and Opinion Surveys, Focus Group Interviews, Web Usability Studies, and Intercept Surveys

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the currently approved information collection 1525–0012, as required by the Paperwork Reduction Act of 1995. Currently, the United States Mint, a bureau of the Department of the Treasury, is soliciting comments on the United States Mint customer satisfaction and opinion surveys, focus group interviews, web usability studies and intercept surveys.

DATES: Written comments should be received on or before September 7, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Leslie Schwager, Market Research Specialist, Sales and Marketing Directorate; United States Mint; 801 9th Street NW; Washington, DC 20220; (202) 354–7291 (this is not a toll-free number); *Leslie.Schwager@usmint.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection package should be directed to Leslie Schwager, Market Research Specialist, Sales and Marketing Directorate; United States Mint; 801 9th Street NW; Washington, DC 20220; (202) 354–7291 (this is not a toll-free number); *Leslie.Schwager@usmint.treas.gov.*

SUPPLEMENTARY INFORMATION: *Title:* United States Mint customer satisfaction and opinion surveys, focus group interviews, web usability studies, and intercept surveys.

OMB Number: 1525–0012.

Abstract: The proposed customer satisfaction and opinion surveys, focus group interviews, web usability studies, and intercept surveys will allow the United States Mint to assess the acceptance of, potential demand for, and barriers to acceptance/increased demand for current and future products, and the needs and desires of customers for more efficient, economical services.

Current Actions: The United States Mint conducts customer satisfaction and opinion surveys, focus group interviews, web usability studies, and intercept surveys to measure customer opinion and assess acceptance of, the potential demand for, and barriers to acceptance/increased demand for United States Mint products, and to determine the level of satisfaction of United States Mint customers and the general public.

Type of Review: Review of estimated annual respondents and estimated annual burden hours.

Affected Public: The affected public includes serious and casual numismatic collectors, dealers, and persons in the numismatic business, and the general public.

Estimated Number of Respondents: The estimated number of annual respondents is 48,936.

Estimated Total Annual Burden Hours: The estimated number of annual burden hours is 12,756.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Eric Anderson,

Executive Secretary, United States Mint.

Supporting Statement A—United States Mint Generic Clearance (October 31, 2021–October 31, 2024) 1525–0012

A. Justification

A1. Circumstances Necessitating the Collection of Information

This is a request for a three-year generic clearance to conduct customer satisfaction and opinion surveys, and focus group interviews. This clearance will allow the United States Mint to comply with Executive Order 12862 and assist the United States Mint in fulfilling its mission.

The mission of the United States Mint is to serve the American people by manufacturing and distributing the highest quality circulating coinage and national medals for the Nation to conduct its trade and commerce, and providing security over assets entrusted to the United States Mint.

The United States Mint is responsible for producing proof, uncirculated, circulating, and commemorative coins, and medals, and platinum, gold and silver bullion coins in response to programs legislated by Congress in support of domestic trade and commerce, civic, philanthropic, and national organizations.

To effectively accomplish the goals of these programs, it is crucial for the United States Mint to know and maintain awareness of customer preferences and needs by continually monitoring customer satisfaction.

However, because the time period between program authorization, production, and product shipment is often short, the United States Mint has not always had adequate time to obtain needed information about customer preferences and market conditions.

Therefore, the use of generic clearance to conduct customer satisfaction and opinion surveys, and focus group interviews will allow the United States Mint to quickly obtain useful data to create more profitable programs and to provide better service and products to the American public.

The Supporting Statement contains authorization under which these data collections efforts are implemented. Supporting Statement B contains a list of anticipated projects that may be submitted for approval through the generic clearance process between October 31, 2021 and October 31, 2024. This clearance covers data collection efforts by the United States Mint. An internal review of all proposed data collections will be performed to ensure the following:

- Consistency with United States Mint mission and strategic objectives.
- Appropriate priority within United States Mint's Strategic Plan and/or United States Mint annual business plan.
- Technical adequacy in issues such as frame, sample selection, response rates, quality control in data gathering, recording, and analysis.
- Minimized burden on respondents.
- Confidentiality of individual responses.
- Consistency with this generic clearance.

• Consistency with applicable laws and regulations.

A2. Use of Data

A variety of data collection methods will be employed, including web-based surveys, telephone CATI systems (computer-assisted telephone interviews), focus group interviews, and other appropriate means. The information will be used to:

• Determine customer opinions about the quality of products, pricing, delivery, and other services provided by the United States Mint.

• Determine customer needs and wants in regard to future products and services.

• Define the next steps/actions plans to improving customer satisfaction and United State Mint sales operations.

A3. Use of Information Technology To Reduce Burden

• In past instances, the United States Mint has used CATI systems and web-based surveys (both provided by contractors) for data collection efforts. The CATI systems and web-based surveys increase efficiency and validity of surveys and decrease the time required for each interview and, consequently, the overall burden on respondents. These methodologies use computers to perform a number of critical quality assurance routines that are monitored by survey supervisors. These include tracking average interview length and refusal and termination rates.

A4. Efforts To Identify Duplication

Survey questions will address United States Mint related products and do not duplicate the efforts of other agencies/organizations. Our internal review and approval process ensures that duplication of data gathering within the United States Mint is eliminated.

Additionally, no other organization can conduct a survey of the United States Mint customers because our customer list is unique and secured by the United States Mint.

A5. Methods To Minimize Burden on Small Businesses or Other Small Entities

The data collections for the most part will be targeted to individuals. Although some customers are coin and hobby dealers that may operate a small business, all information requests will be voluntary. In addition, respondents will rarely be required to consult or access their records for detailed factual information.

A6. Consequences of Less Frequent Collection on Federal Programs or Policy Activities

The United States Mint would not be in compliance with Executive Order 12862 if some of the collection efforts were not undertaken. Also, with the United States Mint operating as a self-funding agency, the information and the changes resulting from data collections are crucial to United States Mint numismatic sales efforts.

A7. Special Circumstance Requiring Data Collection To Be Inconsistent With Guidelines in 5 CFR 1320.6

No special circumstances require the collection to be conducted in a manner inconsistent with the guidelines in *5 CFR 1320.6.*

A8. Consultation With Individuals Outside of the Agency on Availability of Data, Frequency of Collection, Clarity of Instruction and Forms, and Data Elements

The United States Mint collaborates with professional marketing firms and contractors with expertise in marketing research, statistical analysis, and customer driven marketing. Their assistance is utilized in development, administration, and analysis research.

A9. Explanation of Decision To Provide Payment or Gift to Respondents

The United States Mint has compensated respondents only when it was necessary as an incentive for their extensive time or expertise. Specific justification has accompanied such requests. In the future, the United States Mint will use compensation for respondents only when it is deemed necessary.

A10. Assurance of Confidentiality of Responses

Survey respondents contacted by mail, fax, internet, or some other form of written communication will be advised on the survey form, cover letter, or other accompanying document that participation is voluntary and that the data provided will be secured. As part of the introduction to a data gathering effort during telephone or personal interviews, the interviewer will inform the respondents that the survey is voluntary and that each individual's responses will be secured. Focus group participants will verbally receive similar assurances during opening statements of the interview session.

A11. Justification of Sensitive Questions

Not applicable. Sensitive information is not collected.

A12. Estimated Burden of Information Collection

The following table is a breakdown of the estimated number of hours for a three-year generic clearance and estimated number of respondents for a three-year generic clearance.

However, due to changes in the market and possible new coin programs legislated by Congress, this figure could increase.

EXPAND TABLE

Research	Estimated number of hours (3 years)	Estimated number of respondents (3 years)
Naxion Customer Acquisition Research	5,451	12,000
Naxion General Analytics Research	3,357	25,200
Naxion Customer Satisfaction Tracking Research	2,700	10,800
Naxion Focus Group Research	3,840	1,920
Web Usability Research	216	216
Total	15,564	50,136

A13. Estimated Total Annual Cost Burden to Respondents

Estimates of the cost burden to respondents is unknown at this time.

A14. Estimated Annualized Cost to the Federal Government

The following table is a breakdown of the estimated cost to the United States Mint based on previous experience.

EXPAND TABLE

Research	Annual estimated cost	Total estimated—3 years
Naxion Customer Acquisition Research	$399,000	$1,197,000
Naxion General Analytics Research	400,000	1,200,000
Naxion Customer Satisfaction Tracking Research	240,000	720,000
Naxion Focus Group Research	415,000	1,245,000
Web Usability Research	100,000	300,000
Total	1,554,000	4,662,000

A15. Reason for Change in Burden

There is no change.

A16. Plans for Tabulation Statistical Analysis and Publication

Information from data collection will not be published for statistical purposes.

A17. Reasons Why Displaying the OMB Expiration Date Is Inappropriate

Displaying the expiration date may cause problems with respondents for data collection programs that overlap the three-year authorization periods. In addition, respondents might be declined to refuse to participate if the form carries an authorization date that is expired or soon to expire.

A18. Exceptions to the Certification Statement on OMB Form 83–1

Not applicable. There are no exceptions for certification.

Supporting Statement B—United States Mint Generic Clearance (October 31, 2021–October 31, 2024) 1525–0012

B. Collection of Information Employing Statistical Methods

B1. Universe and Respondent Selection

Surveys covered under this generic clearance will vary with regard to the universe and respondent selection. The potential universe for some surveys will include our active and inactive customers, while others may include far fewer.

However, because the United States Mint is attempting to expand its numismatic markets and practically all Americans are users of circulating coinage, the universe for some surveys may include the entire United States population base, with a statistically valid sample selected for research.

B2. Procedures for Collecting Information

The specific method of data collection for each survey will be provided to OMB before each survey is conducted.

B3. Methods To Maximize Response

The United States Mint has found that by sending an advance notice letter to those customers participating in a telephone survey the rate of response can be increased and will employ this technically when possible and cost effective. The United States Mint will employ procedures to review and test questions by survey experts to ensure that questions and instructions are clear, relevant, and unambiguous. Surveys employing non-response follow-up techniques will use multiple contacts by telephone and/or additional mailing of the questionnaire to ensure an adequate response.

B4. Testing of Procedures

In most cases, a pretest of the data collection instruments will be conducted prior to its use. Pretests will include review by knowledgeable United States Mint staff and consultants. In the case of telephone surveys, the pretest will include monitoring of interviewers and respondents by United States Mint staff and/or consultants prior to the actual survey. No pretest will include provisions for contacting more than nine respondents.

B5. Contacts for Statistical Aspects and Data Collection

The contact person for questions regarding any statistical aspects employed or data collection procedures used will be provided to OMB before each survey. Administrative questions regarding the Mint use of this generic clearance should be directed to Leslie Schwager; Sales and Marketing, 5th Floor; United States Mint; 801 9th Street NW; Washington, DC 20220, *leslie.schwager@usmint.treas.gov.*

[FR Doc. 2021–14433 Filed 7–6–21; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 86 Wednesday,

No. 127 July 7, 2021

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 424, et al.

Medicare and Medicaid Programs; CY 2022 Home Health Prospective Payment System Rate Update; Home Health Value-Based Purchasing Model Requirements and Proposed Model Expansion; Home Health Quality Reporting Requirements; Home Infusion Therapy Services Requirements; Survey and Enforcement Requirements for Hospice Programs; Medicare Provider Enrollment Requirements; Inpatient Rehabilitation Facility Quality Reporting Program Requirements; and Long-Term Care Hospital Quality Reporting Program Requirements; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 424, 484, 488, 489, and 498

[CMS–1747–P]

RIN 0938–AU37

Medicare and Medicaid Programs; CY 2022 Home Health Prospective Payment System Rate Update; Home Health Value-Based Purchasing Model Requirements and Proposed Model Expansion; Home Health Quality Reporting Requirements; Home Infusion Therapy Services Requirements; Survey and Enforcement Requirements for Hospice Programs; Medicare Provider Enrollment Requirements; Inpatient Rehabilitation Facility Quality Reporting Program Requirements; and Long-Term Care Hospital Quality Reporting Program Requirements

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would set forth routine updates to the home health and home infusion therapy services payment rates for calendar year (CY) 2022 in accordance with existing statutory and regulatory requirements. This rule also provides monitoring and analysis of the Patient-Driven Groupings Model (PDGM); solicits comments on a methodology for determining the difference between assumed versus actual behavior change on estimated aggregate expenditures for home health payments as result of the change in the unit of payment to 30 days and the implementation of the PDGM case-mix adjustment methodology; and proposes to recalibrate the PDGM case-mix weights, functional levels, and comorbidity adjustment subgroups while maintaining the low utilization payment adjustment (LUPA) thresholds for CY 2022. Additionally, this rulemaking proposes to utilize the physical therapy LUPA add-on factor to establish the occupational therapy add-on factor for the LUPA add-on payment amounts; and make conforming regulations text changes to reflect that allowed practitioners are able to establish and review the plan of care.

This rulemaking also proposes changes to the Home Health Quality Reporting Program (QRP) to remove one measure, remove two claims-based measures and replace them with one claims-based measure, publicly report two measures, propose a modification to the effective date for the reporting of the Transfer of Health to Provider-Post Acute Care and Transfer of Health to Patient-Post Acute Care (TOH) measures and Standardized Patient Assessment Data Elements and requests information on two topics: Advancing to digital quality measurement through the use of Fast Healthcare Interoperability Resources and our efforts surrounding closing the health equity gap. It also proposes modifications to the effective date for the reporting of TOH measures and certain Standardized Patient Assessment Data Elements. Additionally, this proposed rule requests information on two topics: Advancing to digital quality measurement through the use of Fast Healthcare Interoperability Resources and our efforts surrounding closing the health equity gap. It also proposes modifications to the effective date for the reporting of TOH measures and certain Standardized Patient Assessment Data Elements in the Inpatient Rehabilitation Facility (IRF) QRP and Long-Term Care Hospital (LTCH) QRP. In addition, this proposed rule would incorporate into regulation certain Medicare provider and supplier enrollment policies.

In addition, this rulemaking proposes to make permanent selected regulatory blanket waivers related to home health aide supervision that were issued to Medicare participating home health agencies during the COVID–19 public health emergency (PHE), and would update the home health conditions of participation to implement Division CC, section 115 of the Consolidated Appropriations Act, 2021 (CAA 2021) regarding occupational therapists completing the initial and comprehensive assessments reflect these changes.

This proposed rule also would expand the Home Health Value-Based Purchasing (HHVBP) Model, beginning January 1, 2022, to the 50 States, territories, and District of Columbia. This rulemaking also proposes to end the original HHVBP Model one year early for the home health agencies (HHAs) in the nine original Model States, such that CY 2020 performance data would not be used to calculate a payment adjustment for CY 2022 under the original Model.

Additionally, this proposed rule establishes survey and enforcement requirements for hospice programs as set forth in Division CC, section 407, of the CAA 2021.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on August 27, 2021.

ADDRESSES: In commenting, please refer to file code CMS–1747–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

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–1747–P, P.O. Box 8013, Baltimore, MD 21244–8013.

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–1747–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: Brian Slater, (410) 786–5229, for home health and home infusion therapy payment inquiries. For general information about home infusion payment, send your inquiry via email to *HomeInfusionPolicy@cms.hhs.gov.*

For general information about the Home Health Prospective Payment System (HH PPS), send your inquiry via email to *HomeHealthPolicy@cms.hhs.gov.*

For more information about the Home Health Value-Based Purchasing Model, send your inquiry via email to *HHVBPquestions@cms.hhs.gov.*

For information about the Home Health Quality Reporting Program (HH QRP), send your inquiry via email to *HHQRPquestions@cms.hhs.gov.*

For information about the home health conditions of participation, contact Mary Rossi-Coajou at: *mary.rossicoajou@cms.hhs.gov,* James Cowher at *james.cower@cms.hhs.gov,* or Jeannine Cramer at *Jeannine.cramer@cms.hhs.gov.*

For provider and supplier enrollment process inquiries: Frank Whelan, (410) 786–1302.

For information about the survey and enforcement requirements for hospice programs, send your inquiry via email to *QSOG_Hospice@cms.hhs.gov.*

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 all 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.

Table of Contents

I. Executive Summary

A. Purpose

1. Home Health Prospective Payment System (HH PPS)

This proposed rule provides preliminary monitoring analysis of the implementation of the PDGM, discusses the change in the unit of payment to 30 days and the implementation of the PDGM case-mix adjustment methodology on estimated aggregate expenditures under the HH PPS, and includes a comment solicitation on the methodology for determining the difference between assumed versus actual behavior change on estimated aggregate expenditures for home health payments. This proposed rule would update the payment rates for HHAs for CY 2022, as required under section 1895(b) of the Social Security Act (the Act). This rule also proposes to maintain the CY 2021 LUPA thresholds for CY 2022. However, the rule also proposes to recalibrate the case-mix weights under section 1895(b)(4)(A)(i) and (b)(4)(B) of the Act for 30-day periods of care in CY 2022. This proposed rule would update the CY 2022 fixed-dollar loss ratio (FDL) for outlier payments (outlier payments as a percentage of estimated total payments are not to exceed 2.5 percent, as required by section 1895(b)(5)(A) of the Act). Finally, this rule proposes to use the physical therapy (PT) add-on factor to establish the occupational therapy (OT) LUPA add-on factor and proposes conforming regulations text changes at § 409.43, ensuring the regulations reflect that allowed practitioners, in addition to physicians, may establish and periodically review the home health plan of care.

2. Home Health Value Based Purchasing (HHVBP) Model

In this proposed rule, we would expand the Home Health Value-Based Purchasing (HHVBP) Model to all Medicare-certified HHAs in the 50 States, territories, and District of Columbia beginning January 1, 2022 with CY 2022 as the first performance year and CY 2024 as the first payment year, based on HHA performance in CY 2022. This rule also proposes to end the original HHVBP Model 1 year early for the HHAs in the nine original Model States, such that CY 2020 performance data would not be used to calculate a payment adjustment for CY 2022.

3. Home Health (HH) Quality Reporting Program (HH QRP), Inpatient Rehabilitation Facility (IRF) QRP and Long-Term Care Hospital (LTCH) QRP

This proposed rule would update the HH QRP by removing an OASIS-based measure, the Drug Education on All Medications Provided to Patient/Caregiver During All Episodes of Care measure, from the HH QRP under measure removal factor 1: Measure performance among HHAs is so high and unvarying that meaningful distinctions in improvements in performance can no longer be made. This proposed rule also proposes to replace the Acute Care Hospitalization During the First 60 Days of Home Health (NQF #0171) measure and Emergency Department Use Without Hospitalization During the First 60 Days of Home Health (NQF #0173) measure with the Home Health Within Stay Potentially Preventable measure and proposes to publicly report the Percent of Residents Experiencing One or More Major Falls with Injury measure and Application of Percent of Long-Term Care Hospital Patients with an Admission and Discharge Functional Assessment and a Care Plan that Addresses Function (NQF #2631) measure beginning in April 2022. Finally, this proposed rule proposes revisions for certain HHA QRP reporting requirements. This proposed rule would also revise similar compliance dates for certain IRF QRP and LTCH QRP requirements.

4. Proposed Changes to the Home Health Conditions of Participation

In this rule, we propose to make permanent selected regulatory blanket waivers related to home health aide

supervision that were issued to Medicare participating home health agencies during the COVID–19 PHE. In addition, Division CC, section 115 of CAA 2021 requires CMS to permit an occupational therapist to conduct a home health initial assessment visit and complete a comprehensive assessment under the Medicare program, but only when occupational therapy is on the home health plan of care, with either physical therapy or speech therapy, and when skilled nursing services are *not* initially in the plan of care.

We are proposing changes to the home health aide supervision requirements at § 484.80(h)(1) and § 484.80(h)(2) and conforming regulation text changes at § 484.55(a)(2) and (b)(3), respectively, to allow occupational therapists to complete the initial and comprehensive assessments for patients in accordance with changes in the law.

5. Medicare Coverage of Home Infusion Therapy

This proposed rule includes updates to the home infusion therapy services payment rates for CY 2022, as required by section 1834(u) of the Act.

6. Provider and Supplier Enrollment Processes

In section VI. of this proposed rule, we address a number of provisions regarding Medicare provider and supplier enrollment. Most of these provisions involve the incorporation into 42 CFR part 424, subpart P of certain subregulatory policies. These are addressed in section VI.B. of this proposed rule and include, for example, policies related to: (1) The effective date of billing privileges for certain provider and supplier types and certain provider enrollment transactions; and (2) the deactivation of a provider or supplier's billing privileges.

In addition, we propose in section VI.C. of this proposed rule two regulatory clarifications related to HHA changes of ownership and HHA capitalization requirements.

7. Survey and Enforcement Requirements for Hospice Programs

In this proposed rule, CMS seeks to increase and improve transparency, oversight, and enforcement for hospice programs in addition to implementing the provisions of Division CC, section 407(b) of CAA 2021. CMS continues to review and revise our health and safety requirements and survey processes to ensure that they are effective in driving quality of care for hospice programs.

B. Summary of the Provisions of This Rule

1. Home Health Prospective Payment System (HH PPS)

In section II.B.1. of this rule, we provide data analyses on PDGM utilization since implementation of the new payment system in CY 2020. We describe a methodology for determining budget neutrality for CY 2020 and solicit comments on the difference between assumed versus actual behavior change on estimated aggregate expenditures.

In section II.B.3. of this rule, we propose to recalibrate the PDGM case-mix weights, functional levels, and comorbidity adjustment subgroups while proposing to maintain the CY 2021 LUPA thresholds for CY 2022. The PDGM relies on clinical characteristics and other patient information to place patients into meaningful payment categories and eliminates the use of therapy service thresholds, as required by section 1895(b)(4)(B) of the Act, as amended by section 51001(a)(3) of the Bipartisan Budget Act of 2018 (BBA of 2018).

In section II.B.4. of this rule, we propose to update the home health wage index, the CY 2022 national, standardized 30-day period payment amounts and the CY 2022 national per-visit payment amounts by the home health payment update percentage. The home health payment update percentage for CY 2022 is estimated to be 1.8 percent. Additionally, this proposed rule proposes to update the FDL ratio to 0.41 for CY 2022.

In section II.B.4.(c).(5). of this proposed rule, we discuss the regulations under Division CC, section 115 of CAA 2021 that revised §§ 484.55(a)(2) and 484.55(b)(3) to allow occupational therapists (OTs) to conduct initial and comprehensive assessments for all Medicare beneficiaries under the home health benefit when the plan of care does not initially include skilled nursing care. We propose to utilize the physical therapy (PT) LUPA add-on factor to establish the OT add-on factor for the LUPA add-on payment amounts.

In section II.B.6. of this proposed rule, we are proposing conforming regulations text changes at § 409.43 to reflect that allowed practitioners, in addition to physicians, may establish and periodically review the home health plan of care in accordance with section 3708 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116–136, March 27, 2020).

2. Home Health Value Based Purchasing (HHVBP) Model

In section III.A. of this proposed rule, we are proposing to expand the HHVBP Model to all Medicare-certified HHAs in the 50 States, territories, and District of Columbia beginning January 1, 2022 with CY 2022 as the first performance year and CY 2024 as the first payment year, with a proposed maximum payment adjustment, upward or downward, of 5-percent. We propose that the expanded Model would generally use benchmarks, achievement thresholds, and improvement thresholds based on CY 2019 data to assess achievement or improvement of HHA performance on applicable quality measures and that HHAs would compete nationally in their applicable size cohort, smaller-volume HHAs or larger-volume HHAs, as defined by the number of complete unique beneficiary episodes for each HHA in the year prior to the performance year. All HHAs certified to participate in the Medicare program prior to January 1, 2021 would be required to participate and eligible to receive an annual Total Performance Score based on their CY 2022 performance. We propose the applicable measure set for the expanded Model, as well as policies related to the removal, modification, and suspension of quality measures, and the addition of new measures and the form, manner and timing of the OASIS-based, HHCAHPS survey-based, and claims-based measures submission in the proposed applicable measure set beginning CY 2022 and subsequent years. We also include proposals for an appeals process, an extraordinary circumstances exception policy, and public reporting of annual performance data under the expanded Model.

In section III.B. of this proposed rule, we propose to end the original HHVBP Model one year early. We propose that we would not use CY 2020 performance data for the HHAs in the nine original Model States to apply payment adjustments for the CY 2022 payment year. We also propose that we would not publicly report CY 2020 (performance year 5) annual performance data under the original HHVBP Model.

3. HH QRP

In section IV.C. of this proposed rule, we propose updates to the HH QRP including: The removal of one OASIS-based measure, replacement of two claims-based measures with one claims-based quality measure; public reporting of two measures; revising the compliance date for certain reporting

requirements for certain HH QRP reporting requirements and requests for information regarding digital quality measures and health equity.

4. Proposed Changes to the Home Health Conditions of Participation

In section IV.D. of this rule, we propose to make permanent selected regulatory blanket waivers related to home health aide supervision that were issued to Medicare participating home health agencies during the COVID–19 PHE. In addition, Division CC, section 115 of CAA 2021 requires CMS to permit an occupational therapist to conduct the initial assessment visit and complete the comprehensive assessment under the Medicare program, but only when occupational therapy is on the home health plan of care with either physical therapy or speech therapy and skilled nursing services are not initially on the plan of care. We are proposing changes to the home health aide supervision requirements at § 484.80(h)(1) and (h)(2) and we are proposing conforming regulation text changes at § 484.55(a)(2) and (b)(3), respectively to allow occupational therapists completing the initial and comprehensive assessments for patients

5. Medicare Coverage of Home Infusion Therapy

In section V.A.1. of this proposed rule, we discuss the home infusion therapy services payment categories, as finalized in the CYs 2019 and 2020 HH PPS final rules with comment period (83 FR 56406, 84 FR 60611). In section V.A.2. of this proposed rule, we discuss the home infusion therapy services payment adjustments including a proposal to update the GAFs used for wage adjustment and a proposal to maintain the percentages finalized for the initial and subsequent visit policy. In section V.A.3. of this proposed rule, we discuss updates to the home infusion therapy services payment rates for CY 2022, as required by section 1834(u) of the Act.

6. Provider and Supplier Enrollment Processes

In section VI. of this proposed rule, we address a number of provisions regarding Medicare provider and supplier enrollment. Most of these provisions involve the incorporation into 42 CFR part 424, subpart P of certain subregulatory policies. These are addressed in section VI.B. of this proposed rule and include, for example, policies related to: (1) The effective date of billing privileges for certain provider and supplier types and certain provider enrollment transactions; and (2) the deactivation of a provider or supplier's billing privileges.

In addition, we propose in section VI.C. of this proposed rule two regulatory clarifications related to HHA changes of ownership and HHA capitalization requirements.

7. Survey and Enforcement Requirements for Hospice Programs

In section VII. of this proposed rule, there are a number of provisions related to Division CC, section 407 of CAA 2021. These proposed provisions enhance the hospice program survey process by requiring the use of multidisciplinary survey teams, prohibiting surveyor conflicts of interest, expanding CMS-based surveyor training to accrediting organizations (AOs), and requiring AOs with CMS-approved hospice programs to begin use of the Form CMS–2567. Additionally, the proposed provisions establish a hospice program complaint hotline. Finally, the proposed provisions create a Special Focus Program (SFP) for poor-performing hospice programs and the authority for imposing enforcement remedies for noncompliant hospice programs including the development and implementation of a range of remedies as well as procedures for appealing determinations regarding these remedies.

Section 1865(a) of the Act provides that CMS may recognize and approve national AO Medicare accreditation programs which demonstrate that their health and safety standards and survey and oversight processes meet or exceed those used by CMS to determine compliance with applicable requirements. The CAA 2021 provisions expanding requirements for AOs will apply to AOs that accredit and ''deem'' hospice programs, and currently there are three such AOs: Accreditation Commission for Health Care (ACHC), Community Health Accreditation Partner (CHAP), and The Joint Commission (TJC). Half of all the Medicare-certified hospices have been deemed by these AOs.

We describe and solicit comments on all aspects of these proposed survey and enforcement provisions for hospice programs.

8. Inpatient Rehabilitation Facility Quality Reporting Program

In section IX.A. of this proposed rule, we propose to modify the compliance date for certain reporting requirements in the IRF QRP.

9. Long Term Care Hospital Quality Reporting Program

In section IX.B. of this proposed rule, we propose to modify the compliance date for certain reporting requirements in the -LTCH QRP.

C. Summary of Costs, Transfers, and Benefits

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TABLE 1: SUMMARY OF COSTS, TRANSFERS, AND BENEFITS

Provision Description	Costs and Cost Savings	Transfers	Benefits
CY 2022 HH PPS Payment Rate Update		The overall economic impact of the HH PPS payment rate update is an estimated $310 million (1.7 percent) in increased payments to HHAs in CY 2022.	To ensure home health payments are consistent with statutory payment authority for CY 2022.
HHVBP		The overall economic impact of the HHVBP Model for CYs 2022 through 2026 is an estimated $3.154 billion in total savings to FFS Medicare from a reduction in unnecessary hospitalizations and SNF usage as a result of greater quality improvements in the HH industry. As for payments to HHAs, there are no aggregate increases or decreases expected to be applied to the HHAs competing in the model.	
HH QRP	The total savings beginning in CY 2023 is an estimated $2,762,277 based upon the removal of one OASIS-based measure, item M2016.		
Changes to the Home Health Conditions of Participation	We do not anticipate any costs or cost savings associated with our proposed Conditions of Participation provisions.		
Medicare Coverage of Home Infusion Therapy		The overall economic impact of updating the payment rates for home infusion therapy services is expected to be minimal, based on the percentage increase in the CPI-U reduced by the productivity adjustment for CY 2022. The CPI-U for June 2021 was not yet available at the time of this proposed rule.	To ensure that payment for home infusion therapy services are consistent with statutory authority for CY 2022.
Provider and Supplier Enrollment Processes	We do not anticipate any costs or cost savings associated with our proposed Medicare provider and supplier enrollment provisions.	The overall impact of our proposed provider enrollment provisions would be a transfer of $54,145,000 from providers/suppliers to the Federal government. This would result from our proposed provision prohibiting payment for services and items furnished by a deactivated provider or supplier.	
Survey and Enforcement Requirements for Hospice Programs	We estimate that the proposal that we present in the preamble of this proposed rule to implement Division CC, section 407 of CAA 2021 would result in an estimated cost of approximately $5.5 million from FY 2021 through FY 2022.	We do not anticipate any transfers associated with our proposed Medicare survey and enforcement requirements for hospice programs.	To ensure a comprehensive strategy to enhance the hospice program survey process, increase accountability for hospice programs, and provide increased transparency to the public.

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II. Home Health Prospective Payment System

A. Overview of the Home Health Prospective Payment System

1. Statutory Background

Section 1895(b)(1) of the Act requires the Secretary to establish a Home Health Prospective Payment System (HH PPS) for all costs of home health services paid under Medicare. Section 1895(b)(2) of the Act required that, in defining a prospective payment amount, the Secretary will consider an appropriate unit of service and the number, type, and duration of visits provided within that unit, potential changes in the mix of services provided within that unit and their cost, and a general system design that provides for continued access to quality services.

In accordance with the statute, as amended by the Balanced Budget Act of 1997 (BBA), (Pub. L. 105–33, enacted August 5, 1997) we published a final rule in the July 3, 2000 **Federal Register** (65 FR 41128) to implement the HH PPS legislation. Section 4603(a) of the BBA allowed the Secretary to consider an appropriate unit of service and at such time, a 60-day unit of payment was established. The July 2000 final rule established requirements for the new HH PPS for home health services as required by section 4603 of the BBA, as subsequently amended by section 5101 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 (OCESAA) (Pub. L. 105–277, enacted October 21, 1998); and by sections 302, 305, and 306 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, (BBRA) (Pub. L. 106–113,

enacted November 29, 1999). For a complete and full description of the HH PPS as required by the BBA, see the July 2000 HH PPS final rule (65 FR 41128 through 41214).

Section 5201(c) of the Deficit Reduction Act of 2005 (DRA) (Pub. L. 109–171, enacted February 8, 2006) added new section 1895(b)(3)(B)(v) to the Act, requiring home health agencies (HHAs) to submit data for purposes of measuring health care quality, and linking the quality data submission to the annual applicable payment percentage increase. This data submission requirement is applicable for CY 2007 and each subsequent year. If an HHA does not submit quality data, the home health market basket percentage increase is reduced by 2 percentage points. In the November 9, 2006 **Federal Register** (71 FR 65935), we published a final rule to implement the pay-for-reporting requirement of the DRA, which was codified at § 484.225(h) and (i) in accordance with the statute. The pay-for-reporting requirement was implemented on January 1, 2007.

Section 51001(a)(1)(B) of the Bipartisan Budget Act of 2018 (BBA of 2018) (Pub. L. 115–123) amended section 1895(b) of the Act to require a change to the home health unit of payment to 30-day periods beginning January 1, 2020. Section 51001(a)(2)(A) of the BBA of 2018 added a new subclause (iv) under section 1895(b)(3)(A) of the Act, requiring the Secretary to calculate a standard prospective payment amount (or amounts) for 30-day units of service furnished that end during the 12-month period beginning January 1, 2020, in a budget neutral manner, such that estimated aggregate expenditures under the HH PPS during CY 2020 are equal to the estimated aggregate expenditures that otherwise would have been made under the HH PPS during CY 2020 in the absence of the change to a 30-day unit of service. Section 1895(b)(3)(A)(iv) of the Act requires that the calculation of the standard prospective payment amount (or amounts) for CY 2020 be made before the application of the annual update to the standard prospective payment amount as required by section 1895(b)(3)(B) of the Act.

Additionally, section 1895(b)(3)(A)(iv) of the Act requires that in calculating the standard prospective payment amount (or amounts), the Secretary must make assumptions about behavior changes that could occur as a result of the implementation of the 30-day unit of service under section 1895(b)(2)(B) of the Act and case-mix adjustment factors established under section 1895(b)(4)(B) of the Act. Section 1895(b)(3)(A)(iv) of the Act further requires the Secretary to provide a description of the behavior assumptions made in notice and comment rulemaking. CMS finalized these behavior assumptions in the CY 2019 HH PPS final rule with comment period (83 FR 56461).

Section 51001(a)(2)(B) of the BBA of 2018 also added a new subparagraph (D) to section 1895(b)(3) of the Act. Section 1895(b)(3)(D)(i) of the Act requires the Secretary to annually determine the impact of differences between assumed behavior changes, as described in section 1895(b)(3)(A)(iv) of the Act, and actual behavior changes on estimated aggregate expenditures under the HH PPS with respect to years beginning with 2020 and ending with 2026. Section 1895(b)(3)(D)(ii) of the Act requires the Secretary, at a time and in a manner determined appropriate, through notice and comment rulemaking, to provide for one or more permanent increases or decreases to the standard prospective payment amount (or amounts) for applicable years, on a prospective basis, to offset for such increases or decreases in estimated aggregate expenditures, as determined under section 1895(b)(3)(D)(i) of the Act. Additionally, 1895(b)(3)(D)(iii) of the Act requires the Secretary, at a time and in a manner determined appropriate, through notice and comment rulemaking, to provide for one or more temporary increases or decreases to the payment amount for a unit of home health services for applicable years, on a prospective basis, to offset for such increases or decreases in estimated aggregate expenditures, as determined under section 1895(b)(3)(D)(i) of the Act. Such a temporary increase or decrease shall apply only with respect to the year for which such temporary increase or decrease is made, and the Secretary shall not take into account such a temporary increase or decrease in computing the payment amount for a unit of home health services for a subsequent year. Finally, section 51001(a)(3) of the BBA of 2018 amends section 1895(b)(4)(B) of the Act by adding a new clause (ii) to require the Secretary to eliminate the use of therapy thresholds in the case-mix system for CY 2020 and subsequent years.

2. Current System for Payment of Home Health Services Beginning in CY 2020 and Subsequent Years

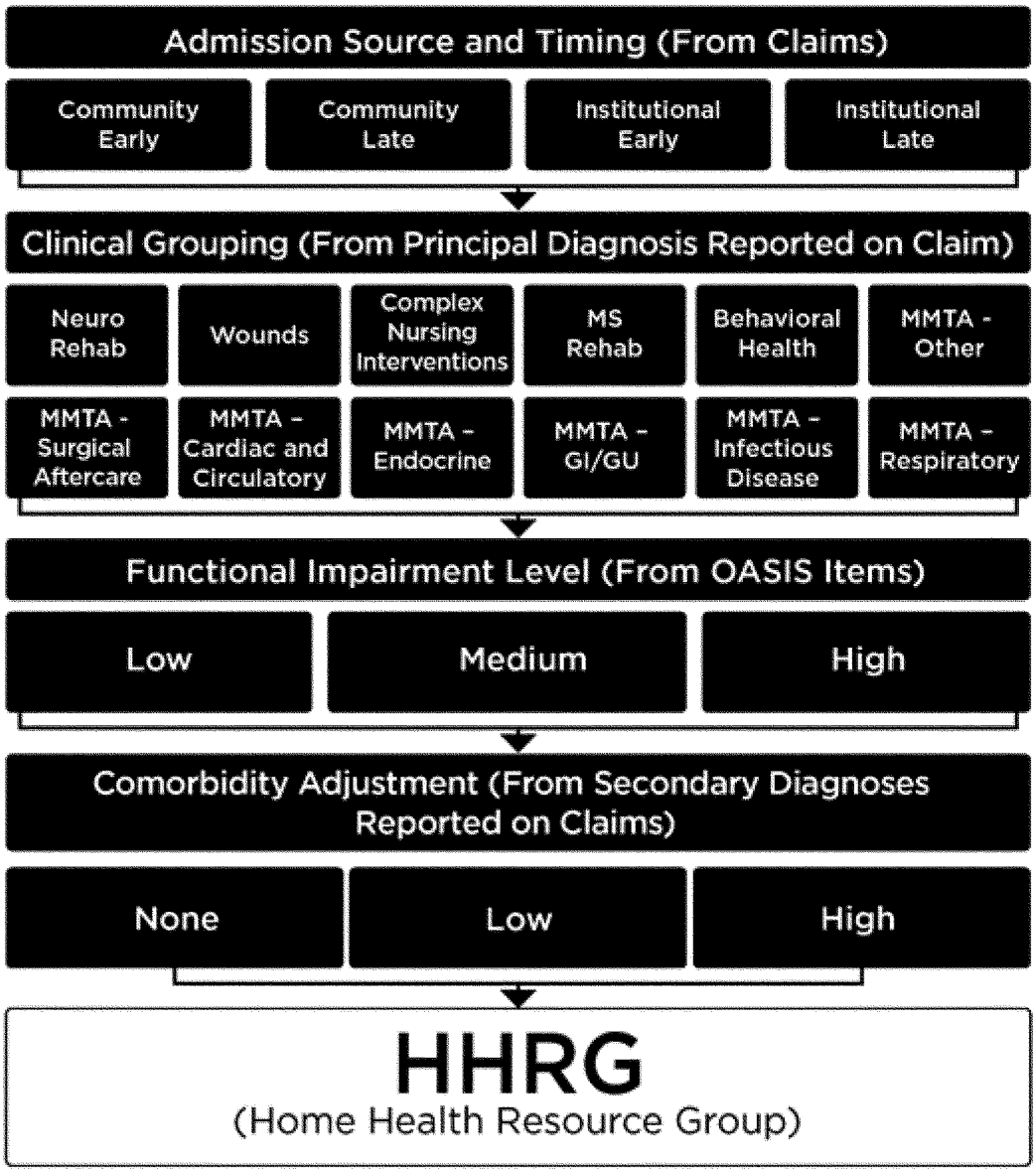
For home health periods of care beginning on or after January 1, 2020, Medicare makes payment under the HH PPS on the basis of a national, standardized 30-day period payment rate that is adjusted for case-mix and area wage differences in accordance with section 51001(a)(1)(B) of the BBA of 2018. The national, standardized 30-day period payment rate includes payment for the six home health disciplines (skilled nursing, home health aide, physical therapy, speech-language pathology, occupational therapy, and medical social services). Payment for non-routine supplies (NRS) is now also part of the national, standardized 30-day period rate. Durable medical equipment provided as a home health service, as defined in section 1861(m) of the Act, is paid the fee schedule amount or is paid through the competitive bidding program and such payment is not included in the national, standardized 30-day period payment amount.

To better align payment with patient care needs and to better ensure that clinically complex and ill beneficiaries have adequate access to home health care, in the CY 2019 HH PPS final rule with comment period (83 FR 56406), we finalized case-mix methodology refinements through the Patient-Driven Groupings Model (PDGM) for home health periods of care beginning on or after January 1, 2020. The PDGM did not change eligibility or coverage criteria for Medicare home health services, and as long as the individual meets the criteria for home health services as described at 42 CFR 409.42, the individual can receive Medicare home health services, including therapy services. For more information about the role of therapy services under the PDGM, we refer readers to the Medicare Learning Network (MLN) Matters article SE2000 available at *https://www.cms.gov/regulations-and-guidance/guidance/transmittals/2020-transmittals/se20005*. To adjust for case-mix for 30-day periods of care beginning on and after January 1, 2020, the HH PPS uses a 432-category case mix classification system to assign patients to a home health resource group (HHRG) using patient characteristics and other clinical information from Medicare claims and the Outcome and Assessment Information Set (OASIS) assessment instrument. These 432 HHRGs represent the different payment groups based on five main case-mix categories under the PDGM, as shown in Figure 1. Each HHRG has an associated case-mix weight that is used in calculating the payment for a 30-day period of care. For periods of care with visits less than the low-utilization payment adjustment (LUPA) threshold for the HHRG, Medicare pays national per-visit rates based on the discipline(s) providing the

services. Medicare also adjusts the national standardized 30-day period payment rate for certain intervening events that are subject to a partial payment adjustment (PEP). For certain cases that exceed a specific cost threshold, an outlier adjustment may also be available.

Under this case-mix methodology, case-mix weights are generated for each of the different PDGM payment groups by regressing resource use for each of the five categories (admission source, timing clinical grouping, functional impairment level, and comorbidity adjustment) using a fixed effects model. A detailed description of each of the case-mix variables under the PDGM have been described previously, and we refer readers to the CY 2021 HH PPS final rule (85 FR 70303 through 70305).

FIGURE 1: CASE-MIX VARIABLES IN THE PDGM



B. Proposed Provisions for Payment Under the HH PPS

1. Monitoring the Effects of the Implementation of PDGM

a. Background

The PDGM made several changes to the HH PPS, including replacing 60-day episodes of care with 30-day periods of care, removing therapy volume from directly determining payment, and developing 432 case-mix adjusted payment groups in place of the previous 153 groups. In the CY 2020 HH PPS final rule with comment period (84 FR 60513), we stated that continued monitoring is needed to understand how the PDGM, including the variables that determine the case-mix weights, affects the provision of home health care in order to inform any future refinements, if needed.

CMS recognizes it takes time for HHAs to operationalize and adjust to a new payment system. We believe these adjustments are still occurring and HHAs are still adjusting to the new payment system given that these changes are the most significant changes to the HH PPS since its inception in

2000. Additionally, the COVID–19 PHE was declared on January 31, 2020 and was retroactive to January 27, 2020.[1] Therefore, any emerging trends may or may not be temporary, permanent, or unrelated to the implementation of the PDGM. Nevertheless, we understand stakeholders want to learn about how home health utilization patterns may have changed under the PDGM, so we are providing preliminary information in this proposed rule.

b. Claims Data Overview Used in PDGM Monitoring

We believe using actual claims data, whenever possible, will provide the most comprehensive and complete evaluation of changes before and after implementation of the PDGM. Prior to the PDGM, HHAs were paid a case-mix adjusted payment for 60-day episodes of care using one of the 153 HHRGs with various therapy utilization thresholds. Under the PDGM, HHAs are paid a case-mix adjusted payment for 30-day periods of care using one of the 432 HHRGs that do not include therapy thresholds. For our analysis, we used the analytic file described in the CY 2020 HH PPS final rule with comment period (84 FR 60512) and applied the three behavioral assumptions to only half of the 30-day periods of care (randomly selected). That is, we used the CY 2018 home health data to divide one 60-day episode of care into two simulated 30-day periods of care that were used to set payment rates in the CY 2020 HH PPS final rule with comment period (84 FR 60518). We also used the analytic file described in the CY 2021 HH PPS final rule (85 FR 70298) and applied the three behavioral assumptions to only half of the 30-day periods of care (randomly selected). That is, we used the CY 2019 home health data to divide one 60-day episode of care into two simulated 30-day periods of care that we used to for routine rate-setting updates and changes for CY 2021. The simulated data in these analytical files represent pre-PDGM utilization. We refer readers to the CY 2019 HH PPS proposed rule (83 FR 32382 through 32388) for a detailed description of how these analytical files were created. Finally, we used CY 2020 claims data as of March 30, 2021 to analyze utilization changes post-implementation of the PDGM and 30-day unit of payment.

c. Routine PDGM Monitoring

As noted previously, section 1895(b)(3)(D) of the Act requires CMS to annually determine the impact of assumed versus actual behavior changes on aggregate expenditures under the HH PPS for CYs 2020 through 2026. Analyses for routine monitoring may include, but would not be limited to, analyzing: Overall total 30-day periods of care and average periods of care per HHA user; the distribution of visits in a 30-day period of care; the percentage of periods that receive the low-utilization payment adjustment (LUPA); the percentage of 30-day periods of care by clinical group, comorbidity adjustment, admission source, timing, and functional impairment level; and the proportion of 30-day periods of care with and without any therapy visits. As a reminder, the beginning of CY 2020 included ongoing 60-day episodes of care that began in CY 2019 and ended in CY 2020. Depending on the length of the remainder of the episode, those 60-day episodes were simulated into one or two 30-day periods of care and are included in this year's proposed rule monitoring tables. Approximately, 6.1 percent of the 30-day periods of care in CY 2020 data were simulated because the original 60-day episode of care began in CY 2019 and ended in CY 2020. We remind readers, our preliminary analysis described in this section is not tied to any quality program.

(1) Utilization

We evaluate utilization by comparing our simulated 30-day periods in our analytical files, to actual CY 2020 PDGM claims, as described previously. The analytic files used for annual ratesetting do not include all 60-day episodes or 30-day periods of care because some of these episodes/periods are dropped for various reasons (for example, the claim could not be matched to an OASIS assessment). For all of the tables that follow, we examined utilization for CY 2018 simulated 30-day periods of care, CY 2019 simulated 30-day periods of care, and CY 2020 actual 30-day periods of care. Table 2 shows the overall utilization of home health over time. Table 3 shows utilization of visits per 30-day period of care by home health discipline over time. Preliminary data indicates while the number of 30-day periods of care decreased between CY 2018 and CY 2020, the average number of 30-day periods of care per unique HHA user is similar. Additionally, our preliminary data indicates, on average, the number of visits per 30-day period of care for all disciplines decreased between CY 2018 and CY 2020. On average, the total number of visits decreased by 1.27 visits per 30-day period of care between CY 2018 and CY 2020. Table 4 shows the proportion of 30-day periods of care that are LUPAs and the average number of visits per discipline of those LUPA 30-day periods of care over time.

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[1] *https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx.*

TABLE 2: OVERALL UTILIZATION OF HOME HEALTH SERVICES, CYs 2018-2020

	CY 2018 (Simulated)	CY 2019 (Simulated)	CY 2020
30-Day Periods of Care	9,336,898	8,744,171	8,165,402
Unique HHA Users	2,980,385	2,802,560	2,786,662
Average Number of 30-Day Periods of care per Unique HHA User	3.13	3.12	2.93

Source: Analysis of data for CY 2018 through CY 2020. CY 2018 and CY 2019 data came from the Home Health Limited Data Set (LDS) file and we applied the three behavioral assumptions to half the claims (randomly selected). CY 2020 was accessed from the Chronic Conditions Data Warehouse (CCW) Virtual Research Data Center (VRDC) on March 30, 2021.

Notes: There are approximately 540,000 60-day episodes that started in 2019 and ended in 2020 that are not included in this analysis. All 30-day periods of care claims were included (for example LUPAs, PEPs, and outliers).

TABLE 3: UTILIZATION OF VISITS PER 30-DAY PERIODS OF CARE BY HOME HEALTH DISCIPLINE, CYs 2018-2020

Discipline	CY 2018 (Simulated)	CY 2019 (Simulated)	CY 2020
Skilled Nursing	4.53	4.49	4.35
Physical Therapy	3.30	3.33	2.71
Occupational Therapy	1.02	1.07	0.78
Speech Therapy	0.21	0.21	0.16
Home Health Aide	0.72	0.67	0.54
Social Worker	0.08	0.08	0.06
Total (all disciplines)	9.86	9.85	8.59

Source: Analysis of data for CY 2018 through CY 2020. CY 2018 and CY 2019 data came from the Home Health LDS file and we applied the three behavioral assumptions to half the claims (randomly selected). CY 2020 was accessed from the CCW VRDC on March 30, 2021.

Notes: There are approximately 540,000 60-day episodes that started in 2019 and ended in 2020 that are not included in this analysis. All 30-day periods of care were included (for example LUPAs, PEPs, and outliers).

TABLE 4: THE PROPORTION OF 30-DAY PERIODS OF CARE THAT ARE LUPAs AND THE AVERAGE NUMBER OF VISITS BY HOME HEALTH DISCIPLINE FOR LUPA HOME HEALTH PERIODS, CYs 2018-2020

Discipline	CY 2018 (Simulated)	CY 2019 (Simulated)	CY 2020
Total percentage of overall 30-day periods of care that are LUPAs	6.7%	6.8%	8.6%
Discipline (Average # of visits for LUPA home health periods)			
Skilled Nursing	1.15	1.14	1.19
Physical Therapy	0.43	0.46	0.53
Occupational Therapy	0.07	0.07	0.08
Speech Therapy	0.02	0.02	0.02
Home Health Aide	0.01	0.01	0.01
Social Worker	0.01	0.01	0.01

Source: Analysis of data for CY 2018 through CY 2020. CY 2018 and CY 2019 data came from the Home Health LDS file and we applied the three behavioral assumptions to half the claims (randomly selected). CY 2020 was accessed from the CCW VRDC on March 30, 2021.

Notes: The average (CY 2018 to CY 2020) number of visits per 30-day periods of care across all claims for skilled nursing is 4.46, for physical therapy is 3.13, for occupational therapy is 0.97, for speech therapy is 0.19, for home health aid is 0.65, and for social worker is 0.07. There are approximately 540,000 60-day episodes that started in 2019 and ended in 2020 that are not included in this analysis.

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(2) Analysis of 2019 Cost Report Data for 30-Day Periods of Care

In the CY 2020 HH PPS final rule with comment period (84 FR 60483), we provided a summary of analysis on fiscal year (FY) 2017 HHA cost report data and how such data, if used, would impact our estimate of the percentage difference between Medicare payments; the CY 2020 30-day payment amount and estimated, average HHA costs for a 30-day period of care. In that rule, we utilized FY 2017 cost reports and CY 2017 home health claims to estimate both 60-day episode of care and 30-day period of care costs. We then updated the estimated CY 2017 60-day episode costs and 30-day period of care costs by the home health market basket update, reduced by the productivity adjustment for CYs 2018, 2019 and 2020 to calculate the 2020 estimated 60-day episode and 30-day period of care costs. As stated in the CY 2020 HH PPS final rule with comment period (84 FR 60485), we estimated that the CY 2020 30-day payment amount was approximately 16 percent higher than the average costs for a 30-day period of care. In MedPAC's March 2020 Report to Congress,[2] their review of home health payment adequacy found that ''access is more than adequate in most areas and that Medicare payments are substantially in excess of costs''.

In this proposed rule, we examined 2019 HHA Medicare cost reports, as this is the most recent and complete cost report data at the time of rulemaking, and CY 2020 30-day period of care home health claims, to estimate 30-day period of care costs. We excluded LUPAs and PEPs in the average number of visits. The 2019 average NRS costs per visit is $3.94. We updated the estimated 30-day period of care costs, 2019 average costs per visit with NRS by the CY 2020 home health market basket update, reduced by the productivity adjustment of 2.6 percent. Table 5 shows the estimated average costs for 30-day periods of care by discipline with NRS and the total 30-day period of care costs with NRS for CY 2020.

[2] *http://www.medpac.gov/docs/default-source/reports/mar20_medpac_ch9_sec.pdf?sfvrsn=0.*

TABLE 5: ESTIMATED COSTS FOR 30-DAY PERIODS OF CARE IN CY 2020

Discipline	2019 Average Costs per visit with NRS	2020 Average Number of Visits	2020 Market Basket Update	2020 Estimated 30-Day Period Costs
Skilled Nursing	$142.75	4.66	1.026	$682.51
Physical Therapy	$160.85	2.92	1.026	$481.89
Occupational Therapy	$160.14	0.85	1.026	$139.66
Speech Pathology	$181.27	0.17	1.026	$31.62
Medical Social Services	$238.66	0.06	1.026	$14.69
Home Health Aides	$73.20	0.59	1.026	$44.31
Total				$1,394.68

Source: 2019 Medicare cost report data obtained on January 26, 2021. Home health visit information came from episodes ending on or before December 31, 2019 (obtained from the CCW VRDC on July 13, 2020).
Note: The 2020 average number of visits excludes LUPAs and PEPs.

The CY 2020 national, standardized 30-day period payment rate was $1,864.03, which is approximately 34 percent more than the estimated CY 2020 30-day period cost of $1,394.68. Note that in the CY 2020 HH PPS final rule with comment period (84 FR 60484), the estimated average number of visits for a 30-day period of care in 2017 was estimated to be 10.5 visits. Using actual CY 2020 claims data, the average number of visits in a 30-day period was 9.25 visits—a decrease of approximately 12 percent. We recognize that with the COVID–19 PHE, the 2019 data on the Medicare cost reports may not reflect the most recent changes such as increased telecommunications technology costs, increased personal protective equipment (PPE) costs, and hazard pay. In its March 2021 Report to Congress, to estimate Medicare margins for 2021, MedPAC assumed a cost growth of 3 percent for CY 2020 (2 percentage points due to inflation and higher expenses for PPE and telehealth and 1 percentage point due to temporary surge pricing for PPE and other temporary costs of the PHE).[3] Furthermore, MedPAC noted that for more than a decade, payments under the HH PPS have significantly exceeded HHAs' costs primarily due to two factors—agencies reducing visits to reduce episode costs and cost growth in recent years has been lower than the annual payment updates.[4] As shown in Table 3 in this proposed rule, HHAs have reduced visits under the PDGM in CY 2020. When the 2020 cost reports become available, we will update the estimated 30-day period of care costs in CY 2020 in future rulemaking.

[3] *http://www.medpac.gov/docs/default-source/reports/mar21_medpac_report_to_the_congress_sec.pdf?sfvrsn=0.*

[4] Ibid.

(3) Clinical Groupings and Comorbidities

Each 30-day period of care is grouped into one of 12 clinical groups, which describe the primary reason for which patients are receiving home health services under the Medicare home health benefit. The clinical grouping is based on the principal diagnosis reported on the home health claim. Table 6 shows the distribution of the 12 clinical groups over time. We also include the average case-mix weight for all 30-day periods in each of the clinical groups in CY 2020. In other words, the average case-mix weight for each clinical group includes all possible comorbidity adjustments, admission source and timing, and functional impairment levels. We refer readers to Table 16 in the CY 2020 HH PPS final rule with comment period (84 FR 60522 through 60533) for the CY 2020 PDGM LUPA threshold and case mix weight for each HHRG payment group.

TABLE 6: DISTRIBUTION OF 30-DAY PERIODS OF CARE BY THE 12 PDGM CLINICAL GROUPS, CYs 2018-2020

Clinical Grouping	CY 2018 (Simulated)	CY 2019 (Simulated)	CY 2020	Average Case-mix Weight for Each Group
Behavioral Health	1.7%	1.5%	2.3%	0.8243
Complex	2.6%	2.5%	3.5%	0.8574
MMTA – Cardiac	16.5%	16.1%	19.0%	0.9202
MMTA – Endocrine	17.3%	17.4%	7.2%	1.0161
MMTA – GI/GU	2.2%	2.3%	4.7%	0.9793
MMTA – Infectious	2.9%	2.7%	4.8%	0.9805
MMTA – Other	4.7%	4.7%	3.1%	0.9711
MMTA – Respiratory	4.3%	4.1%	7.8%	0.9906
MMTA – Surgical Aftercare	1.8%	1.8%	3.5%	1.0701
MS Rehab	17.1%	17.3%	19.4%	1.1174
Neuro	14.4%	14.5%	10.5%	1.1603
Wound	14.5%	15.1%	14.2%	1.1923

Source: Analysis of data for CY 2018 through CY 2020. CY 2018 and CY 2019 data came from the Home Health LDS file and we applied the three behavioral assumptions to half the claims (randomly selected). CY 2020 was accessed from the CCW VRDC on March 30, 2021.

Note: The average case mix weight for each clinical group includes all 30-day periods regardless of other adjustments (for example admission source, timing, comorbidities, etc.)

Thirty-day periods will receive a comorbidity adjustment category based on the presence of certain secondary diagnoses reported on home health claims. These diagnoses are based on a home health specific list of clinically and statistically significant secondary diagnosis subgroups with similar resource use. We refer readers to section II. of this proposed rule and the CY 2020 final rule with comment period (84 FR 60493) for further information on the categories of the comorbidity adjustment. Home health 30-day periods of care can receive a low or a high comorbidity adjustment, or no comorbidity adjustment. Table 7 shows the distribution of 30-day periods of care by comorbidity adjustment category for all 30-day periods. We also include the average case-mix weight for each of the comorbidity adjustments in CY 2020. In other words, the average case-mix weight for each comorbidity adjustment includes all possible clinical groupings, admission source and timing, and functional impairment levels.

TABLE 7: DISTRIBUTION OF 30-DAY PERIODS OF CARE BY COMORBIDITY ADJUSTMENT CATEGORY FOR 30-DAY PERIODS, CYs 2018-2020

Comorbidity Adjustment	CY 2018 (Simulated)	CY 2019 (Simulated)	CY 2020	Average Case-mix Weight for Each Group
None	55.6%	52.0%	49.2%	1.0058
Low	35.3%	38.0%	36.9%	1.0446
High	9.2%	10.0%	14.0%	1.1683

Source: Analysis of data for CY 2018 through CY 2020. CY 2018 and CY 2019 data came from the Home Health LDS file and we applied the three behavioral assumptions to half the claims (randomly selected). CY 2020 was accessed from the CCW VRDC on March 30, 2021.

Note: The average case mix weight for each clinical group includes all 30-day periods regardless of other adjustments (for example admission source, timing, clinical group, etc.)

(4) Admission Source and Timing

Each 30-day period of care is classified into one of two admission source categories—community or institutional—depending on what healthcare setting was utilized in the 14 days prior to receiving home health care. Thirty-day periods of care for beneficiaries with any inpatient acute care hospitalizations, inpatient psychiatric facility (IPF) stays, skilled nursing facility (SNF) stays, inpatient rehabilitation facility (IRF) stays, or long-term care hospital (LTCH) stays within 14 days prior to a home health admission are designated as institutional admissions. Thirty-day periods of care are classified as ''early'' or ''late'' depending on when they occur within a sequence of 30-day periods of care. The first 30-day period of care is classified as early and all subsequent 30-day periods of care in the sequence (second or later) are classified as late. A subsequent 30-day period of care would not be considered early unless there is

a gap of more than 60 days between the end of one previous period of care and the start of another. Information regarding the timing of a 30-day period of care comes from Medicare home health claims data and not the OASIS assessment to determine if a 30-day period of care is ''early'' or ''late''. Table 8 shows the distribution of 30-day periods of care by admission source and timing over time. We also include the average case-mix weight for each of the admission source and period timing in CY 2020. In other words, the average case-mix weight for each admission source and period timing includes all possible clinical groupings, comorbidity adjustment, and functional impairment levels. We refer readers to Table 16 in the CY 2020 HH PPS Final Rule with comment period (84 FR 60522 through 60533) for the CY 2020 PDGM LUPA threshold and case mix weight for each HHRG payment group.

TABLE 8: DISTRIBUTION OF 30-DAY PERIODS OF CARE BY ADMISSION SOURCE AND PERIOD TIMING, CYs 2018-2020

Admission Source	Period Timing	CY 2018 (Simulated)	CY 2019 (Simulated)	CY 2020	Average Case-mix Weight for Each Group
Community	Early	13.5%	13.8%	12.5%	1.2584
Community	Late	61.1%	60.9%	61.9%	0.8504
Institutional	Early	18.6%	18.4%	19.9%	1.4234
Institutional	Late	6.8%	6.9%	5.8%	1.3303

Source: Analysis of data for CY 2018 through CY 2020. CY 2018 and CY 2019 data came from the Home Health LDS file and we applied the three behavioral assumptions to half the claims (randomly selected). CY 2020 was accessed from the CCW VRDC on March 30, 2021.

(5) Functional Impairment Level

Each 30-day period of care is placed into one of three functional impairment levels (low, medium, or high) based on responses to certain OASIS functional items associated with grooming, bathing, dressing, ambulating, transferring, and risk for hospitalization. The specific OASIS items that are used for the functional impairment level are found in Table 7 in the CY 2020 HH PPS final rule with comment period (84 FR, 60490). Responses to these OASIS items are grouped together into response categories with similar resource use and each response category has associated points. A more detailed description as to how these response categories were established can be found in the technical report, ''Overview of the Home Health Groupings Model'' posted on the HHA web page.[5] The sum of these points' results in a functional impairment level score used to group 30-day periods of care into a functional impairment level with similar resource use. The scores associated with the functional impairment levels vary by clinical group to account for differences in resource utilization. The functional impairment level will remain the same for the first and second 30-day periods of care unless there has been a significant change in condition which that warranted an ''other follow-up'' assessment prior to the second 30-day period of care. For each 30-day period of care, the Medicare claims processing system will look for the most recent OASIS assessment based on the claims ''from date.'' Table 9 shows the distribution of 30-day periods by functional status. We also include the average case-mix weight for each functional impairment level in CY 2020. In other words, the average case-mix weight for each functional impairment level includes all possible clinical groupings, comorbidity adjustment, and admission source and period timing. We refer readers to Table 16 in the CY 2020 HH PPS Final Rule with comment period (84 FR 60522 through 60533) for the CY 2020 PDGM LUPA threshold and case mix weight for each HHRG payment group.

TABLE 9: DISTRIBUTION OF 30-DAY PERIODS OF CARE BY FUNCTIONAL IMPAIRMENT LEVEL, CYs 2018-2020

Functional Impairment Level	CY 2018 (Simulated)	CY 2019 (Simulated)	CY 2020	Average Case mix Weight for Each Group
Low	33.9%	31.9%	25.6%	0.8392
Medium	34.9%	35.5%	32.7%	1.0373
High	31.2%	32.6%	41.7%	1.1724

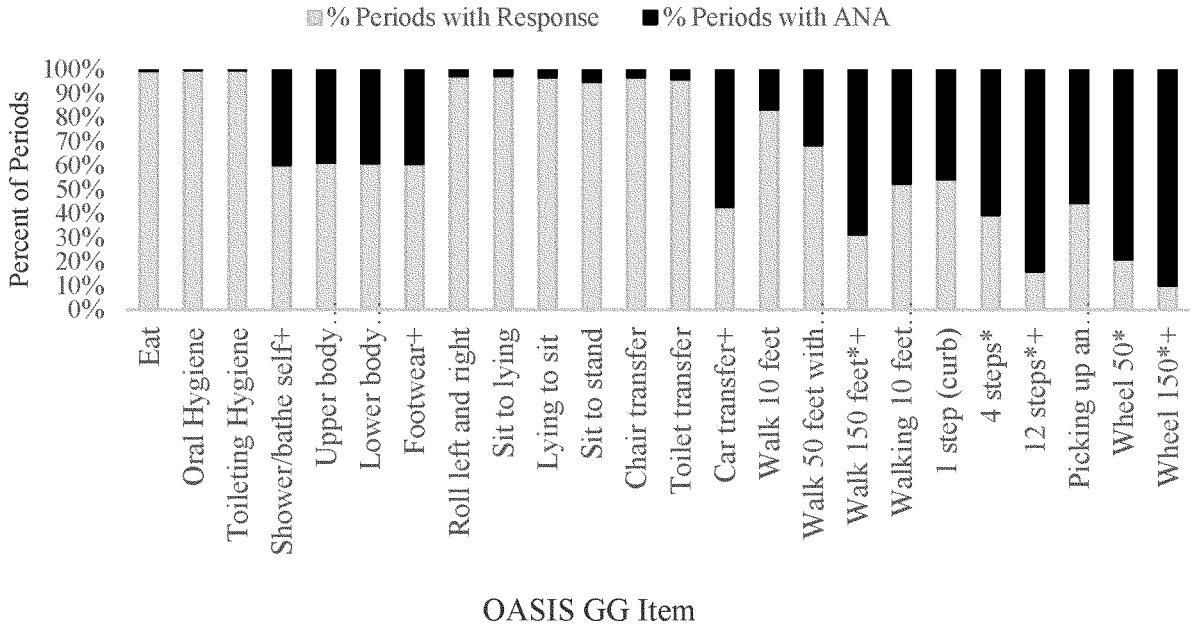
Source: Analysis of data for CY 2018 through CY 2020. CY 2018 and CY 2019 data came from the Home Health LDS file and we applied the three behavioral assumptions to half the claims (randomly selected). CY 2020 was accessed from the CCW VRDC on March 30, 2021.

[5] Overview of the Home Health Groupings Model. November 18, 2016. *https://downloads.cms.gov/files/hhgm%20technical%20report%20120516%20sxf.pdf.*

Currently, the functional impairment level is determined by responses to certain OASIS items associated with functional activities of daily living and risk of hospitalization; that is, responses to OASIS items M1800–M1860 and M1032. However, the Improving Medicare Post-Acute Care Transformation Act of 2014 (IMPACT Act) (Pub. L. 113–185, enacted on October 6, 2014) amended Title XVIII of the Act to include enacting new data reporting requirements for certain post-acute care (PAC) providers, including HHAs. Sections 1899B(b)(1)(A) of the Act requires the Secretary to require home health agencies to report standardized patient assessment data beginning no later than January 1, 2019. The standardized patient assessment data categories include functional status, such as mobility and self-care at admission and discharge, in accordance with 1899B(b)(1)(B)(i) of the Act. As such, CMS finalized adding the functional items, Section GG, ''Functional Abilities and Goals'', to the OASIS data set, effective January 1, 2019, in order to be able to measure functional status across PAC providers. At the time of CY 2020 rulemaking, we did not yet have the data to determine the effect, if any, of these newly added items on resource costs utilization during a home health period of care for use in the PDGM. Therefore, the GG functional items are not currently used to determine the functional impairment level under the PDGM.

We have examined the correlation between the current functional items used for payment (that is, M1800–1860) and the analogous GG items. We note that M1032, Risk for Hospitalization, does not have a corresponding GG item. Our preliminary analysis shows there is a correlation between the current responses to the M1800–1860 items and the GG items. However, there are certain information in M1800 items that are being collected at follow-up that are not collected with GG items (for example, the M1800 items associated with upper and lower body dressing are collected at follow up). Additionally, the GG items include an ''Activity Not Attempted'' (ANA) option, meaning the clinician did not put a response for the patient. Furthermore, there are a variety of ANA responses, including ''Not attempted due to medical or safety concerns'', and ''Not applicable''. Figure 2 shows the frequencies by response type in CY 2020 to the OASIS GG items.

FIGURE 2: OASIS GG ITEM FREQUENCIES BY RESPONSE TYPE IN CY 2020



Source: CY 2020 home health periods linked to OASIS data accessed from the CCW VRDC on March 30, 2021. Sample composed of 8,791,804 home health periods ending in 2020.
Notes: +Item is not collected on the follow-up assessment. *Item is skipped if a prior item has an ANA response. Wheel 50 and Wheel 150 are skipped if the patient is not indicated as using a wheelchair.

Our analysis of the GG items shows a significant amount of these ANA responses, making it difficult to map to the corresponding M1800–1860 item responses. Therefore, we will continue to monitor the GG items to determine the correlation between the current functional items used to case-mix adjust home health payments and the GG items, and we will provide additional analysis of the GG functional items in future rulemaking.

(6) Therapy Visits

Beginning in CY 2020, section 1895(b)(4)(B)(ii) of the Act eliminated the use of therapy thresholds in calculating payments for CY 2020 and subsequent years. Prior to implementation of the PDGM, HHAs could receive an adjustment to payment based on the number of therapy visits provided during a 60-day episode of care. As such, we examined the proportion of simulated 30-day periods with and without any therapy visits for CYs 2018 and 2019, prior to the removal of therapy thresholds. We also examined the proportion of actual 30-day periods of care with and without therapy visits for CY 2020, after the removal of therapy thresholds. To be

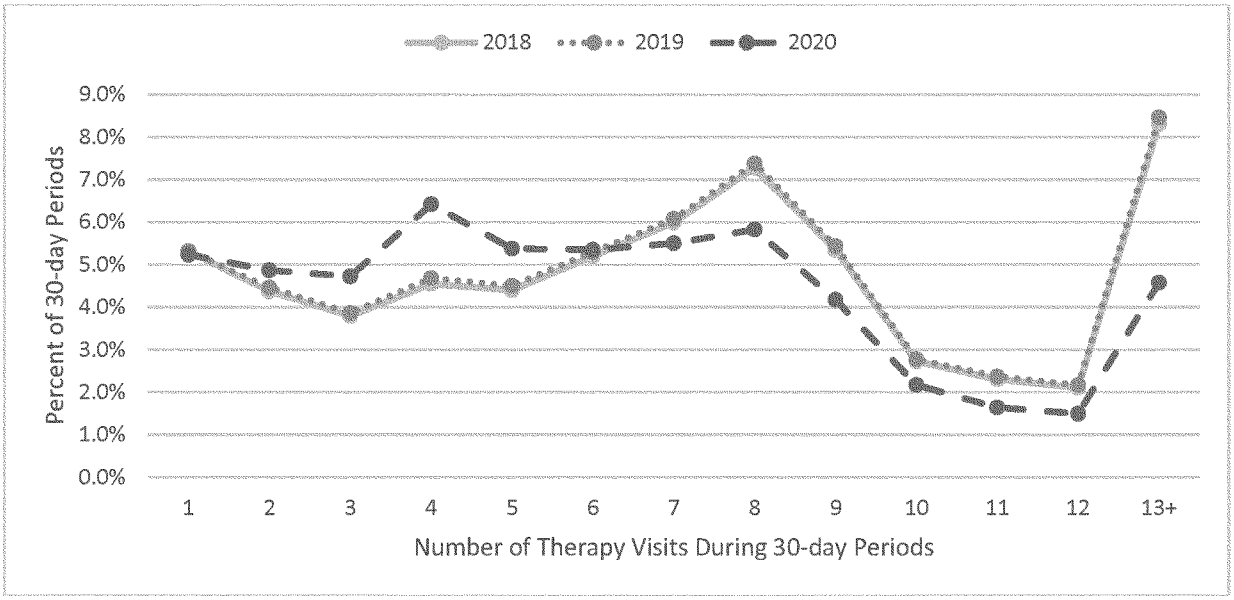
covered as skilled therapy, the services must require the skills of a qualified therapist (that is, PT, OT, or SLP) or qualified therapist assistant and must be reasonable and necessary for the treatment of the patient's illness or injury.[6] As shown in Table 3, we are monitoring the number of visits per 30-day periods of care by each home health discipline. Any 30-day period of care can include both therapy and non-therapy visits. If any 30-day period of care consisted of only visits for PT, OT, and/or SLP, then this 30-day period of care is considered ''therapy only''. If any 30-day period of care consisted of only visits for skilled nursing, home health aide, or social worker, then this 30-day period of care is considered ''no therapy''. If any 30-day period of care consisted of at least one therapy visit and one non-therapy, then this 30-day period of care is considered ''therapy + non-therapy''. Table 10 shows the proportion of 30-day periods of care with only therapy visits, at least one therapy visit and one non-therapy visits, and no therapy visits. Figure 3 shows the proportion of 30-day periods of care by the number of therapy visits (excluding zero) provided during 30-day periods of care.

TABLE 10: PROPORTION OF 30-DAY PERIODS OF CARE WITH ONLY THERAPY, AT LEAST ONE THERAPY VISITS, AND NO THERAPY VISIT FOR CY 2018-2020

30-day Period Visit Type	CY 2018 (Simulated)	CY 2019 (Simulated)	CY 2020
Therapy Only	13.5%	14.4%	15.2%
Therapy + Non-therapy	48.2%	48.4%	42.2%
No Therapy	38.3%	37.2%	42.6%
Total 30-day periods	9,336,898	8,744,171	8,165,402

Source: Analysis of data for CY 2018 through CY 2020. CY 2018 and CY 2019 data came from the Home Health LDS file and we applied the three behavioral assumptions to half the claims (randomly selected). CY 2020 was accessed from the CCW VRDC on March 30, 2021.

FIGURE 3: PROPORTION OF 30-DAY PERIODS OF CARE BY THE NUMBER OF THERAPY VISITS DURING 30-DAY PERIODS, CYs 2018-2020.



Source: Analysis of data for CY 2018 through CY 2020. CY 2018 and CY 2019 data came from the Home Health LDS file and we applied the three behavioral assumptions to half the claims (randomly selected). CY 2020 was accessed from the CCW VRDC on March 30, 2021 and includes all months of data.
Notes: Thirty-day periods of care with ≥13 therapy visits were combined into one category for illustrative purposes only

Both Table 10 and Figure 3, as previously discussed, indicate there have been changes in the distribution of both therapy and non-therapy visits in CY 2020. For example, the percent of 30-day periods with six or less therapy

[6] Medicare Benefit Policy Manual, Chapter 7 Home Health Services, Section 40.2 Skilled Therapy Services *https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/bp102c07.pdf.*

visits during a 30-day period increased in CY 2020. However, the percent of 30-day periods with seven or more therapy visits decreased in CY 2020.

In addition, we also examined the proportion of 30-day periods of care with and without skilled nursing, social work, or home health aide visits for CYs 2018, 2019 and 2020. Table 11 shows the number of 30-day periods of care with only skilled nursing visits, at least one skilled nursing visit and one other visit type (therapy or non-therapy), and no skilled nursing visits. Table 13 shows the number of 30-day periods of care with and without home health aide and/or social worker visits.

TABLE 11: PROPORTION OF 30-DAY PERIODS OF CARE WITH ONLY SKILLED NURSING, SKILLED NURSING + OTHER VISIT TYPE, AND NO SKILLED NURSING VISITS FOR CYs 2018-2020

30-day Period Visit Type	CY 2018 (Simulated)	CY 2019 (Simulated)	CY 2020
Skilled Nursing Only	33.8%	33.1%	38.6%
Skilled Nursing + Other	51.6%	51.5%	45.2%
No Skilled Nursing	14.7%	15.5%	16.2%
Total 30-day periods	9,336,898	8,744,171	8,165,402

Source: Analysis of data for CY 2018 through CY 2020. CY 2018 and CY 2019 data came from the Home Health LDS file and we applied the three behavioral assumptions to half the claims (randomly selected). CY 2020 was accessed from the CCW VRDC on March 30, 2021.

TABLE 12: PROPORTION OF 30-DAY PERIODS OF CARE WITH AND WITHOUT HOME HEALTH AIDE AND/OR SOCIAL WORKER VISITS FOR CYs 2018-2020

30-day Period Visit Type	CY 2018 (Simulated)	CY 2019 (Simulated)	CY 2020
Any HH aide and/or social worker	16.6%	15.9%	13.1%
No HH aide and/or social worker	83.4%	84.1%	86.9%
Total 30-day periods	9,336,898	8,744,171	8,165,402

Source: Analysis of data for CY 2018 through CY 2020. CY 2018 and CY 2019 data came from the Home Health LDS file and we applied the three behavioral assumptions to half the claims (randomly selected). CY 2020 was accessed from the CCW VRDC on March 30, 2021.

We will continue to monitor the provision of home health services, including any changes in the number and duration of home health visits, composition of the disciplines providing such services, and overall home health payments to determine if refinements to the case-mix adjustment methodology may be needed in the future.

We solicit public comments on the preliminary data analysis presented in this rule and we solicit comments on whether there are other analyses that should be conducted to examine the effects of the PDGM on home health expenditures and utilization.

2. Comment Solicitation on the Annual Determination of the Impact of Differences Between Assumed Behavior Changes and Actual Behavior Changes on Estimated Aggregate Payment Expenditures Under the HH PPS

a. Background

Section 1895(b)(3)(A)(iv) of the Act, required CMS, with respect to payments for home health units of service furnished that end during the 12-month period beginning January 1, 2020, to calculate a standard prospective payment amount (or amounts) for 30-day units of service in a manner such that the estimated aggregate amount of expenditures would be equal to the estimated aggregate amount of expenditures that otherwise would have been made had the 30-day unit of payment not been enacted. In calculating such amount (or amounts), CMS was required to make assumptions about behavior changes that could occur as a result of the implementation of the 30-day unit of payment and the case-mix adjustment factors that eliminated the use of therapy thresholds. CMS was to provide a description of such assumptions through notice and comment rulemaking.

In the CY 2019 HH PPS final rule with comment period (83 FR 56454), as required by law, we stated that this means we were required to calculate a 30-day period payment amount for CY 2020 in a budget neutral manner such that estimated aggregate expenditures under the HH PPS during CY 2020 were equal to the estimated aggregate expenditures that otherwise would have been made under the HH PPS during CY 2020 in the absence of the change to a 30-day unit of payment and the implementation of the PDGM case-mix adjustment methodology. This means

that aggregate Medicare payments under the new 432-group payment system and 30-day unit of payment would be the same as they would have been under the 153-group payment system and 60-day unit of payment.

In the CY 2019 HH PPS final rule with comment period (83 FR 56455), we finalized three behavior assumptions in order to calculate a 30-day budget-neutral payment amount for CY 2020:

- *Clinical Group Coding:* The clinical group is determined by the principal diagnosis code for the patient as reported by the HHA on the home health claim. This behavior assumption assumes that HHAs will change their documentation and coding practices and put the highest paying diagnosis code as the principal diagnosis code in order to have a 30-day period be placed into a higher-paying clinical group.
- *Comorbidity Coding:* The PDGM further adjusts payments based on patients' secondary diagnoses as reported by the HHA on the home health claim. The OASIS only allows HHAs to designate 1 principal diagnosis and 5 secondary diagnoses while the home health claim allows HHAs to designate 1 principal diagnosis and up to 24 secondary diagnoses. This behavior assumption assumes that by taking into account additional ICD–10–CM diagnosis codes listed on the home health claim (beyond the 6 allowed on the OASIS), more 30-day periods of care will receive a comorbidity adjustment.
- *LUPA Threshold:* This behavior assumption assumes that for one-third of LUPAs that are 1 to 2 visits away from the LUPA threshold HHAs will provide 1 to 2 extra visits to receive a full 30-day payment.

There are overlaps and interactions between these behavior assumptions, and when combined, the budget-neutral payment amount for CY 2020 resulted in a proposed −8.389 percent adjustment to the 30-day period payment amount compared to the payment amount calculated in a budget neutral manner without these assumptions applied. In response to the proposed rule, commenters stated that CMS overestimated the magnitude of the assumed behavior changes. We reconsidered the frequency of the assumed behaviors during the first year of the transition to the new unit of payment and case-mix adjustment methodology in response to these comments, and in the CY 2020 HH PPS final rule with comment period (84 FR 60519), we finalized a −4.36 percent behavior assumption adjustment in order to calculate a national, standardized 30-day base payment rate. After applying the wage index budget neutrality factor and the home health payment update, the CY 2020 30-day payment rate was set at $1,864.03, and for determining outlier payments the fixed-dollar loss (FDL) ratio was set at 0.56.

Section 1895(b)(3)(D)(i) of the Act requires CMS to annually determine the impact of the differences between assumed behavior changes and actual behavior changes on estimated aggregate expenditures beginning with 2020 and ending with 2026. In the CY 2020 final rule (84 FR 60513), we stated that we interpret actual behavior changes to encompass both behavior changes that were previously outlined, as assumed by CMS, and other behavior changes not identified at the time that the budget neutral 30-day payment for CY 2020 was determined. As required by 1895(b)(3)(D)(ii) of the Act, the Secretary shall, at a time and in a manner determined appropriate, through notice and comment rulemaking, provide for one or more permanent increases or decreases to the standard prospective payment amount (or amounts) for applicable years, on a prospective basis, to offset for such increases or decreases in estimated aggregate expenditures.

As required by section 1895(b)(3)(D)(iii) of the Act, the Secretary shall, at a time and in a manner determined appropriate, through notice and comment rulemaking, provide for one or more temporary increases or decreases to the payment amount for a unit of home health services for applicable years, on a prospective basis, to offset for such increases or decreases in estimated aggregate expenditures. Such a temporary increase or decrease shall apply only with respect to the year for which such temporary increase or decrease is made, and the Secretary shall not take into account such a temporary increase or decrease in computing such amount for a subsequent year. That is, we are required to retrospectively determine if the 30-day payment amount in CY 2020 resulted in the same level of estimated aggregate expenditures that would have been made if the change in the unit of payment and the PDGM case-mix adjustment methodology had not been implemented, and make adjustments to the 30-day payment amount prospectively, if needed.

b. Methodology To Determine the Difference Between Assumed Versus Actual Behavior Changes on Estimated Aggregate Expenditures

Using CY 2020 data (as of March 30, 2021), the most recent, complete data available at the time of this proposed rule, we analyzed the impact of the differences between assumed behavior changes and actual behavior changes on estimated aggregate expenditures to determine whether a temporary and/or a permanent increase or decrease is needed to the national, standardized 30-day period payment in CY 2022. We analyzed data to determine if the CY 2020 30-day payment amount resulted in the same estimated aggregate expenditures that would have been paid if the PDGM and change in the unit of payment had not been implemented.

To evaluate if whether the 30-day budget neutral payment amount for CY 2020 maintained budget neutrality given the change to a 30-day unit of payment and the implementation of a new case-mix adjustment methodology without therapy thresholds was accurate, we used actual CY 2020 30-day period claims data to simulate 60-day episodes and we determined what CY 2020 payments would have been under the 153-group case-mix system and 60-day unit of payment. To do this, we used the steps outlined as follows as detailed in this section of this rule.

The first step in repricing CY 2020 PDGM claims was to determine which 30-day periods of care could be grouped together to form 60-day episodes of care. To facilitate grouping, we made some exclusions and assumptions.

(1) Exclusions

We limited the sample to 30-day periods where the claim occurrence code 50 date (representing the OASIS assessment date) occurred on or before October 31, 2020. This was done to ensure the simulated 60-day episodes we constructed contained both 30-day periods and would not be simulated 60-day episodes that would have overlapped into 2021.

We excluded the following:

- Beneficiaries and all of their claims if they had overlapping claims from the same provider (as identified by CCN).[7]
- Beneficiaries and all of their claims if three or more claims from the same provider are linked to the same occurrence code 50 date.[8]

(2) Assumptions

We assumed the following:

- If two 30-day periods of care from the same provider reference the same

[7] All of a beneficiary's claims were dropped so as not to create problems with assigning episode timing if only a subset of claims were dropped. 1,320 claims from 224 beneficiaries are excluded.

[8] This was done because if three or more claims linked to the same OASIS it would not be clear which claims should be joined to simulate a 60-day episode. 11,794 claims from 351 beneficiaries are excluded.

OASIS assessment date (using occurrence code 50), and then we assume those two 30-day periods of care would have been billed as a 60-day episode of care under the 153-group system.

- If there are two 30 day-periods of care that reference different OASIS assessment dates and each of those assessment dates is referenced by a single 30-day period of care and those two 30-day periods of care occur together close in time (that is, the from date of the later 30-day period of care is between 0 to 14 days after the through date of the earlier 30-day period of care), then we assume those two 30-day periods of care also would have been billed as a 60-day episode of care under the 153-group system.
- For all other 30-day periods of care, we assumed that they would not be combined with another 30-day period of care and would have been billed alone. We excluded such periods that occurred at the start of the year (January 1, 2020–January 14, 2020) or end of the year (December 1–31, 2020) so as not to count a single 30-day period of care that may have had a counterpart that could not be observed.

Once we applied our exclusions and assumptions, we assigned each 60-day episode of care as a normal episode, PEP, LUPA, or outlier based on the payment parameters established in the CY 2020 final rule with comment period (84 FR 60478) for 60-day episodes of care. Next, using the 3M Home Health Grouper (v8219) we assigned a Health Insurance Prospective Payment System (HIPPS) code to each simulated 60-day episode of care using the 153-group methodology. Finally, we priced out the simulated 60-day episodes of care using the payment parameters described in the CY 2020 final rule with comment period (84 FR 60537) for 60-day episodes of care. Before comparing payments for the 30-day periods of care using the 432-group PDGM methodology, we first removed any claim that was excluded in the simulated 60-day episode dataset. Therefore, our comparison between payments had the same utilization between the CY 2020 simulated 60-day episodes of care and the CY 2020 actual 30-day periods of care.

We began with 8,165,808 30-day periods of care and dropped 524,163 30-day periods of care that had a claim occurrence code 50 date after October 31, 2020. We also eliminated 81,641 30-day periods of care that appeared to not group with another 30-day period of care to form a 60-day episode of care if the 30-day period of care had a ''from date'' before January 15, 2020 or a ''through date after'' November 30, 2020. This was done to ensure the 30-day period of care would not have been part of a 60-day episode of care that would have spanned into a prior or subsequent year. As described previously, we excluded claims and made assumptions when combining two 30-day periods of care. Additionally, any simulated 60-day episode of care where no OASIS information was available or could not be grouped to a HIPPS due to a missing primary diagnosis or other reason was excluded from analysis. Our simulated 60-day episodes of care produced a distribution between two 30-day periods of care (69.8 percent) and single 30-day periods of care (30.2 percent) that was similar to what we found when we simulated two 30-day periods of care for implementation of the PDGM. After all exclusions and assumptions were applied, the final dataset included 7,441,602 actual 30-day periods of care and 4,378,823 simulated 60-day episodes of care for CY 2020.

For the simulated 60-day episodes of care and before any adjustment for PEP, LUPA, or outliers were applied, payments were calculated using the CY 2020 153-group 60-day base payment rate of $3,220.79, the 153-group case-mix adjustment methodology, and FDL of 0.51, as described in the CY 2020 HH PPS final rule with comment period (84 FR 60537). For the actual 30-day periods of care that constructed the simulated 60-day episodes of care and before any adjustment for PEP, LUPA, or outliers were applied, payments were calculated using the CY 2020 30-day base payment rate of $1,864.03, the 432-group PDGM case-mix adjustment methodology, and FDL of 0.56 as described in the CY 2020 final rule with comment period (84 FR 60539). After the claims in the simulated 60-day episodes of care and 30-day periods of care were priced using the payment rates described previously, we calculated the total payments for all periods, normal periods, PEPs, LUPAs, and outliers (excluding the base payment to ensure outlier payments were no more than 2.5 percent of total estimated HH PPS payments). Our preliminary results indicated that aggregate payments to HHAs were higher in CY 2020 under the PDGM case-mix adjustment methodology and the 30-day unit of payment compared to what HHAs would have been paid had the PDGM and 30-day unit of payment not been implemented.

Next, we calculated what the CY 2020 30-day periods of care base payment rate and FDL should have been, to achieve the estimated aggregate payments for the simulated 60-day episodes in CY 2020. We then calculated a percent change between the payment rates. In other words, we divided the CY 2020 repriced 30-day base payment rate by the actual CY 2020 base-payment rate minus one. We determined the CY 2020 30-day base payment rate was approximately 6 percent higher than it should have been, and would require temporary retrospective adjustments for CY 2020 and subsequent years until a permanent prospective adjustment could be implemented in future rulemaking.

One of the driving factors between what we paid HHAs under the current 432-group PDGM methodology with a 30-day unit of payment and what we would have paid HHAs under the previous 153-group case-mix adjustment methodology with a 60-day unit of payment is related to the average case-mix weights. The average case-mix weight for the 30-day periods of care used to construct the simulated 60-day of care episodes was 1.0310; compared to the average case-mix weight for the simulated 60-day of care episodes was 0.9657, a difference of 0.0653. As the difference between the two average case-mix weights increases (that is, farther from zero) the higher the difference in payments; conversely as the difference between the two average case-mix weights decreases (that is, closer to zero) the smaller the difference in payments. HHAs should be providing visits in accordance with patient care needs.

The law provides flexibility for the Secretary to make an increase or decrease adjustment to the 30-day payment amount to offset any difference between assumed versus actual behavior of estimated aggregate expenditures, at a time and manner determined appropriate and allows for prospective adjustments based on retrospective behavior. As stated previously, currently our preliminary analysis shows an additional payment decrease would more appropriately account for behaviors reflected in CY 2020, after the implementation of the PDGM and 30-day unit of payment. However, we anticipate potentially seeing further variability in this percentage as we continue to analyze full claims data from CY 2020 and subsequent years, and considering that the COVID–19 PHE is still ongoing. We intend to propose a methodology and, if appropriate, a temporary and permanent payment adjustment based on our analysis in future rulemaking. However, we note that by not proposing any adjustment for CY 2022, this could potentially result in larger, compounding payment adjustments in future years to fully

account for the difference between assumed versus actual behavior change on estimated aggregate expenditures beginning in CY 2020.

We recognize that stakeholders may have other ways to analyze the data to determine the difference between assumed versus actual behavior change on estimated aggregate expenditures, such as analysis of nominal case-mix growth or calculating the percent difference and percent change of payments between simulated 30-day periods of care and actual 30-day periods of care. We solicit comments on the described repricing method for evaluating budget neutrality for CY 2020 and any alternate approaches to annually determine the difference between assumed and actual behavioral changes on estimated aggregate expenditures under the HH PPS.

3. CY 2022 PDGM LUPA Thresholds and PDGM Case-Mix Weights

a. Proposed CY 2022 PDGM LUPA Thresholds

Under the HH PPS, LUPAs are paid when a certain visit threshold for a payment group during a 30-day period of care is not met. In the CY 2019 HH PPS final rule (83 FR 56492),) we finalized that the LUPA thresholds would be set at the 10th percentile of visits or 2 visits, whichever is higher, for each payment group. This means that the LUPA threshold for each 30-day period of care varies depending on the PDGM payment group to which it is assigned. If the LUPA threshold for the payment group is met under the PDGM, the 30-day period of care will be paid the full 30-day period case-mix adjusted payment amount (subject to any PEP or outlier adjustments). If a 30-day period of care does not meet the PDGM LUPA visit threshold, then payment will be made using the CY 2022 per-visit payment amounts as described in Section III of this proposed rule. For example, if the LUPA visit threshold is four, and a 30-day period of care has four or more visits, it is paid the full 30-day period payment amount; if the period of care has three or less visits, payment is made using the per-visit payment amounts.

In the CY 2019 HH PPS final rule with comment period (83 FR 56492), we finalized our policy that the LUPA thresholds for each PDGM payment group would be reevaluated every year based on the most current utilization data available at the time of rulemaking. However, CY 2020 was the first year of the new case-mix adjustment methodology and we stated in the CY 2021 final rule (85 FR 70305, 70306) we would maintain the LUPA thresholds that were finalized and shown in Table 17 of the CY 2020 HH PPS final rule with comment period (84 FR 60522) for CY 2021 payment purposes. At that time, we did not have sufficient CY 2020 data to reevaluate the LUPA thresholds for CY 2021.

We have received anecdotal feedback from stakeholders that in CY 2020, HHAs billed more LUPAs because patients requested fewer in-person visits due the COVID–19 PHE. As discussed further in this section of this rule, while we are proposing to update the case-mix weights for CY 2022 using CY 2020 data, there are several factors that contribute to how the case-mix weight is set for a particular case-mix group (such as the number of visits, length of visits, types of disciplines providing visits, and non-routine supplies) and the case-mix weight is derived by comparing the average resource use for the case-mix group relative to the average resource use across all groups. CMS believes that the PHE would have impacted utilization within all case-mix groups similarly. Therefore, the impact of any reduction in resource use caused by the PHE on the calculation of the case-mix weight would be minimized since the impact would be accounted for both in the numerator and denominator of the formula used to calculate the case-mix weight. However, in contrast, the LUPA thresholds are based on the number of overall visits in a particular case-mix group (the threshold is the 10th percentile of visits or 2 visits, whichever is greater) instead of a relative value (like what is used to generate the case-mix weight) that would control for the impacts of the PHE. We note that visit patterns and some of the decrease in overall visits in CY 2020 may not be representative of visit patterns in CY 2022. If we were to set the LUPA thresholds in this proposed rule using CY 2020 data and then set the LUPA thresholds again for CY 2023 using data from CY 2021, it is likely that there would be an increase in these thresholds due to the lower number of visits that occurred in CY 2020. Therefore, to mitigate any potential future and significant short-term variability in the LUPA thresholds due to the COVID–19 PHE, we are proposing to maintain the LUPA thresholds finalized and displayed in Table 17 in the CY 2020 HH PPS final rule with comment period (84 FR 60522) for CY 2022 payment purposes. We believe that maintaining the LUPA thresholds for CY 2022 is the best approach because it mitigates potential fluctuations in the thresholds caused by visit patterns changing from what we observed in CY 2020 potentially due to the PHE. We will repost these LUPA thresholds (along with the case-mix weights) that will be used for CY 2022 on the HHA Center web page.[9] We solicit public comments on maintaining the LUPA thresholds for CY 2022 payment purposes.

b. CY 2022 Functional Impairment Levels

Under the PDGM, the functional impairment level is determined by responses to certain OASIS items associated with activities of daily living and risk of hospitalization; that is, responses to OASIS items M1800–M1860 and M1032. A home health period of care receives points based on each of the responses associated with these functional OASIS items, which are then converted into a table of points corresponding to increased resource use. The sum of all of these points results in a functional score which is used to group home health periods into a functional level with similar resource use. That is, the higher the points, the higher the response is associated with increased resource use. The sum of all of these points results in a functional impairment score which is used to group home health periods into one of three functional impairment levels with similar resource use. The three functional impairment levels of low, medium, and high were designed so that approximately one-third of home health periods from each of the clinical groups fall within each level. This means home health periods in the low impairment level have responses for the functional OASIS items that are associated with the lowest resource use, on average. Home health periods in the high impairment level have responses for the functional OASIS items that are associated with the highest resource use on average.

For CY 2022, we propose to use CY 2020 claims data to update the functional points and functional impairment levels by clinical group. The CY 2018 HH PPS Proposed rule (82 FR 35320) and the HHGM technical report from December 2016 posted on the HHA Center web page provide a more detailed explanation as to the construction of these functional impairment levels using the OASIS items. We are proposing to use this same methodology previously finalized to update the functional impairment levels for CY 2022. The updated OASIS functional points table and the table of

[9] *https://www.cms.gov/Center/Provider-Type/Home-Health-Agency-HHA-Center.*

functional impairment levels by clinical group for CY 2022 are listed in Tables 13 and 14, respectively. We solicit public comments on the updates to functional points and the functional impairment levels by clinical group.

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TABLE 13: OASIS POINTS TABLE FOR THOSE ITEMS ASSOCIATED WITH INCREASED RESOURCE USE USING A REDUCED SET OF OASIS ITEMS, CY 2020

	Responses	Points (2020)	Percent of Periods in 2020 with this Response Category
M1800: Grooming	0 or 1	0	33.8%
	2 or 3	3	66.2%
M1810: Current Ability to Dress Upper Body	0 or 1	0	28.8%
	2 or 3	6	71.2%
M1820: Current Ability to Dress Lower Body	0 or 1	0	13.6%
	2	5	63.3%
	3	12	23.0%
M1830: Bathing	0 or 1	0	3.4%
	2	1	13.4%
	3 or 4	9	51.4%
	5 or 6	17	31.7%
M1840: Toilet Transferring	0 or 1	0	63.7%
	2, 3 or 4	5	36.3%
M1850: Transferring	0	0	2.0%
	1	3	24.3%
	2, 3, 4 or 5	7	73.7%
M1860: Ambulation/Locomotion	0 or 1	0	4.5%
	2	6	16.8%
	3	6	61.2%
	4, 5 or 6	19	17.5%
M1032: Risk of Hospitalization	Three or fewer items marked (Excluding responses 8, 9 or 10)	0	70.1%
	Four or more items marked (Excluding responses 8, 9 or 10)	12	29.9%

Source: CY 2020 Home Health Claims Data, Periods that begin and end in CY 2020 accessed from the CCW on March 30, 2021.

TABLE 14: THRESHOLDS FOR FUNCTIONAL LEVELS BY CLINICAL GROUP, CY 2020

Clinical Group	Level of Impairment	Points (2020)
MMTA – Other	Low	0-32
	Medium	33-48
	High	49+
Behavioral Health	Low	0-32
	Medium	33-48
	High	49+
Complex Nursing Interventions	Low	0-35
	Medium	36-56
	High	57+
Musculoskeletal Rehabilitation	Low	0-35
	Medium	36-48
	High	49+
Neuro Rehabilitation	Low	0-36
	Medium	37-55
	High	56+
Wound	Low	0-36
	Medium	37-53
	High	54+
MMTA - Surgical Aftercare	Low	0-33
	Medium	34-45
	High	46+
MMTA - Cardiac and Circulatory	Low	0-32
	Medium	33-47
	High	48+
MMTA - Endocrine	Low	0-30
	Medium	31-44
	High	45+
MMTA - Gastrointestinal tract and Genitourinary system	Low	0-36
	Medium	37-51
	High	52+
MMTA - Infectious Disease, Neoplasms, and Blood-Forming Diseases	Low	0-33
	Medium	34-48
	High	49+
MMTA - Respiratory	Low	0-36
	Medium	37-48
	High	49+

Source: CY 2020 Home Health Claims Data, Periods that begin and end in CY 2020 accessed on the CCW March 30, 2021.

c. CY 2022 Comorbidity Subgroups

Thirty-day periods of care receive a comorbidity adjustment category based on the presence of certain secondary diagnoses reported on home health claims. These diagnoses are based on a home-health specific list of clinically and statistically significant secondary diagnosis subgroups with similar resource use, meaning the diagnoses have at least as high as the median resource use and are reported in more than 0.1 percent of 30-day periods of care. Home health 30-day periods of care can receive a comorbidity adjustment under the following circumstances:

- *Low comorbidity adjustment:* There is a reported secondary diagnosis on the home health-specific comorbidity subgroup list that is associated with higher resource use.
- *High comorbidity adjustment:* There are two or more secondary diagnoses on the home health-specific comorbidity subgroup interaction list that are associated with higher resource use when both are reported together compared to if they were reported separately. That is, the two diagnoses

may interact with one another, resulting in higher resource use.

- *No comorbidity adjustment:* A 30-day period of care receives no comorbidity adjustment if no secondary diagnoses exist or none meet the criteria for a low or high comorbidity adjustment.

In the CY 2019 HH PPS final rule with comment period (83 FR 56406) we stated that we would continue to examine the relationship of reported comorbidities on resource utilization and make the appropriate payment refinements to help ensure that payment is in alignment with the actual costs of providing care. For CY 2022, we propose to use the same methodology used to establish the comorbidity subgroups to update the comorbidity subgroups using CY 2020 home health data.

For CY 2022, we propose to update the comorbidity subgroups to include 20 low comorbidity adjustment subgroups as identified in Table 15 and 85 high comorbidity adjustment interaction subgroups as identified in Table 16. The proposed CY 2022 low comorbidity adjustment subgroups and the high comorbidity adjustment interaction subgroups including those diagnoses within each of these comorbidity adjustments will also be posted on the HHA Center web page at *https://www.cms.gov/Center/Provider-Type/Home-Health-Agency-HHA-Center.*

We invite comments on the proposed updates to the low comorbidity adjustment subgroups and the high comorbidity adjustment interactions for CY 2022.

TABLE 15: LOW COMORBIDITY ADJUSTMENT SUBGROUPS FOR CY 2022

Low Comorbidity Subgroup	Subgroup Description
Neoplasms 22	Includes lymphoma and leukemia
Musculoskeletal 2	Includes rheumatoid arthritis
Circulatory 7	Includes atherosclerosis and peripheral vascular disease
Neoplasms 2	Includes gastrointestinal cancers
Musculoskeletal 1	Includes lupus
Endocrine 4	Includes malnutrition and graft-versus-host-disease
Heart 10	Includes atrial fibrillation and atrial flutter.
Heart 11	Includes heart failure
Neurological 10	Includes diabetes with neuropathy
Neurological 11	Includes macular degeneration
Neoplasms 18	Includes secondary cancers
Neoplasms 1	Includes head and neck cancers
Circulatory 9	Includes embolisms and thromboses
Cerebral 4	Includes cerebral atherosclerosis and stroke sequelae
Skin 1	Includes cellulitis and abscesses
Neurological 5	Includes Parkinson's Disease
Circulatory 10	Includes varicose veins with ulceration
Neurological 7	Includes paraplegia, hemiplegia and quadriplegia
Skin 3	Includes chronic ulcers
Skin 4	Includes pressure ulcers

Source: CY 2020 Home Health Claims Data, Periods that begin and end in CY 2020 accessed on the CCW March 30, 2021.

TABLE 16: HIGH COMORBIDITY ADJUSTMENT INTERACTIONS FOR CY 2022

Comorbidity Subgroup Interaction	Comorbidity Group	Comorbidity Group
1	Neurological 4	Respiratory 9
2	Neurological 4	Neurological 5
3	Renal 1	Skin 3
4	Behavioral 2	Neurological 5
5	Cerebral 4	Neurological 10
6	Endocrine 3	Neurological 5
7	Neurological 3	Skin 3
8	Endocrine 5	neurological_7

Comorbidity Subgroup Interaction	Comorbidity Group	Comorbidity Group
9	Neurological 10	Neurological 5
10	Musculoskeletal 3	Neurological 7
11	Heart 12	Skin 3
12	Circulatory 9	Endocrine 4
13	Circulatory 4	Neurological 7
14	Circulatory 2	Neurological 5
15	Neurological 4	Skin 3
16	Cerebral 4	Neurological 5
17	Heart 11	Neurological 7
18	Neurological 5	Neurological 7
19	Circulatory 10	Heart 11
20	Circulatory 10	Endocrine 5
21	Circulatory 4	Skin 3
22	Neurological 10	Skin 3
23	Skin 1	Skin 3
24	Endocrine 1	Skin 3
25	Cerebral 4	Skin 3
26	Neurological 7	Renal 3
27	Musculoskeletal 4	Skin 3
28	Musculoskeletal 3	Skin 3
29	Heart 8	Skin 3
30	Circulatory 1	Neurological 7
31	Circulatory 7	Skin 3
32	Endocrine 3	Skin 3
33	Endocrine 5	Skin 3
34	Neurological 3	Skin 4
35	Circulatory 2	Neurological 7
36	Endocrine 4	Neurological 7
37	Renal 1	Skin 4
38	Cerebral 4	Skin 4
39	Circulatory 10	Skin 3
40	Infectious 1	Skin 4
41	Renal 3	Skin 4
42	Heart 10	Skin 4
43	Endocrine 4	Skin 4
44	Neurological 7	Skin 4
45	Skin 3	Skin 4
46	Cerebral 4	Circulatory 7
47	Circulatory 9	Renal 3
48	Circulatory 10	Endocrine 3
49	Circulatory 10	Heart 12
50	Behavioral 2	Neurological 7
51	Neurological 5	Skin 3
52	Neurological 4	Skin 4
53	Endocrine 5	Skin 1

Comorbidity Subgroup Interaction	Comorbidity Group	Comorbidity Group
54	Neurological 5	Renal 3
55	Cerebral 4	Heart 11
56	Infectious 1	Skin 3
57	Respiratory 5	Skin 4
58	Endocrine 1	Skin 4
59	Circulatory 10	Neurological 10
60	Circulatory 1	Skin 3
61	Musculoskeletal 2	Skin 3
62	Respiratory 4	Skin 3
63	Neurological 11	Skin 4
64	Behavioral 2	Skin 4
65	Circulatory 1	Neurological 5
66	Neurological 10	Skin 4
67	Heart 11	Skin 3
68	Respiratory 9	Skin 3
69	Circulatory 2	Skin 4
70	Cerebral 4	Circulatory 2
71	Circulatory 10	Endocrine 1
72	Heart 11	Skin 1
73	Circulatory 10	Neurological 11
74	Endocrine 5	Neurological 5
75	Musculoskeletal 3	Neurological 5
76	Heart 10	Skin 3
77	Behavioral 5	Skin 4
78	Circulatory 7	Neurological 5
79	Heart 10	Skin 1
80	Circulatory 10	Respiratory 5
81	Behavioral 5	Neurological 7
82	Musculoskeletal 4	Neurological 5
83	Neurological 11	Skin 1
84	Circulatory 9	Neurological 10
85	Circulatory 4	Skin 4

Source: CY 2020 Home Health Claims Data, Periods that begin and end in CY 2020 accessed from the CCW March 30, 2021.

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d. CY 2022 PDGM Case-Mix Weights

As finalized in the CY 2019 HH PPS final rule with comment period (83 FR 56502), the PDGM places patients into meaningful payment categories based on patient and other characteristics, such as timing, admission source, clinical grouping using the reported principal diagnosis, functional impairment level, and comorbid conditions. The PDGM case-mix methodology results in 432 unique case-mix groups called home health resource groups (HHRGs). We also finalized in the CY 2019 HH PPS final rule with comment period (83 FR 56515) to annually recalibrate the PDGM case-mix weights using a fixed effects model with the most recent and complete utilization data available at the time of annual rulemaking. Annual recalibration of the PDGM case-mix weights ensures that the case-mix weights reflect, as accurately as possible, current home health resource use and changes in utilization patterns. To generate the proposed recalibrated CY 2022 case-mix weights, we used CY 2020 home health claims data with linked OASIS data (as of March 30, 2021). These data are the most current and complete data available at this time. We believe that recalibrating the case-mix weights using data from CY 2020 would be more reflective of PDGM utilization and patient resource use than case-mix weights that were set using simulated claims data of 60-day

episodes grouped under the old system. Using data from CY 2020 would begin to shift case-mix weights derived from data with 60-day episodes grouped under the old system to data from actual 30-day periods under the PDGM.

The claims data provide visit-level data and data on whether NRS was provided during the period and the total charges of NRS. We determine the case-mix weight for each of the 432 different PDGM payment groups by regressing resource use on a series of indicator variables for each of the categories using a fixed effects model as described in the following steps:

Step 1: Estimate a regression model to assign a functional impairment level to each 30-day period. The regression model estimates the relationship between a 30-day period's resource use and the functional status and risk of hospitalization items included in the PDGM, which are obtained from certain OASIS items. We refer readers to Table 11 for further information on the OASIS items used for the functional impairment level under the PDGM. We measure resource use with the cost-per-minute + NRS approach that uses information from 2019 home health cost reports. We use 2019 home health cost report data because it is the most complete data available at the time of rulemaking. Other variables in the regression model include the 30-day period's admission source, clinical group, and 30-day period timing. We also include home health agency level fixed effects in the regression model. After estimating the regression model using 30-day periods, we divide the coefficients that correspond to the functional status and risk of hospitalization items by 10 and round to the nearest whole number. Those rounded numbers are used to compute a functional score for each 30-day period by summing together the rounded numbers for the functional status and risk of hospitalization items that are applicable to each 30-day period. Next, each 30-day period is assigned to a functional impairment level (low, medium, or high) depending on the 30-day period's total functional score. Each clinical group has a separate set of functional thresholds used to assign 30-day periods into a low, medium or high functional impairment level. We set those thresholds so that we assign roughly a third of 30-day periods within each clinical group to each functional impairment level (low, medium, or high).

Step 2: A second regression model estimates the relationship between a 30-day period's resource use and indicator variables for the presence of any of the comorbidities and comorbidity interactions that were originally examined for inclusion in the PDGM. Like the first regression model, this model also includes home health agency level fixed effects and includes control variables for each 30-day period's admission source, clinical group, timing, and functional impairment level. After we estimate the model, we assign comorbidities to the low comorbidity adjustment if any comorbidities have a coefficient that is statistically significant (p-value of 0.05 or less) and which have a coefficient that is larger than the 50th percentile of positive and statistically significant comorbidity coefficients. If two comorbidities in the model and their interaction term have coefficients that sum together to exceed $150 and the interaction term is statistically significant (p-value of 0.05 or less), we assign the two comorbidities together to the high comorbidity adjustment.

Step 3: Hold the LUPA thresholds at their current thresholds as described previously in this proposed rule.

Step 4: Take all non-LUPA 30-day periods and regress resource use on the 30-day period's clinical group, admission source category, episode timing category, functional impairment level, and comorbidity adjustment category. The regression includes fixed effects at the level of the home health agency. After we estimate the model, the model coefficients are used to predict each 30-day period's resource use. To create the case-mix weight for each 30-day period, the predicted resource use is divided by the overall resource use of the 30-day periods used to estimate the regression.

The case-mix weight is then used to adjust the base payment rate to determine each 30-day period's payment. Table 17 shows the coefficients of the payment regression used to generate the weights, and the coefficients divided by average resource use.

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TABLE 17: COEFFICIENT OF PAYMENT REGRESSION AND COEFFICIENT DIVIDED BY AVERAGE RESOURCE USE (LUPA THRESHOLDS HELD)

Variable	Coefficient	Percentage of 30-Day Periods for this Model	Coefficient Divided by Average Resource Use
Clinical Group and Functional Impairment Level (MMTA - Other - Low is excluded)			
MMTA - Other - Medium Functional	$168.75	1.2%	0.1173
MMTA - Other - High Functional	$328.92	0.9%	0.2286
MMTA - Surgical Aftercare - Low Functional	-$84.68	1.2%	-0.0589
MMTA - Surgical Aftercare - Medium Functional	$136.53	1.2%	0.0949
MMTA - Surgical Aftercare - High Functional	$373.88	1.1%	0.2598
MMTA - Cardiac and Circulatory - Low Functional	-$46.28	6.8%	-0.0322
MMTA - Cardiac and Circulatory - Medium Functional	$133.00	6.0%	0.0924
MMTA - Cardiac and Circulatory - High Functional	$287.68	6.5%	0.1999
MMTA - Endocrine - Low Functional	$283.93	2.5%	0.1973
MMTA - Endocrine - Medium Functional	$453.61	2.5%	0.3153
MMTA - Endocrine - High Functional	$560.18	2.4%	0.3893
MMTA - Gastrointestinal tract and Genitourinary system - Low Functional	-$71.18	1.8%	-0.0495
MMTA - Gastrointestinal tract and Genitourinary system - Medium Functional	$129.27	1.3%	0.0898
MMTA - Gastrointestinal tract and Genitourinary system - High Functional	$259.89	1.5%	0.1806
MMTA - Infectious Disease, Neoplasms, and Blood-Forming Diseases - Low Functional	-$44.92	1.6%	-0.0312
MMTA - Infectious Disease, Neoplasms, and Blood-Forming Diseases - Medium Functional	$130.02	1.7%	0.0904
MMTA - Infectious Disease, Neoplasms, and Blood-Forming Diseases - High Functional	$319.67	1.5%	0.2222
MMTA - Respiratory - Low Functional	-$33.98	3.3%	-0.0236
MMTA - Respiratory - Medium Functional	$132.20	1.9%	0.0919
MMTA - Respiratory - High Functional	$283.71	2.5%	0.1972
Behavioral Health - Low Functional	-$117.70	0.8%	-0.0818
Behavioral Health - Medium Functional	$109.77	0.8%	0.0763
Behavioral Health - High Functional	$235.73	0.7%	0.1638
Complex - Low Functional	-$125.82	1.0%	-0.0874
Complex - Medium Functional	$76.72	1.1%	0.0533
Complex - High Functional	$49.15	1.0%	0.0342
MS Rehab - Low Functional	$103.23	6.6%	0.0717
MS Rehab - Medium Functional	$253.23	6.9%	0.1760
MS Rehab - High Functional	$485.44	6.0%	0.3374
Neuro - Low Functional	$260.97	3.6%	0.1814
Neuro - Medium Functional	$452.77	3.4%	0.3147
Neuro - High Functional	$628.16	3.5%	0.4366
Wound - Low Functional	$426.01	5.7%	0.2961
Wound - Medium Functional	$597.58	3.8%	0.4153
Wound - High Functional	$770.94	4.8%	0.5358
Admission Source with Timing (Community Early is excluded)			
Community – Late	-$568.10	62.9%	-0.3948
Institutional – Early	$308.04	19.4%	0.2141
Institutional – Late	$173.03	6.1%	0.1203
Comorbidity Adjustment (No Comorbidity Adjustment is excluded)			
Comorbidity Adjustment - Has at least one comorbidity from comorbidity list, no interaction from interaction list	$92.90	48.1%	0.0646
Comorbidity Adjustment - Has at least one interaction from interaction list	$318.97	14.6%	0.2217
Constant	$1,365.18		
Average Resource Use	$1,438.86		
Number of 30-day Periods	7,365,743		
Adjusted R-Squared	0.3311		

Source: CY 2020 Home Health Claims Data, Periods that begin and end in CY 2020 accessed on the CCW March 30, 2021.

The case-mix weights proposed for CY 2022 are listed in Table 19 and will also be posted on the HHA Center web page [10] upon display of this proposed rule.

TABLE 18—CASE MIX WEIGHTS FOR EACH HHRG PAYMENT GROUP

HIPPS	Clinical Group and Functional Level	Admission Source and Timing	Comorbidity Adjustment (0 = none, 1 = single comorbidity, 2 = interaction)	Weight
1AA11	MMTA - Other - Low	Early – Community	0	0.9488
1AA21	MMTA - Other - Low	Early – Community	1	1.0134
1AA31	MMTA - Other - Low	Early – Community	2	1.1705
1AB11	MMTA - Other - Medium	Early – Community	0	1.0661
1AB21	MMTA - Other - Medium	Early – Community	1	1.1306
1AB31	MMTA - Other - Medium	Early – Community	2	1.2877
1AC11	MMTA - Other - High	Early – Community	0	1.1774
1AC21	MMTA - Other - High	Early – Community	1	1.2420
1AC31	MMTA - Other - High	Early – Community	2	1.3991
1BA11	Neuro - Low	Early – Community	0	1.1302
1BA21	Neuro - Low	Early – Community	1	1.1947
1BA31	Neuro - Low	Early – Community	2	1.3518
1BB11	Neuro - Medium	Early – Community	0	1.2635
1BB21	Neuro - Medium	Early – Community	1	1.3280
1BB31	Neuro - Medium	Early – Community	2	1.4851
1BC11	Neuro - High	Early – Community	0	1.3854
1BC21	Neuro - High	Early – Community	1	1.4499
1BC31	Neuro - High	Early – Community	2	1.6070
1CA11	Wound - Low	Early – Community	0	1.2449
1CA21	Wound - Low	Early – Community	1	1.3094
1CA31	Wound - Low	Early – Community	2	1.4665

[10] HHA Center web page: *https://www.cms.gov/Center/Provider-Type/Home-Health-Agency-HHA-Center*

HIPPS	Clinical Group and Functional Level	Admission Source and Timing	Comorbidity Adjustment (0 = none, 1 = single comorbidity, 2 = interaction)	Weight
1CB11	Wound - Medium	Early – Community	0	1.3641
1CB21	Wound - Medium	Early – Community	1	1.4287
1CB31	Wound - Medium	Early - Community	2	1.5858
1CC11	Wound - High	Early - Community	0	1.4846
1CC21	Wound - High	Early - Community	1	1.5492
1CC31	Wound - High	Early - Community	2	1.7063
1DA11	Complex - Low	Early - Community	0	0.8613
1DA21	Complex - Low	Early - Community	1	0.9259
1DA31	Complex - Low	Early - Community	2	1.0830
1DB11	Complex - Medium	Early - Community	0	1.0021
1DB21	Complex - Medium	Early - Community	1	1.0667
1DB31	Complex - Medium	Early - Community	2	1.2238
1DC11	Complex - High	Early - Community	0	0.9829
1DC21	Complex - High	Early - Community	1	1.0475
1DC31	Complex - High	Early - Community	2	1.2046
1EA11	MS Rehab - Low	Early - Community	0	1.0205
1EA21	MS Rehab - Low	Early - Community	1	1.0851
1EA31	MS Rehab - Low	Early - Community	2	1.2422
1EB11	MS Rehab - Medium	Early - Community	0	1.1248
1EB21	MS Rehab - Medium	Early - Community	1	1.1894
1EB31	MS Rehab - Medium	Early - Community	2	1.3465
1EC11	MS Rehab - High	Early - Community	0	1.2862
1EC21	MS Rehab - High	Early - Community	1	1.3507
1EC31	MS Rehab - High	Early - Community	2	1.5078
1FA11	Behavioral Health - Low	Early - Community	0	0.8670
1FA21	Behavioral Health - Low	Early - Community	1	0.9316
1FA31	Behavioral Health - Low	Early - Community	2	1.0887
1FB11	Behavioral Health - Medium	Early - Community	0	1.0251
1FB21	Behavioral Health - Medium	Early - Community	1	1.0896
1FB31	Behavioral Health - Medium	Early - Community	2	1.2468
1FC11	Behavioral Health - High	Early - Community	0	1.1126
1FC21	Behavioral Health - High	Early - Community	1	1.1772
1FC31	Behavioral Health - High	Early - Community	2	1.3343
1GA11	MMTA - Surgical Aftercare - Low	Early - Community	0	0.8899
1GA21	MMTA - Surgical Aftercare - Low	Early - Community	1	0.9545
1GA31	MMTA - Surgical Aftercare - Low	Early - Community	2	1.1116
1GB11	MMTA - Surgical Aftercare - Medium	Early - Community	0	1.0437
1GB21	MMTA - Surgical Aftercare - Medium	Early - Community	1	1.1082
1GB31	MMTA - Surgical Aftercare - Medium	Early - Community	2	1.2654
1GC11	MMTA - Surgical Aftercare - High	Early - Community	0	1.2086
1GC21	MMTA - Surgical Aftercare - High	Early - Community	1	1.2732
1GC31	MMTA - Surgical Aftercare - High	Early - Community	2	1.4303
1HA11	MMTA - Cardiac - Low	Early - Community	0	0.9166
1HA21	MMTA - Cardiac - Low	Early - Community	1	0.9812
1HA31	MMTA - Cardiac - Low	Early - Community	2	1.1383
1HB11	MMTA - Cardiac - Medium	Early - Community	0	1.0412
1HB21	MMTA - Cardiac - Medium	Early - Community	1	1.1058
1HB31	MMTA - Cardiac - Medium	Early - Community	2	1.2629
1HC11	MMTA - Cardiac - High	Early - Community	0	1.1487
1HC21	MMTA - Cardiac - High	Early - Community	1	1.2133
1HC31	MMTA - Cardiac - High	Early - Community	2	1.3704
1IA11	MMTA - Endocrine - Low	Early - Community	0	1.1461
1IA21	MMTA - Endocrine - Low	Early - Community	1	1.2107

HIPPS	Clinical Group and Functional Level	Admission Source and Timing	Comorbidity Adjustment (0 = none, 1 = single comorbidity, 2 = interaction)	Weight
1IA31	MMTA - Endocrine - Low	Early - Community	2	1.3678
1IB11	MMTA - Endocrine - Medium	Early - Community	0	1.2640
1IB21	MMTA - Endocrine - Medium	Early - Community	1	1.3286
1IB31	MMTA - Endocrine - Medium	Early - Community	2	1.4857
1IC11	MMTA - Endocrine - High	Early - Community	0	1.3381
1IC21	MMTA - Endocrine - High	Early - Community	1	1.4027
1IC31	MMTA - Endocrine - High	Early - Community	2	1.5598
1JA11	MMTA - GI/GU - Low	Early - Community	0	0.8993
1JA21	MMTA - GI/GU - Low	Early - Community	1	0.9639
1JA31	MMTA - GI/GU - Low	Early - Community	2	1.1210
1JB11	MMTA - GI/GU - Medium	Early - Community	0	1.0386
1JB21	MMTA - GI/GU - Medium	Early - Community	1	1.1032
1JB31	MMTA - GI/GU - Medium	Early - Community	2	1.2603
1JC11	MMTA - GI/GU - High	Early - Community	0	1.1294
1JC21	MMTA - GI/GU - High	Early - Community	1	1.1940
1JC31	MMTA - GI/GU - High	Early - Community	2	1.3511
1KA11	MMTA - Infectious - Low	Early - Community	0	0.9176
1KA21	MMTA - Infectious - Low	Early - Community	1	0.9821
1KA31	MMTA - Infectious - Low	Early - Community	2	1.1393
1KB11	MMTA - Infectious - Medium	Early - Community	0	1.0392
1KB21	MMTA - Infectious - Medium	Early - Community	1	1.1037
1KB31	MMTA - Infectious - Medium	Early - Community	2	1.2608
1KC11	MMTA - Infectious - High	Early - Community	0	1.1710
1KC21	MMTA - Infectious - High	Early - Community	1	1.2355
1KC31	MMTA - Infectious - High	Early - Community	2	1.3926
1LA11	MMTA - Respiratory - Low	Early - Community	0	0.9252
1LA21	MMTA - Respiratory - Low	Early - Community	1	0.9897
1LA31	MMTA - Respiratory - Low	Early - Community	2	1.1469
1LB11	MMTA - Respiratory - Medium	Early - Community	0	1.0407
1LB21	MMTA - Respiratory - Medium	Early - Community	1	1.1052
1LB31	MMTA - Respiratory - Medium	Early - Community	2	1.2623
1LC11	MMTA - Respiratory - High	Early - Community	0	1.1460
1LC21	MMTA - Respiratory - High	Early - Community	1	1.2105
1LC31	MMTA - Respiratory - High	Early - Community	2	1.3676
2AA11	MMTA - Other - Low	Early - Institutional	0	1.1629
2AA21	MMTA - Other - Low	Early - Institutional	1	1.2274
2AA31	MMTA - Other - Low	Early - Institutional	2	1.3846
2AB11	MMTA - Other - Medium	Early - Institutional	0	1.2802
2AB21	MMTA - Other - Medium	Early - Institutional	1	1.3447
2AB31	MMTA - Other - Medium	Early - Institutional	2	1.5018
2AC11	MMTA - Other - High	Early - Institutional	0	1.3915
2AC21	MMTA - Other - High	Early - Institutional	1	1.4560
2AC31	MMTA - Other - High	Early - Institutional	2	1.6132
2BA11	Neuro - Low	Early - Institutional	0	1.3442
2BA21	Neuro - Low	Early - Institutional	1	1.4088
2BA31	Neuro - Low	Early - Institutional	2	1.5659
2BB11	Neuro - Medium	Early - Institutional	0	1.4775
2BB21	Neuro - Medium	Early - Institutional	1	1.5421
2BB31	Neuro - Medium	Early - Institutional	2	1.6992
2BC11	Neuro - High	Early - Institutional	0	1.5994
2BC21	Neuro - High	Early - Institutional	1	1.6640
2BC31	Neuro - High	Early - Institutional	2	1.8211
2CA11	Wound - Low	Early - Institutional	0	1.4589

HIPPS	Clinical Group and Functional Level	Admission Source and Timing	Comorbidity Adjustment (0 = none, 1 = single comorbidity, 2 = interaction)	Weight
2CA21	Wound - Low	Early - Institutional	1	1.5235
2CA31	Wound - Low	Early - Institutional	2	1.6806
2CB11	Wound - Medium	Early - Institutional	0	1.5782
2CB21	Wound - Medium	Early - Institutional	1	1.6428
2CB31	Wound - Medium	Early - Institutional	2	1.7999
2CC11	Wound - High	Early - Institutional	0	1.6987
2CC21	Wound - High	Early - Institutional	1	1.7632
2CC31	Wound - High	Early - Institutional	2	1.9204
2DA11	Complex - Low	Early - Institutional	0	1.0754
2DA21	Complex - Low	Early - Institutional	1	1.1400
2DA31	Complex - Low	Early - Institutional	2	1.2971
2DB11	Complex - Medium	Early - Institutional	0	1.2162
2DB21	Complex - Medium	Early - Institutional	1	1.2808
2DB31	Complex - Medium	Early - Institutional	2	1.4379
2DC11	Complex - High	Early - Institutional	0	1.1970
2DC21	Complex - High	Early - Institutional	1	1.2616
2DC31	Complex - High	Early - Institutional	2	1.4187
2EA11	MS Rehab - Low	Early - Institutional	0	1.2346
2EA21	MS Rehab - Low	Early - Institutional	1	1.2992
2EA31	MS Rehab - Low	Early - Institutional	2	1.4563
2EB11	MS Rehab - Medium	Early - Institutional	0	1.3389
2EB21	MS Rehab - Medium	Early - Institutional	1	1.4034
2EB31	MS Rehab - Medium	Early - Institutional	2	1.5605
2EC11	MS Rehab - High	Early - Institutional	0	1.5002
2EC21	MS Rehab - High	Early - Institutional	1	1.5648
2EC31	MS Rehab - High	Early - Institutional	2	1.7219
2FA11	Behavioral Health - Low	Early - Institutional	0	1.0811
2FA21	Behavioral Health - Low	Early - Institutional	1	1.1456
2FA31	Behavioral Health - Low	Early - Institutional	2	1.3028
2FB11	Behavioral Health - Medium	Early - Institutional	0	1.2392
2FB21	Behavioral Health - Medium	Early - Institutional	1	1.3037
2FB31	Behavioral Health - Medium	Early - Institutional	2	1.4608
2FC11	Behavioral Health - High	Early - Institutional	0	1.3267
2FC21	Behavioral Health - High	Early - Institutional	1	1.3913
2FC31	Behavioral Health - High	Early - Institutional	2	1.5484
2GA11	MMTA - Surgical Aftercare - Low	Early - Institutional	0	1.1040
2GA21	MMTA - Surgical Aftercare - Low	Early - Institutional	1	1.1686
2GA31	MMTA - Surgical Aftercare - Low	Early - Institutional	2	1.3257
2GB11	MMTA - Surgical Aftercare - Medium	Early - Institutional	0	1.2578
2GB21	MMTA - Surgical Aftercare - Medium	Early - Institutional	1	1.3223
2GB31	MMTA - Surgical Aftercare - Medium	Early - Institutional	2	1.4794
2GC11	MMTA - Surgical Aftercare - High	Early - Institutional	0	1.4227
2GC21	MMTA - Surgical Aftercare - High	Early - Institutional	1	1.4873
2GC31	MMTA - Surgical Aftercare - High	Early - Institutional	2	1.6444
2HA11	MMTA - Cardiac - Low	Early - Institutional	0	1.1307
2HA21	MMTA - Cardiac - Low	Early - Institutional	1	1.1953
2HA31	MMTA - Cardiac - Low	Early - Institutional	2	1.3524
2HB11	MMTA - Cardiac - Medium	Early - Institutional	0	1.2553
2HB21	MMTA - Cardiac - Medium	Early - Institutional	1	1.3199
2HB31	MMTA - Cardiac - Medium	Early - Institutional	2	1.4770
2HC11	MMTA - Cardiac - High	Early - Institutional	0	1.3628
2HC21	MMTA - Cardiac - High	Early - Institutional	1	1.4274
2HC31	MMTA - Cardiac - High	Early - Institutional	2	1.5845

HIPPS	Clinical Group and Functional Level	Admission Source and Timing	Comorbidity Adjustment (0 = none, 1 = single comorbidity, 2 = interaction)	Weight
2IA11	MMTA - Endocrine - Low	Early - Institutional	0	1.3602
2IA21	MMTA - Endocrine - Low	Early - Institutional	1	1.4248
2IA31	MMTA - Endocrine - Low	Early - Institutional	2	1.5819
2IB11	MMTA - Endocrine - Medium	Early - Institutional	0	1.4781
2IB21	MMTA - Endocrine - Medium	Early - Institutional	1	1.5427
2IB31	MMTA - Endocrine - Medium	Early - Institutional	2	1.6998
2IC11	MMTA - Endocrine - High	Early - Institutional	0	1.5522
2IC21	MMTA - Endocrine - High	Early - Institutional	1	1.6168
2IC31	MMTA - Endocrine - High	Early - Institutional	2	1.7739
2JA11	MMTA - GI/GU - Low	Early - Institutional	0	1.1134
2JA21	MMTA - GI/GU - Low	Early - Institutional	1	1.1780
2JA31	MMTA - GI/GU - Low	Early - Institutional	2	1.3351
2JB11	MMTA - GI/GU - Medium	Early - Institutional	0	1.2527
2JB21	MMTA - GI/GU - Medium	Early - Institutional	1	1.3173
2JB31	MMTA - GI/GU - Medium	Early - Institutional	2	1.4744
2JC11	MMTA - GI/GU - High	Early - Institutional	0	1.3435
2JC21	MMTA - GI/GU - High	Early - Institutional	1	1.4081
2JC31	MMTA - GI/GU - High	Early - Institutional	2	1.5652
2KA11	MMTA - Infectious - Low	Early - Institutional	0	1.1317
2KA21	MMTA - Infectious - Low	Early - Institutional	1	1.1962
2KA31	MMTA - Infectious - Low	Early - Institutional	2	1.3533
2KB11	MMTA - Infectious - Medium	Early - Institutional	0	1.2532
2KB21	MMTA - Infectious - Medium	Early - Institutional	1	1.3178
2KB31	MMTA - Infectious - Medium	Early - Institutional	2	1.4749
2KC11	MMTA - Infectious - High	Early - Institutional	0	1.3850
2KC21	MMTA - Infectious - High	Early - Institutional	1	1.4496
2KC31	MMTA - Infectious - High	Early - Institutional	2	1.6067
2LA11	MMTA - Respiratory - Low	Early - Institutional	0	1.1393
2LA21	MMTA - Respiratory - Low	Early - Institutional	1	1.2038
2LA31	MMTA - Respiratory - Low	Early - Institutional	2	1.3609
2LB11	MMTA - Respiratory - Medium	Early - Institutional	0	1.2547
2LB21	MMTA - Respiratory - Medium	Early - Institutional	1	1.3193
2LB31	MMTA - Respiratory - Medium	Early - Institutional	2	1.4764
2LC11	MMTA - Respiratory - High	Early - Institutional	0	1.3601
2LC21	MMTA - Respiratory - High	Early - Institutional	1	1.4246
2LC31	MMTA - Respiratory - High	Early - Institutional	2	1.5817
3AA11	MMTA - Other - Low	Late - Community	0	0.5540
3AA21	MMTA - Other - Low	Late - Community	1	0.6185
3AA31	MMTA - Other - Low	Late - Community	2	0.7756
3AB11	MMTA - Other - Medium	Late - Community	0	0.6712
3AB21	MMTA - Other - Medium	Late - Community	1	0.7358
3AB31	MMTA - Other - Medium	Late - Community	2	0.8929
3AC11	MMTA - Other - High	Late - Community	0	0.7826
3AC21	MMTA - Other - High	Late - Community	1	0.8471
3AC31	MMTA - Other - High	Late - Community	2	1.0042
3BA11	Neuro - Low	Late - Community	0	0.7353
3BA21	Neuro - Low	Late - Community	1	0.7999
3BA31	Neuro - Low	Late - Community	2	0.9570
3BB11	Neuro - Medium	Late - Community	0	0.8686
3BB21	Neuro - Medium	Late - Community	1	0.9332
3BB31	Neuro - Medium	Late - Community	2	1.0903
3BC11	Neuro - High	Late - Community	0	0.9905
3BC21	Neuro - High	Late - Community	1	1.0551

HIPPS	Clinical Group and Functional Level	Admission Source and Timing	Comorbidity Adjustment (0 = none, 1 = single comorbidity, 2 = interaction)	Weight
3BC31	Neuro - High	Late - Community	2	1.2122
3CA11	Wound - Low	Late - Community	0	0.8500
3CA21	Wound - Low	Late - Community	1	0.9146
3CA31	Wound - Low	Late - Community	2	1.0717
3CB11	Wound - Medium	Late - Community	0	0.9693
3CB21	Wound - Medium	Late - Community	1	1.0338
3CB31	Wound - Medium	Late - Community	2	1.1910
3CC11	Wound - High	Late - Community	0	1.0898
3CC21	Wound - High	Late - Community	1	1.1543
3CC31	Wound - High	Late - Community	2	1.3114
3DA11	Complex - Low	Late - Community	0	0.4665
3DA21	Complex - Low	Late - Community	1	0.5311
3DA31	Complex - Low	Late - Community	2	0.6882
3DB11	Complex - Medium	Late - Community	0	0.6073
3DB21	Complex - Medium	Late - Community	1	0.6718
3DB31	Complex - Medium	Late - Community	2	0.8290
3DC11	Complex - High	Late - Community	0	0.5881
3DC21	Complex - High	Late - Community	1	0.6527
3DC31	Complex - High	Late - Community	2	0.8098
3EA11	MS Rehab - Low	Late - Community	0	0.6257
3EA21	MS Rehab - Low	Late - Community	1	0.6903
3EA31	MS Rehab - Low	Late - Community	2	0.8474
3EB11	MS Rehab - Medium	Late - Community	0	0.7300
3EB21	MS Rehab - Medium	Late - Community	1	0.7945
3EB31	MS Rehab - Medium	Late - Community	2	0.9516
3EC11	MS Rehab - High	Late - Community	0	0.8913
3EC21	MS Rehab - High	Late - Community	1	0.9559
3EC31	MS Rehab - High	Late - Community	2	1.1130
3FA11	Behavioral Health - Low	Late - Community	0	0.4722
3FA21	Behavioral Health - Low	Late - Community	1	0.5367
3FA31	Behavioral Health - Low	Late - Community	2	0.6938
3FB11	Behavioral Health - Medium	Late - Community	0	0.6303
3FB21	Behavioral Health - Medium	Late - Community	1	0.6948
3FB31	Behavioral Health - Medium	Late - Community	2	0.8519
3FC11	Behavioral Health - High	Late - Community	0	0.7178
3FC21	Behavioral Health - High	Late - Community	1	0.7824
3FC31	Behavioral Health - High	Late - Community	2	0.9395
3GA11	MMTA - Surgical Aftercare - Low	Late - Community	0	0.4951
3GA21	MMTA - Surgical Aftercare - Low	Late - Community	1	0.5597
3GA31	MMTA - Surgical Aftercare - Low	Late - Community	2	0.7168
3GB11	MMTA - Surgical Aftercare - Medium	Late - Community	0	0.6488
3GB21	MMTA - Surgical Aftercare - Medium	Late - Community	1	0.7134
3GB31	MMTA - Surgical Aftercare - Medium	Late - Community	2	0.8705
3GC11	MMTA - Surgical Aftercare - High	Late - Community	0	0.8138
3GC21	MMTA - Surgical Aftercare - High	Late - Community	1	0.8784
3GC31	MMTA - Surgical Aftercare - High	Late - Community	2	1.0355
3HA11	MMTA - Cardiac - Low	Late - Community	0	0.5218
3HA21	MMTA - Cardiac - Low	Late - Community	1	0.5864
3HA31	MMTA - Cardiac - Low	Late - Community	2	0.7435
3HB11	MMTA - Cardiac - Medium	Late - Community	0	0.6464
3HB21	MMTA - Cardiac - Medium	Late - Community	1	0.7110
3HB31	MMTA - Cardiac - Medium	Late - Community	2	0.8681
3HC11	MMTA - Cardiac - High	Late - Community	0	0.7539

HIPPS	Clinical Group and Functional Level	Admission Source and Timing	Comorbidity Adjustment (0 = none, 1 = single comorbidity, 2 = interaction)	Weight
3HC21	MMTA - Cardiac - High	Late - Community	1	0.8185
3HC31	MMTA - Cardiac - High	Late - Community	2	0.9756
3IA11	MMTA - Endocrine - Low	Late - Community	0	0.7513
3IA21	MMTA - Endocrine - Low	Late - Community	1	0.8159
3IA31	MMTA - Endocrine - Low	Late - Community	2	0.9730
3IB11	MMTA - Endocrine - Medium	Late - Community	0	0.8692
3IB21	MMTA - Endocrine - Medium	Late - Community	1	0.9338
3IB31	MMTA - Endocrine - Medium	Late - Community	2	1.0909
3IC11	MMTA - Endocrine - High	Late - Community	0	0.9433
3IC21	MMTA - Endocrine - High	Late - Community	1	1.0078
3IC31	MMTA - Endocrine - High	Late - Community	2	1.1650
3JA11	MMTA - GI/GU - Low	Late - Community	0	0.5045
3JA21	MMTA - GI/GU - Low	Late - Community	1	0.5691
3JA31	MMTA - GI/GU - Low	Late - Community	2	0.7262
3JB11	MMTA - GI/GU - Medium	Late - Community	0	0.6438
3JB21	MMTA - GI/GU - Medium	Late - Community	1	0.7084
3JB31	MMTA - GI/GU - Medium	Late - Community	2	0.8655
3JC11	MMTA - GI/GU - High	Late - Community	0	0.7346
3JC21	MMTA - GI/GU - High	Late - Community	1	0.7991
3JC31	MMTA - GI/GU - High	Late - Community	2	0.9563
3KA11	MMTA - Infectious - Low	Late - Community	0	0.5227
3KA21	MMTA - Infectious - Low	Late - Community	1	0.5873
3KA31	MMTA - Infectious - Low	Late - Community	2	0.7444
3KB11	MMTA - Infectious - Medium	Late - Community	0	0.6443
3KB21	MMTA - Infectious - Medium	Late - Community	1	0.7089
3KB31	MMTA - Infectious - Medium	Late - Community	2	0.8660
3KC11	MMTA - Infectious - High	Late - Community	0	0.7761
3KC21	MMTA - Infectious - High	Late - Community	1	0.8407
3KC31	MMTA - Infectious - High	Late - Community	2	0.9978
3LA11	MMTA - Respiratory - Low	Late - Community	0	0.5303
3LA21	MMTA - Respiratory - Low	Late - Community	1	0.5949
3LA31	MMTA - Respiratory - Low	Late - Community	2	0.7520
3LB11	MMTA - Respiratory - Medium	Late - Community	0	0.6458
3LB21	MMTA - Respiratory - Medium	Late - Community	1	0.7104
3LB31	MMTA - Respiratory - Medium	Late - Community	2	0.8675
3LC11	MMTA - Respiratory - High	Late - Community	0	0.7511
3LC21	MMTA - Respiratory - High	Late - Community	1	0.8157
3LC31	MMTA - Respiratory - High	Late - Community	2	0.9728
4AA11	MMTA - Other - Low	Late - Institutional	0	1.0690
4AA21	MMTA - Other - Low	Late - Institutional	1	1.1336
4AA31	MMTA - Other - Low	Late - Institutional	2	1.2907
4AB11	MMTA - Other - Medium	Late - Institutional	0	1.1863
4AB21	MMTA - Other - Medium	Late - Institutional	1	1.2509
4AB31	MMTA - Other - Medium	Late - Institutional	2	1.4080
4AC11	MMTA - Other - High	Late - Institutional	0	1.2976
4AC21	MMTA - Other - High	Late - Institutional	1	1.3622
4AC31	MMTA - Other - High	Late - Institutional	2	1.5193
4BA11	Neuro - Low	Late - Institutional	0	1.2504
4BA21	Neuro – Low	Late - Institutional	1	1.3150
4BA31	Neuro – Low	Late - Institutional	2	1.4721
4BB11	Neuro - Medium	Late - Institutional	0	1.3837
4BB21	Neuro - Medium	Late - Institutional	1	1.4483
4BB31	Neuro - Medium	Late - Institutional	2	1.6054

HIPPS	Clinical Group and Functional Level	Admission Source and Timing	Comorbidity Adjustment (0 = none, 1 = single comorbidity, 2 = interaction)	Weight
4BC11	Neuro – High	Late - Institutional	0	1.5056
4BC21	Neuro – High	Late - Institutional	1	1.5702
4BC31	Neuro – High	Late - Institutional	2	1.7273
4CA11	Wound – Low	Late - Institutional	0	1.3651
4CA21	Wound – Low	Late - Institutional	1	1.4297
4CA31	Wound – Low	Late - Institutional	2	1.5868
4CB11	Wound - Medium	Late - Institutional	0	1.4844
4CB21	Wound - Medium	Late - Institutional	1	1.5489
4CB31	Wound - Medium	Late - Institutional	2	1.7060
4CC11	Wound – High	Late - Institutional	0	1.6048
4CC21	Wound – High	Late - Institutional	1	1.6694
4CC31	Wound – High	Late - Institutional	2	1.8265
4DA11	Complex – Low	Late - Institutional	0	0.9816
4DA21	Complex – Low	Late - Institutional	1	1.0462
4DA31	Complex – Low	Late - Institutional	2	1.2033
4DB11	Complex - Medium	Late - Institutional	0	1.1224
4DB21	Complex - Medium	Late - Institutional	1	1.1869
4DB31	Complex - Medium	Late - Institutional	2	1.3440
4DC11	Complex – High	Late - Institutional	0	1.1032
4DC21	Complex – High	Late - Institutional	1	1.1678
4DC31	Complex – High	Late - Institutional	2	1.3249
4EA11	MS Rehab – Low	Late - Institutional	0	1.1408
4EA21	MS Rehab – Low	Late - Institutional	1	1.2053
4EA31	MS Rehab – Low	Late - Institutional	2	1.3625
4EB11	MS Rehab - Medium	Late - Institutional	0	1.2450
4EB21	MS Rehab - Medium	Late - Institutional	1	1.3096
4EB31	MS Rehab - Medium	Late - Institutional	2	1.4667
4EC11	MS Rehab – High	Late - Institutional	0	1.4064
4EC21	MS Rehab – High	Late - Institutional	1	1.4710
4EC31	MS Rehab – High	Late - Institutional	2	1.6281
4FA11	Behavioral Health – Low	Late - Institutional	0	0.9872
4FA21	Behavioral Health – Low	Late - Institutional	1	1.0518
4FA31	Behavioral Health – Low	Late - Institutional	2	1.2089
4FB11	Behavioral Health - Medium	Late - Institutional	0	1.1453
4FB21	Behavioral Health - Medium	Late - Institutional	1	1.2099
4FB31	Behavioral Health - Medium	Late - Institutional	2	1.3670
4FC11	Behavioral Health - High	Late - Institutional	0	1.2329
4FC21	Behavioral Health - High	Late - Institutional	1	1.2974
4FC31	Behavioral Health - High	Late - Institutional	2	1.4546
4GA11	MMTA - Surgical Aftercare - Low	Late - Institutional	0	1.0102
4GA21	MMTA - Surgical Aftercare - Low	Late - Institutional	1	1.0748
4GA31	MMTA - Surgical Aftercare - Low	Late - Institutional	2	1.2319
4GB11	MMTA - Surgical Aftercare - Medium	Late - Institutional	0	1.1639
4GB21	MMTA - Surgical Aftercare - Medium	Late - Institutional	1	1.2285
4GB31	MMTA - Surgical Aftercare - Medium	Late - Institutional	2	1.3856
4GC11	MMTA - Surgical Aftercare - High	Late - Institutional	0	1.3289
4GC21	MMTA - Surgical Aftercare - High	Late - Institutional	1	1.3934
4GC31	MMTA - Surgical Aftercare - High	Late - Institutional	2	1.5506
4HA11	MMTA - Cardiac – Low	Late - Institutional	0	1.0369
4HA21	MMTA - Cardiac – Low	Late - Institutional	1	1.1014
4HA31	MMTA - Cardiac – Low	Late - Institutional	2	1.2586
4HB11	MMTA - Cardiac - Medium	Late - Institutional	0	1.1615
4HB21	MMTA - Cardiac - Medium	Late - Institutional	1	1.2260

HIPPS	Clinical Group and Functional Level	Admission Source and Timing	Comorbidity Adjustment (0 = none, 1 = single comorbidity, 2 = interaction)	Weight
4HB31	MMTA - Cardiac - Medium	Late - Institutional	2	1.3832
4HC11	MMTA - Cardiac - High	Late - Institutional	0	1.2690
4HC21	MMTA - Cardiac - High	Late - Institutional	1	1.3335
4HC31	MMTA - Cardiac - High	Late - Institutional	2	1.4907
4IA11	MMTA - Endocrine - Low	Late - Institutional	0	1.2664
4IA21	MMTA - Endocrine - Low	Late - Institutional	1	1.3309
4IA31	MMTA - Endocrine - Low	Late - Institutional	2	1.4881
4IB11	MMTA - Endocrine - Medium	Late - Institutional	0	1.3843
4IB21	MMTA - Endocrine - Medium	Late - Institutional	1	1.4489
4IB31	MMTA - Endocrine - Medium	Late - Institutional	2	1.6060
4IC11	MMTA - Endocrine - High	Late - Institutional	0	1.4584
4IC21	MMTA - Endocrine - High	Late - Institutional	1	1.5229
4IC31	MMTA - Endocrine - High	Late - Institutional	2	1.6800
4JA11	MMTA - GI/GU – Low	Late - Institutional	0	1.0196
4JA21	MMTA - GI/GU – Low	Late - Institutional	1	1.0841
4JA31	MMTA - GI/GU – Low	Late - Institutional	2	1.2413
4JB11	MMTA - GI/GU - Medium	Late - Institutional	0	1.1589
4JB21	MMTA - GI/GU - Medium	Late - Institutional	1	1.2234
4JB31	MMTA - GI/GU - Medium	Late - Institutional	2	1.3806
4JC11	MMTA - GI/GU – High	Late - Institutional	0	1.2497
4JC21	MMTA - GI/GU – High	Late - Institutional	1	1.3142
4JC31	MMTA - GI/GU – High	Late - Institutional	2	1.4713
4KA11	MMTA - Infectious – Low	Late - Institutional	0	1.0378
4KA21	MMTA - Infectious – Low	Late - Institutional	1	1.1024
4KA31	MMTA - Infectious – Low	Late - Institutional	2	1.2595
4KB11	MMTA - Infectious - Medium	Late - Institutional	0	1.1594
4KB21	MMTA - Infectious - Medium	Late - Institutional	1	1.2240
4KB31	MMTA - Infectious - Medium	Late - Institutional	2	1.3811
4KC11	MMTA - Infectious – High	Late - Institutional	0	1.2912
4KC21	MMTA - Infectious – High	Late - Institutional	1	1.3558
4KC31	MMTA - Infectious – High	Late - Institutional	2	1.5129
4LA11	MMTA - Respiratory – Low	Late - Institutional	0	1.0454
4LA21	MMTA - Respiratory – Low	Late - Institutional	1	1.1100
4LA31	MMTA - Respiratory – Low	Late - Institutional	2	1.2671
4LB11	MMTA - Respiratory - Medium	Late - Institutional	0	1.1609
4LB21	MMTA - Respiratory - Medium	Late - Institutional	1	1.2255
4LB31	MMTA - Respiratory - Medium	Late - Institutional	2	1.3826
4LC11	MMTA - Respiratory – High	Late - Institutional	0	1.2662
4LC21	MMTA - Respiratory – High	Late - Institutional	1	1.3308
4LC31	MMTA - Respiratory – High	Late - Institutional	2	1.4879

Source: CY 2020 Home Health Claims Data, Periods that begin and end in CY 2020 accessed from the CCW March 30, 2021.

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To ensure the changes to the PDGM case-mix weights are implemented in a budget neutral manner, we then apply a case-mix budget neutrality factor to the CY 2022 national, standardized 30-day period payment rate. Typically, the case-mix weight budget neutrality factor is calculated using the most recent, complete home health claims data available. However, due to the COVID–19 PHE, we looked at using the previous calendar year's home health claims data (CY 2019) to determine if there were significant differences between utilizing CY 2019 and CY 2020 claims data. We note that CY 2020 is the first year of actual PDGM utilization data, therefore, if we were to use CY 2019 data due to the PHE we would need to simulate 30-day periods from 60-day episodes under the old system. We believe that using CY 2020 utilization data is more appropriate than using CY 2019 utilization data because it is actual PDGM utilization data. The case-mix budget neutrality factor is calculated as the ratio of 30-day base payment rates such that total payments when the CY 2022 PDGM case-mix weights

(developed using CY 2020 home health claims data) are applied to CY 2020 utilization (claims) data are equal to total payments when CY 2021 PDGM case-mix weights (developed using CY 2018 home health claims data) are applied to CY 2020 utilization data. This produces a case-mix budget neutrality factor for CY 2022 of 1.0344. For reasons described previously, CY 2020 utilization data was used to calculate the case-mix weight budget neutrality factor because it is the most recent complete data we have at the time of this rulemaking.

We invite comments on the CY 2022 proposed case-mix weights and proposed case-mix weight budget neutrality factor.

4. Proposed CY 2022 Home Health Payment Rate Updates

a. Proposed CY 2022 Home Health Market Basket Update for HHAs

Section 1895(b)(3)(B) of the Act requires that the standard prospective payment amounts for home health be increased by a factor equal to the applicable home health market basket update for those HHAs that submit quality data as required by the Secretary. In the CY 2019 HH PPS final rule with comment period (83 FR 56425), we finalized a rebasing of the home health market basket to reflect 2016 cost report data. As such, based on the rebased 2016-based home health market basket, we finalized that the labor share is 76.1 percent and the non-labor share is 23.9 percent. A detailed description of how we rebased the HHA market basket is available in the CY 2019 HH PPS final rule with comment period (83 FR 56425 through 56436).

Section 1895(b)(3)(B) of the Act requires that in CY 2015 and in subsequent calendar years, except CY 2018 (under section 411(c) of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) (Pub. L. 114–10, enacted April 16, 2015)), and CY 2020 (under section 53110 of the Bipartisan Budget Act of 2018 (BBA) (Pub. L. 115–123, enacted February 9, 2018)), the market basket percentage under the HHA prospective payment system, as described in section 1895(b)(3)(B) of the Act, be annually adjusted by changes in economy-wide productivity. Section 1886(b)(3)(B)(xi)(II) of the Act defines the productivity adjustment to be equal to the 10-year moving average of changes in annual economy-wide private nonfarm business multifactor productivity (MFP) (as projected by the Secretary for the 10-year period ending with the applicable fiscal year, calendar year, cost reporting period, or other annual period). The Bureau of Labor Statistics (BLS) is the agency that publishes the official measure of private nonfarm business MFP. Please visit *http://www.bls.gov/mfp,* to obtain the BLS historical published MFP data.

The proposed home health update percentage for CY 2022 is based on the estimated home health market basket update, specified at section 1895(b)(3)(B)(iii) of the Act, of 2.4 percent (based on IHS Global Inc.'s first-quarter 2021 forecast with historical data through fourth-quarter 2020). The estimated CY 2022 home health market basket update of 2.4 percent is then reduced by a productivity adjustment, as mandated by the section 3401 of the Patient Protection and Affordable Care Act (the Affordable Care Act) (Pub. L. 111–148), currently estimated to be 0.6 percentage point for CY 2022. In effect, the proposed home health payment update percentage for CY 2022 is a 1.8 percent increase. Section 1895(b)(3)(B)(v) of the Act requires that the home health update be decreased by 2 percentage points for those HHAs that do not submit quality data as required by the Secretary. For HHAs that do not submit the required quality data for CY 2022, the home health payment update would be −0.2 percent (1.8 percent minus 2 percentage points). If more recent data becomes available after the publication of this proposed rule and before the publication of the final rule (for example, more recent estimates of the home health market basket update and productivity adjustment), we would use such data, if appropriate, to determine the home health payment update percentage for CY 2022 in the final rule.

b. CY 2022 Home Health Wage Index

Sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act require the Secretary to provide appropriate adjustments to the proportion of the payment amount under the HH PPS that account for area wage differences, using adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services. Since the inception of the HH PPS, we have used inpatient hospital wage data in developing a wage index to be applied to home payments. We propose to continue this practice for CY 2022, as we continue to believe that, in the absence of home health-specific wage data that accounts for area differences, using inpatient hospital wage data is appropriate and reasonable for the HH PPS.

In the FY 2021 HH PPS final rule (85 FR 70298), we finalized the proposal to adopt the revised OMB delineations with a 5 percent cap on wage index decreases, where the estimated reduction in a geographic area's wage index would be capped at 5 percent in CY 2021 only and no cap would be applied to wage index decreases for the second year (CY 2022). Therefore, we propose to use the FY 2022 pre-floor, pre-reclassified hospital wage index with no 5 percent cap on decreases as the CY 2022 wage adjustment to the labor portion of the HH PPS rates. For CY 2022, the updated wage data are for hospital cost reporting periods beginning on or after October 1, 2017, and before October 1, 2018 (FY 2018 cost report data). We apply the appropriate wage index value to the labor portion of the HH PPS rates based on the site of service for the beneficiary (defined by section 1861(m) of the Act as the beneficiary's place of residence).

To address those geographic areas in which there are no inpatient hospitals, and thus, no hospital wage data on which to base the calculation of the CY 2022 HH PPS wage index, we propose to continue to use the same methodology discussed in the CY 2007 HH PPS final rule (71 FR 65884) to address those geographic areas in which there are no inpatient hospitals. For rural areas that do not have inpatient hospitals, we propose to use the average wage index from all contiguous Core Based Statistical Areas (CBSAs) as a reasonable proxy. Currently, the only rural area without a hospital from which hospital wage data could be derived is Puerto Rico. However, for rural Puerto Rico, we do not apply this methodology due to the distinct economic circumstances that exist there (for example, due to the close proximity to one another of almost all of Puerto Rico's various urban and non-urban areas, this methodology would produce a wage index for rural Puerto Rico that is higher than that in half of its urban areas). Instead, we propose to continue to use the most recent wage index previously available for that area. The most recent wage index previously available for rural Puerto Rico is 0.4047. For urban areas without inpatient hospitals, we use the average wage index of all urban areas within the State as a reasonable proxy for the wage index for that CBSA. For CY 2022, the only urban area without inpatient hospital wage data is Hinesville, GA (CBSA 25980). The CY 2022 wage index value for Hinesville, GA is 0.8557.

On February 28, 2013, OMB issued Bulletin No. 13–01, announcing revisions to the delineations of MSAs, Micropolitan Statistical Areas, and CBSAs, and guidance on uses of the

delineation of these areas. In the CY 2015 HH PPS final rule (79 FR 66085 through 66087), we adopted OMB's area delineations using a 1-year transition.

On August 15, 2017, OMB issued Bulletin No. 17–01 in which it announced that one Micropolitan Statistical Area, Twin Falls, Idaho, now qualifies as a Metropolitan Statistical Area. The new CBSA (46300) comprises the principal city of Twin Falls, Idaho in Jerome County, Idaho and Twin Falls County, Idaho. The CY 2022 HH PPS wage index value for CBSA 46300, Twin Falls, Idaho, will be 0.8757. Bulletin No. 17–01 is available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/bulletins/2017/b-17-01.pdf.*

On April 10, 2018 OMB issued OMB Bulletin No. 18–03 which superseded the August 15, 2017 OMB Bulletin No. 17–01. On September 14, 2018, OMB issued OMB Bulletin No. 18–04 which superseded the April 10, 2018 OMB Bulletin No. 18–03. These bulletins established revised delineations for Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and provided guidance on the use of the delineations of these statistical areas. A copy of OMB Bulletin No. 18–04 may be obtained at: *https://www.bls.gov/bls/omb-bulletin-18-04-revised-delineations-of-metropolitan-statistical-areas.pdf.*

On March 6, 2020, OMB issued Bulletin No. 20–01, which provided updates to and superseded OMB Bulletin No. 18–04 that was issued on September 14, 2018. The attachments to OMB Bulletin No. 20–01 provided detailed information on the update to statistical areas since September 14, 2018, and were based on the application of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for July 1, 2017 and July 1, 2018. (For a copy of this bulletin, we refer readers to *https://www.whitehouse.gov/wp-content/uploads/2020/03/Bulletin-20-01.pdf*). In OMB Bulletin No. 20–01, OMB announced one new Micropolitan Statistical Area, one new component of an existing Combined Statistical Are and changes to New England City and Town Area (NECTA) delineations. In the CY 2021 HH PPS final rule (85 FR 70298) we stated that if appropriate, we would propose any updates from OMB Bulletin No. 20–01 in future rulemaking. After reviewing OMB Bulletin No. 20–01, we have determined that the changes in Bulletin 20–01 encompassed delineation changes that would not affect the Medicare wage index for CY 2022. Specifically, the updates consisted of changes to NECTA delineations and the redesignation of a single rural county into a newly created Micropolitan Statistical Area. The Medicare wage index does not utilize NECTA definitions, and, as most recently discussed in the CY 2021 HH PPS final rule (85 FR 70298) we include hospitals located in Micropolitan Statistical areas in each State's rural wage index. Therefore, while we are proposing to adopt the updates set forth in OMB Bulletin No. 20–01 consistent with our longstanding policy of adopting OMB delineation updates, we note that specific wage index updates would not be necessary for CY 2022 as a result of adopting these OMB updates. In other words, these OMB updates would not affect any geographic areas for purposes of the wage index calculation for CY 2022.

The proposed CY 2022 wage index is available on the CMS website at: *https://www.cms.gov/Center/Provider-Type/Home-Health-Agency-HHA-Center.*

c. CY 2022 Annual Payment Update

(1) Background

The HH PPS has been in effect since October 1, 2000. As set forth in the July 3, 2000 final rule (65 FR 41128), the base unit of payment under the HH PPS was a national, standardized 60-day episode payment rate. As finalized in the CY 2019 HH PPS final rule with comment period (83 FR 56406), and as described in the CY 2020 HH PPS final rule with comment period (84 FR 60478), the unit of home health payment changed from a 60-day episode to a 30-day period effective for those 30-day periods beginning on or after January 1, 2020.

As set forth in § 484.220, we adjust the national, standardized prospective payment rates by a case-mix relative weight and a wage index value based on the site of service for the beneficiary. To provide appropriate adjustments to the proportion of the payment amount under the HH PPS to account for area wage differences, we apply the appropriate wage index value to the labor portion of the HH PPS rates. In the CY 2019 HH PPS final rule with comment period (83 FR 56435), we finalized rebasing the home health market basket to reflect 2016 Medicare cost report data. We also finalized a revision to the labor share to reflect the 2016-based home health market basket compensation (Wages and Salaries plus Benefits) cost weight. We finalized that for CY 2019 and subsequent years, the labor share would be 76.1 percent and the non-labor share would be 23.9 percent. The following are the steps we take to compute the case-mix and wage-adjusted 30-day period payment amount for CY 2021:

- Multiply the national, standardized 30-day period rate by the patient's applicable case-mix weight.
- Divide the case-mix adjusted amount into a labor (76.1 percent) and a non-labor portion (23.9 percent).
- Multiply the labor portion by the applicable wage index based on the site of service of the beneficiary.
- Add the wage-adjusted portion to the non-labor portion, yielding the case-mix and wage adjusted 30-day period payment amount, subject to any additional applicable adjustments.

We provide annual updates of the HH PPS rate in accordance with section 1895(b)(3)(B) of the Act. Section 484.225 sets forth the specific annual percentage update methodology. In accordance with section 1895(b)(3)(B)(v) of the Act and § 484.225(i), for an HHA that does not submit home health quality data, as specified by the Secretary, the unadjusted national prospective 30-day period rate is equal to the rate for the previous calendar year increased by the applicable home health payment update, minus 2 percentage points. Any reduction of the percentage change would apply only to the calendar year involved and would not be considered in computing the prospective payment amount for a subsequent calendar year.

The final claim that the HHA submits for payment determines the total payment amount for the period and whether we make an applicable adjustment to the 30-day case-mix and wage-adjusted payment amount. The end date of the 30-day period, as reported on the claim, determines which calendar year rates Medicare will use to pay the claim.

We may adjust a 30-day case-mix and wage-adjusted payment based on the information submitted on the claim to reflect the following:

- A LUPA is provided on a per-visit basis as set forth in §§ 484.205(d)(1) and 484.230.
- A PEP adjustment as set forth in §§ 484.205(d)(2) and 484.235.
- An outlier payment as set forth in §§ 484.205(d)(3) and 484.240.

(2) CY 2022 National, Standardized 30-Day Period Payment Amount

CMS provided preliminary monitoring data for the first year of PDGM and presented a repricing method to determine the differences between assumed and actual behavior changes and the impact of such on estimated aggregate expenditures, as discussed in Section III.B of this

proposed rule. For CY 2022, we are not proposing to make any additional permanent or temporary adjustments to the national, standardized 30-day period payment in this proposed rule in accordance with section 1895(b)(3)(D) of the Act.

Section 1895(b)(3)(A)(i) of the Act requires that the standard prospective payment rate and other applicable amounts be standardized in a manner that eliminates the effects of variations in relative case-mix and area wage adjustments among different home health agencies in a budget-neutral manner. To determine the CY 2022 national, standardized 30-day period payment rate, we apply a case-mix weights recalibration budget neutrality factor, a wage index budget neutrality factor and the home health payment update percentage discussed in Section III.C.2 of this proposed rule. As discussed previously, to ensure the changes to the PDGM case-mix weights are implemented in a budget neutral manner, we apply a case-mix weights budget neutrality factor to the CY 2021 national, standardized 30-day period payment rate. The proposed case-mix weights budget neutrality factor for CY 2022 is 1.0344.

Additionally, we also apply a wage index budget neutrality to ensure that wage index updates and revisions are implemented in a budget neutral manner. Typically, the wage index budget neutrality factor is calculated using the most recent, complete home health claims data available. However, due to the COVID–19 PHE, we looked at using the previous calendar year's home health claims data (CY 2019) to determine if there were significant differences between utilizing 2019 and 2020 claims data. Our analysis showed that there is only a small difference between the wage index budget neutrality factors calculated using CY 2019 and CY 2020 home health claims data. Therefore, we have decided to continue our practice of using the most recent, complete home health claims data available; that is we are using CY 2020 claims data for the CY 2022 payment rate updates.

To calculate the wage index budget neutrality factor, we simulated total payments using CY 2020 home health claims utilization data for non-LUPA 30-day periods using the proposed CY 2022 wage index and compared it to our simulation of total payments for non-LUPA 30-day periods using the CY 2021 wage index. By dividing the total payments for non-LUPA 30-day periods using the CY 2022 wage index by the total payments for non-LUPA 30-day periods using the CY 2021 wage index, we obtain a wage index budget neutrality factor of 1.0013. We would apply the wage index budget neutrality factor of 1.0013 to the 30-day period payment rate.

Next, we would update the 30-day period payment rate by the CY 2022 home health payment update percentage of 1.8 percent. The CY 2022 national, standardized 30-day period payment rate is calculated in Table 19.

TABLE 19: CY 2022 NATIONAL, STANDARDIZED 30-DAY PERIOD PAYMENT AMOUNT

CY 2021 National Standardized 30-Day Period Payment	Case-Mix Weights Recalibration Neutrality Factor	Wage Index Budget Neutrality Factor	CY 2022 HH Payment Update	CY 2022 National, Standardized 30-Day Period Payment
$1,901.12	1.0390	1.0013	1.018	$2,013.43

The CY 2022 national, standardized 30-day period payment rate for a HHA that does not submit the required quality data is updated by the CY 2022 home health payment update of 1.8 percent minus 2 percentage points and is shown in Table 20.

TABLE 20: CY 2022 NATIONAL, STANDARDIZED 30-DAY PERIOD PAYMENT AMOUNT FOR HHAS THAT DO NOT SUBMIT THE QUALITY DATA

CY 2021 National Standardized 30-Day Period Payment	Case-Mix Weights Recalibration Neutrality Factor	Wage Index Budget Neutrality Factor	CY 2022 HH Payment Update Minus 2 Percentage Points	CY 2022 National, Standardized 30-Day Period Payment
$1,901.12	1.0390	1.0013	0.998	$1,973.88

(3) CY 2022 National Per-Visit Rates for 30-Day Periods of Care

The national per-visit rates are used to pay LUPAs and are also used to compute imputed costs in outlier calculations. The per-visit rates are paid by type of visit or HH discipline. The six HH disciplines are as follows:

- Home health aide (HH aide).
- Medical Social Services (MSS).
- Occupational therapy (OT).
- Physical therapy (PT).
- Skilled nursing (SN).
- Speech-language pathology (SLP).

To calculate the CY 2022 national per-visit rates, we started with the CY 2021 national per-visit rates. Then we applied a wage index budget neutrality factor to ensure budget neutrality for LUPA per-

visit payments. We calculated the wage index budget neutrality factor by simulating total payments for LUPA 30-day periods of care using the CY 2022 wage index and comparing it to simulated total payments for LUPA 30-day periods of care using the CY 2021 wage index. By dividing the total payments for LUPA 30-day periods of care using the CY 2022 wage index by the total payments for LUPA 30-day periods of care using the CY 2021 wage index, we obtained a wage index budget neutrality factor of 1.0014. We apply the wage index budget neutrality factor in order to calculate the CY 2022 national per-visit rates.

The LUPA per-visit rates are not calculated using case-mix weights. Therefore, no case-mix weights budget neutrality factor is needed to ensure budget neutrality for LUPA payments. Lastly, the per-visit rates for each discipline are updated by the CY 2022 home health payment update percentage of 1.8 percent. The national per-visit rates are adjusted by the wage index based on the site of service of the beneficiary. The per-visit payments for LUPAs are separate from the LUPA add-on payment amount, which is paid for episodes that occur as the only episode or initial episode in a sequence of adjacent episodes. The CY 2022 national per-visit rates for HHAs that submit the required quality data are updated by the CY 2022 home health payment update percentage of 1.8 percent and are shown in Table 21.

TABLE 21: CY 2022 NATIONAL PER-VISIT PAYMENT AMOUNTS

HH Discipline	CY 2021 Per-Visit Payment	Wage Index Budget Neutrality Factor	CY 2022 HH Payment Update	CY 2022 Per-Visit Payment
Home Health Aide	$69.11	X 1.0014	X 1.018	$70.45
Medical Social Services	$244.64	X 1.0014	X 1.018	$249.39
Occupational Therapy	$167.98	X 1.0014	X 1.018	$171.24
Physical Therapy	$166.83	X 1.0014	X 1.018	$170.07
Skilled Nursing	$152.63	X 1.0014	X 1.018	$155.59
Speech-Language Pathology	$181.34	X 1.0014	X 1.018	$184.86

The CY 2022 per-visit payment rates for HHAs that do not submit the required quality data are updated by the CY 2020 home health payment update percentage of 1.8 percent minus 2 percentage points and are shown in Table 22.

TABLE 22: CY 2022 NATIONAL PER-VISIT PAYMENT AMOUNTS FOR HHAS THAT DO NOT SUBMIT THE REQUIRED QUALITY DATA

HH Discipline	CY 2021 Per-Visit Rates	Wage Index Budget Neutrality Factor	CY 2022 HH Payment Update Minus 2 Percentage Points	CY 2022 Per-Visit Rates
Home Health Aide	$69.11	X 1.0014	X 0.998	$69.07
Medical Social Services	$244.64	X 1.0014	X 0.998	$244.49
Occupational Therapy	$167.98	X 1.0014	X 0.998	$167.88
Physical Therapy	$166.83	X 1.0014	X 0.998	$166.73
Skilled Nursing	$152.63	X 1.0014	X 0.998	$152.54
Speech- Language Pathology	$181.34	X 1.0014	X 0.998	$181.23

We are reminding stakeholders of the policies finalized in the CY 2020 HH PPS final rule with comment period (84 FR 60544) and the implementation of a new one-time Notice of Admission (NOA) process starting in CY 2022. In that final rule, we finalized the lowering of the up-front payment made in response to Requests for Anticipated Payment (RAPs) to zero percent for all 30-day periods of care beginning on or after January 1, 2021 (84 FR 60544). For CY 2021, all HHAs (both existing and newly-enrolled HHAs) were required to submit a RAP at the beginning of each 30-day period in order to establish the home health period of care in the common working file and also to trigger the consolidated billing edits. With the removal of the upfront RAP payment for CY 2021, we relaxed the required information for submitting the RAP for CY 2021 and also stated that the information required for submitting an NOA for CYs 2022 and beyond would mirror that of the RAP in CY 2021. Starting in CY 2022, HHAs will submit a one-time NOA that establishes the home health period of care and covers all contiguous 30-day periods of care until the individual is discharged from Medicare home health services. Also, for the one-time NOA for CYs 2022 and

beyond, we finalized a payment reduction if the HHA does not submit the NOA for CYs 2022 and beyond within 5 calendar days from the start of care. That is, if an HHA fails to submit a timely NOA for CYs 2022 and beyond, the reduction in payment amount would be equal to a one-thirtieth reduction to the wage and case-mix adjusted 30-day period payment amount for each day from the home health start of care date until the date the HHA submitted the NOA. In other words, the one-thirtieth reduction would be to the 30-day period adjusted payment amount, including any outlier payment, that the HHA otherwise would have received absent any reduction. For LUPA 30-day periods of care in which an HHA fails to submit a timely NOA, no LUPA payments would be made for days that fall within the period of care prior to the submission of the NOA. We stated that these days would be a provider liability, the payment reduction could not exceed the total payment of the claim, and that the provider may not bill the beneficiary for these days.

We remind stakeholders that for purposes of determining if an NOA is timely-filed, the NOA must be submitted within 5 calendar days after the start of care for the first 30-day period of care. For example, if the start of care for the first 30-day period is January 1, 2022, the NOA would be considered timely-filed if it is submitted on or before January 6, 2022.

Example

1/1/2022 = Day 0 (start of the first 30-day period of care)

1/6/2022 = Day 5 (An NOA submitted on or before this date would be considered ''timely-filed''.)

1/7/2022 and after = Day 6 and beyond (An NOA submitted on and after this date will trigger the penalty.) In the event that the NOA is not timely-filed, the penalty is calculated from the first day of that 30-day period (in the example, the penalty calculation would begin with the start of care date of January 1, 2022, counting as the first day of the penalty) until the date of the submission of the NOA.

Also, in the CY 2020 HH PPS final rule with comment period (84 FR 60478), we finalized exceptions to the timely filing consequences of the NOA requirements at § 484.205(j)(4). Specifically, we finalized that CMS may waive the consequences of failure to submit a timely-filed NOA if it is determined that a circumstance encountered by a home health agency is exceptional and qualifies for waiver of the consequence. As finalized in the CY 2020 HH PPS final rule with comment period and as set forth in regulation at § 484.205(j)(4), an exceptional circumstance may be due to, but is not limited to the following:

- Fires, floods, earthquakes, or similar unusual events that inflict extensive damage to the home health agency's ability to operate.
- A CMS or Medicare contractor systems issue that is beyond the control of the home health agency.
- A newly Medicare-certified home health agency that is notified of that certification after the Medicare certification date, or which is awaiting its user ID from its Medicare contractor.
- Other situations determined by CMS to be beyond the control of the home health agency.

If an HHA believes that there is a circumstance that may qualify for an exception, the HHA must fully document and furnish any requested documentation to their MAC for a determination of exception.

For more in-depth information regarding the finalized policies associated with the new one-time NOA process, we refer readers to the CY 2020 HH PPS final rule with comment period (84 FR 60544) as well as the regulations at § 484.205(j).

(4) LUPA Add-On Factors

Prior to the implementation of the 30-day unit of payment, LUPA episodes were eligible for a LUPA add-on payment if the episode of care was the first or only episode in a sequence of adjacent episodes. As stated in the CY 2008 HH PPS final rule, the average visit lengths in these initial LUPAs are 16 to 18 percent higher than the average visit lengths in initial non-LUPA episodes (72 FR 49848). LUPA episodes that occur as the only episode or as an initial episode in a sequence of adjacent episodes are adjusted by applying an additional amount to the LUPA payment before adjusting for area wage differences. In the CY 2014 HH PPS final rule (78 FR 72305), we changed the methodology for calculating the LUPA add-on amount by finalizing the use of three LUPA add-on factors: 1.8451 for SN; 1.6700 for PT; and 1.6266 for SLP. We multiply the per-visit payment amount for the first SN, PT, or SLP visit in LUPA episodes that occur as the only episode or an initial episode in a sequence of adjacent episodes by the appropriate factor to determine the LUPA add-on payment amount.

In the CY 2019 HH PPS final rule with comment period (83 FR 56440), in addition to finalizing a 30-day unit of payment, we finalized our policy of continuing to multiply the per-visit payment amount for the first skilled nursing, physical therapy, or speech-language pathology visit in LUPA periods that occur as the only period of care or the initial 30-day period of care in a sequence of adjacent 30-day periods of care by the appropriate add-on factor (1.8451 for SN, 1.6700 for PT, and 1.6266 for SLP) to determine the LUPA add-on payment amount for 30-day periods of care under the PDGM. For example, using the proposed CY 2022 per-visit payment rates for those HHAs that submit the required quality data, for LUPA periods that occur as the only period or an initial period in a sequence of adjacent periods, if the first skilled visit is SN, the payment for that visit would be $287.06 (1.8451 multiplied by $155.58), subject to area wage adjustment.

(5) Proposed Occupational Therapy LUPA Add-On Factor

In order to implement Division CC, section 115, of CAA 2021, we are proposing conforming changes to regulations at §§ 484.55(a)(2) and 484.55(b)(3) that were revised to allow OTs to conduct initial and comprehensive assessments for all Medicare beneficiaries under the home health benefit when the plan of care does not initially include skilled nursing care, but includes either PT or SLP. Because of this change, we are proposing to establish a LUPA add-on factor for calculating the LUPA add-on payment amount for the first skilled occupational therapy visit in LUPA periods that occurs as the only period of care or the initial 30-day period of care in a sequence of adjacent 30-day periods of care. Currently, there are no sufficient data regarding the average excess of minutes for the first visit in LUPA periods where the initial and comprehensive assessments are conducted by occupational therapists. Therefore, we propose to utilize the PT LUPA add-on factor of 1.6700 as a proxy until we have CY 2022 data to establish a more accurate OT add-on factor for the LUPA add-on payment amounts. We believe that the similarity in the per-visit payment rates for both PT and OT make the PT LUPA add-on factor the most appropriate proxy. We welcome comments on this proposal.

d. Rural Add-On Payments for CY 2022

(1) Background

Section 421(a) of the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA) (Pub. L. 108–173) required, for home health services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act), for episodes or visits ending on or

after April 1, 2004, and before April 1, 2005, that the Secretary increase the payment amount that otherwise would have been made under section 1895 of the Act for the services by 5 percent. Section 5201 of the Deficit Reduction Act of 2003 (DRA) (Pub. L. 108–171) amended section 421(a) of the MMA. The amended section 421(a) of the MMA required, for home health services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act), on or after January 1, 2006, and before January 1, 2007, that the Secretary increase the payment amount otherwise made under section 1895 of the Act for those services by 5 percent.

Section 3131(c) of the Affordable Care Act amended section 421(a) of the MMA to provide an increase of 3 percent of the payment amount otherwise made under section 1895 of the Act for home health services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act), for episodes and visits ending on or after April 1, 2010, and before January 1, 2016. Section 210 of the MACRA amended section 421(a) of the MMA to extend the rural add-on by providing an increase of 3 percent of the payment amount otherwise made under section 1895 of the Act for home health services provided in a rural area (as defined in section 1886(d)(2)(D) of the Act), for episodes and visits ending before January 1, 2018.

Section 50208(a) of the BBA of 2018 amended section 421(a) of the MMA to extend the rural add-on by providing an increase of 3 percent of the payment amount otherwise made under section 1895 of the Act for home health services provided in a rural area (as defined in section 1886(d)(2)(D) of the Act), for episodes and visits ending before January 1, 2019.

(2) Rural Add-On Payments for CYs 2019 Through CY 2022

Section 50208(a)(1)(D) of the BBA of 2018 added a new subsection (b) to section 421 of the MMA to provide rural add-on payments for episodes or visits ending during CYs 2019 through 2022. It also mandated implementation of a new methodology for applying those payments. Unlike previous rural add-ons, which were applied to all rural areas uniformly, the extension provided varying add-on amounts depending on the rural county (or equivalent area) classification by classifying each rural county (or equivalent area) into one of three distinct categories: (1) Rural counties and equivalent areas in the highest quartile of all counties and equivalent areas based on the number of Medicare home health episodes furnished per 100 individuals who are entitled to, or enrolled for, benefits under Part A of Medicare or enrolled for benefits under Part B of Medicare only, but not enrolled in a Medicare Advantage plan under Part C of Medicare (the ''High utilization'' category); (2) rural counties and equivalent areas with a population density of 6 individuals or fewer per square mile of land area and are not included in the ''High utilization'' category (the ''Low population density'' category); and (3) rural counties and equivalent areas not in either the ''High utilization'' or ''Low population density'' categories (the ''All other'' category).

In the CY 2019 HH PPS final rule with comment period (83 FR 56443), CMS finalized policies for the rural add-on payments for CY 2019 through CY 2022, in accordance with section 50208 of the BBA of 2018. The CY 2019 HH PPS proposed rule (83 FR 32373) described the provisions of the rural add-on payments, the methodology for applying the new payments, and outlined how we categorized rural counties (or equivalent areas) based on claims data, the Medicare Beneficiary Summary File and Census data. The data used to categorize each county or equivalent area is available in the Downloads section associated with the publication of this rule at: *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HomeHealthPPS/Home-Health-Prospective-Payment-System-Regulations-and-Notices.html.* In addition, an Excel file containing the rural county or equivalent area name, their Federal Information Processing Standards (FIPS) State and county codes, and their designation into one of the three rural add-on categories is available for download.

The HH PRICER module, located within CMS' claims processing system, will increase the CY 2022 30-day base payment rates, described in section III.C.3. of this proposed rule, by the appropriate rural add-on percentage prior to applying any case-mix and wage index adjustments. The CY 2019 through CY 2022 rural add-on percentages outlined in law are shown in Table 23.

TABLE 23: HOME HEALTH PPS RURAL ADD-ON PERCENTAGES, CYs 2019-2022

Category	CY 2019	CY 2020	CY 2021	CY 2022
High utilization	1.5%	0.5%	None	None
Low population density	4.0%	3.0%	2.0%	1.0%
All other	3.0%	2.0%	1.0%	None

e. Proposed Payments for High-Cost Outliers Under the HH PPS

(1) Background

Section 1895(b)(5) of the Act allows for the provision of an addition or adjustment to the home health payment amount otherwise made in the case of outliers because of unusual variations in the type or amount of medically necessary care. Under the HH PPS and the previous unit of payment (that is, 60-day episodes), outlier payments were made for 60-day episodes whose estimated costs exceed a threshold amount for each Home Health Resource Group (HHRG). The episode's estimated cost was established as the sum of the national wage-adjusted per visit payment amounts delivered during the episode. The outlier threshold for each case-mix group or PEP adjustment defined as the 60-day episode payment or PEP adjustment for that group plus a fixed-dollar loss (FDL) amount. For the purposes of the HH PPS, the FDL amount is calculated by multiplying the home health FDL ratio by a case's wage-adjusted national, standardized 60-day episode payment rate, which yields an FDL dollar amount for the case. The outlier threshold amount is the sum of the wage and case-mix adjusted PPS episode amount and wage-adjusted FDL amount. The outlier payment is defined to be a proportion of the wage-adjusted estimated cost that surpasses the wage-adjusted threshold. The proportion of additional costs over the outlier

threshold amount paid as outlier payments is referred to as the loss-sharing ratio.

As we noted in the CY 2011 HH PPS final rule (75 FR 70397 through 70399), section 3131(b)(1) of the Affordable Care Act amended section 1895(b)(3)(C) of the Act to require that the Secretary reduce the HH PPS payment rates such that aggregate HH PPS payments were reduced by 5 percent. In addition, section 3131(b)(2) of the Affordable Care Act amended section 1895(b)(5) of the Act by redesignating the existing language as section 1895(b)(5)(A) of the Act and revised the language to state that the total amount of the additional payments or payment adjustments for outlier episodes could not exceed 2.5 percent of the estimated total HH PPS payments for that year. Section 3131(b)(2)(C) of the Affordable Care Act also added section 1895(b)(5)(B) of the Act, which capped outlier payments as a percent of total payments for each HHA for each year at 10 percent.

As such, beginning in CY 2011, we reduced payment rates by 5 percent and targeted up to 2.5 percent of total estimated HH PPS payments to be paid as outliers. To do so, we first returned the 2.5 percent held for the target CY 2010 outlier pool to the national, standardized 60-day episode rates, the national per visit rates, the LUPA add-on payment amount, and the NRS conversion factor for CY 2010. We then reduced the rates by 5 percent as required by section 1895(b)(3)(C) of the Act, as amended by section 3131(b)(1) of the Affordable Care Act. For CY 2011 and subsequent calendar years we targeted up to 2.5 percent of estimated total payments to be paid as outlier payments, and apply a 10-percent agency-level outlier cap.

In the CY 2017 HH PPS proposed and final rules (81 FR 43737 through 43742 and 81 FR 76702), we described our concerns regarding patterns observed in home health outlier episodes. Specifically, we noted the methodology for calculating home health outlier payments may have created a financial incentive for providers to increase the number of visits during an episode of care in order to surpass the outlier threshold; and simultaneously created a disincentive for providers to treat medically complex beneficiaries who require fewer but longer visits. Given these concerns, in the CY 2017 HH PPS final rule (81 FR 76702), we finalized changes to the methodology used to calculate outlier payments, using a cost-per-unit approach rather than a cost-per-visit approach. This change in methodology allows for more accurate payment for outlier episodes, accounting for both the number of visits during an episode of care and the length of the visits provided. Using this approach, we now convert the national per-visit rates into per 15-minute unit rates. These per 15-minute unit rates are used to calculate the estimated cost of an episode to determine whether the claim will receive an outlier payment and the amount of payment for an episode of care. In conjunction with our finalized policy to change to a cost-per-unit approach to estimate episode costs and determine whether an outlier episode should receive outlier payments, in the CY 2017 HH PPS final rule we also finalized the implementation of a cap on the amount of time per day that would be counted toward the estimation of an episode's costs for outlier calculation purposes (81 FR 76725). Specifically, we limit the amount of time per day (summed across the six disciplines of care) to 8 hours (32 units) per day when estimating the cost of an episode for outlier calculation purposes.

In the CY 2017 HH PPS final rule (81 FR 76724), we stated that we did not plan to re-estimate the average minutes per visit by discipline every year. Additionally, the per unit rates used to estimate an episode's cost were updated by the home health update percentage each year, meaning we would start with the national per visit amounts for the same calendar year when calculating the cost-per-unit used to determine the cost of an episode of care (81 FR 76727). We will continue to monitor the visit length by discipline as more recent data becomes available, and may propose to update the rates as needed in the future.

In the CY 2019 HH PPS final rule with comment period (83 FR 56521), we finalized a policy to maintain the current methodology for payment of high-cost outliers upon implementation of PDGM beginning in CY 2020 and calculated payment for high-cost outliers based upon 30-day period of care. Upon implementation of the PDGM and 30-day unit of payment, we finalized the FDL ratio of 0.56 for 30-day periods of care in CY 2020. Given that CY 2020 was the first year of the PDGM and the change to a 30-day unit of payment, we finalized to maintain the same FDL ratio of 0.56 in CY 2021 as we did not have sufficient CY 2020 data at the time of CY 2021 rulemaking to proposed a change to the FDL ratio for CY 2021.

(2) Fixed Dollar Loss (FDL) Ratio for CY 2022

For a given level of outlier payments, there is a trade-off between the values selected for the FDL ratio and the loss-sharing ratio. A high FDL ratio reduces the number of periods that can receive outlier payments, but makes it possible to select a higher loss-sharing ratio, and therefore, increase outlier payments for qualifying outlier periods. Alternatively, a lower FDL ratio means that more periods can qualify for outlier payments, but outlier payments per period must be lower.

The FDL ratio and the loss-sharing ratio are selected so that the estimated total outlier payments do not exceed the 2.5 percent aggregate level (as required by section 1895(b)(5)(A) of the Act). Historically, we have used a value of 0.80 for the loss-sharing ratio, which, we believe, preserves incentives for agencies to attempt to provide care efficiently for outlier cases. With a loss-sharing ratio of 0.80, Medicare pays 80 percent of the additional estimated costs that exceed the outlier threshold amount. Using CY 2020 claims data (as of March 30, 2021), and given the statutory requirement that total outlier payments does not exceed 2.5 percent of the total payments estimated to be made under the HH PPS, we are proposing a FDL ratio of 0.41 for CY 2022.

6. Conforming Regulations Text Changes Regarding Allowed Practitioners

As stated in the May 2020 COVID–19 interim final rule with comment period (85 FR 27550), we amended the regulations at parts 409, 424, and 484 to implement section 3708 of the CARES Act. This included defining a nurse practitioner (NP), a clinical nurse specialist (CNS), and a physician's assistant (PA) (as such qualifications are defined at §§ 410.74 through 410.76) as ''allowed practitioners'' (85 FR 27572). This means that in addition to a physician, as defined at section 1861(r) of the Act, an allowed practitioner may certify, establish and periodically review the plan of care, as well as supervise the provision of items and services for beneficiaries under the Medicare home health benefit. Additionally, we amended the regulations to reflect that we would expect the allowed practitioner to also perform the face-to-face encounter for the patient for whom they are certifying eligibility; however, if a face-to-face encounter is performed by a physician or an allowed non-physician practitioner (NPP), as set forth in § 424.22(a)(1)(v)(A), in an acute or post-acute facility, from which the patient was directly admitted to home health, the certifying allowed practitioner may be different from the provider physician or allowed practitioner that performed the face-to-face encounter. These regulations text changes are not time

limited to the period of the COVID–19 PHE.

When implementing plan of care changes in the CY 2021 HH PPS final rule (85 FR 70298), the term ''allowed practitioner'' was inadvertently deleted from the regulation text at § 409.43. Therefore, in this proposed rule we are proposing conforming regulations text changes at § 409.43 to reflect that allowed practitioners, in addition to physicians, may establish and periodically review the plan of care.

III. Home Health Value-Based Purchasing (HHVBP) Model

A. Proposal To Expand the HHVBP Model Nationwide

1. Background

As authorized by section 1115A of the Act and finalized in the CY 2016 HH PPS final rule (80 FR 68624), the CMS Center for Medicare and Medicaid Innovation (Innovation Center) implemented the Home Health Value-Based Purchasing Model (original Model) in nine States on January 1, 2016. The last year of data collection for the original Model ended on December 31, 2020. The original Model design leveraged the successes of and lessons learned from other value-based purchasing programs and demonstrations to shift from volume-based payments to a Model designed to promote the delivery of higher quality care to Medicare beneficiaries. The specific goals of the original Model were to: (1) Provide incentives for better quality care with greater efficiency; (2) study new potential quality and efficiency measures for appropriateness in the home health setting; and (3) enhance the current public reporting process.

Using the randomized selection methodology finalized in the CY 2016 HH PPS final rule, we selected nine States for inclusion in the original HHVBP Model, representing each geographic area across the nation. All Medicare-certified home health agencies (HHAs) providing services in Arizona, Florida, Iowa, Maryland, Massachusetts, Nebraska, North Carolina, Tennessee, and Washington were required to compete in the original Model. We stated that requiring all Medicare-certified HHAs in the selected States to participate in the Model ensures that there is no selection bias, participants are representative of HHAs nationally, and there would be sufficient participation to generate meaningful results.

The original Model uses the waiver authority under section 1115A(d)(1) of the Act to adjust the Medicare payment amounts under section 1895(b) of the Act based on the competing HHAs' performance on applicable quality measures. Under the original Model, CMS adjusts fee-for-service payments to Medicare-certified HHAs based on each HHA's performance on a set of quality measures in a given performance year measured against a baseline year and relative to peers in its State. The maximum payment adjustment percentage increased incrementally, upward or downward, over the course of the original Model in the following manner: (1) 3 percent in CY 2018; (2) 5 percent in CY 2019; (3) 6 percent in CY 2020; (4) 7 percent in CY 2021; and (5) 8 percent in CY 2022. Payment adjustments are based on each HHA's Total Performance Score (TPS) in a given performance year, which is comprised of performance on: (1) A set of measures already reported via the Outcome and Assessment Information Set (OASIS),[11] completed Home Health Consumer Assessment of Healthcare Providers and Systems (HHCAHPS) surveys, and claims-based measures; and (2) three New Measures for which points were achieved for reporting data. Payment adjustments for a given year are based on the TPS calculated for performance two years' prior; for example, the CY 2018 payment adjustments were based on CY 2016 performance.

In the CY 2017 HH PPS final rule (81 FR 76741 through 76752), CY 2018 HH PPS final rule (83 FR 51701 through 51706), and CY 2019 HH PPS final rule (83 FR 56527 through 56547), we finalized changes to the original Model. Some of those changes included adding and removing measures from the applicable measure set, revising our methodology for calculating benchmarks and achievement thresholds at the State level, creating an appeals process for recalculation requests, and revising our methodologies for weighting measures and assigning improvement points.

On January 8, 2021, we announced that the HHVBP Model had been certified for expansion nationwide,[12] as well as our intent to expand the Model through notice and comment rulemaking beginning no sooner than CY 2022. The original Model has resulted in an average 4.6 percent improvement in home health agencies' quality scores as well as average annual savings of $141 million to Medicare.[13]

As described in this proposed rule, we are proposing to expand the HHVBP Model (expanded Model/Model expansion) to all 50 States, the District of Columbia and the territories starting in CY 2022. We are proposing to codify HHVBP Model expansion policies at §§ 484.340; 484.345; 484.350; 484.355; 484.360; 484.365; 484.370; and 484.375, as discussed in more detail in the sections that follow.

2. Requirements for Expansion

Section 1115A(c) of the Act provides the Secretary with the authority to expand (including implementation on a nationwide basis), through notice and comment rulemaking, the duration and scope of a model that is being tested under section 1115A(b) of the Act if the following findings are made, taking into account the evaluation of the model under section 1115A(b)(4) of the Act: (1) The Secretary determines that the expansion is expected to either reduce spending without reducing quality of care or improve the quality of patient care without increasing spending; (2) the CMS Chief Actuary certifies that the expansion would reduce (or would not result in any increase in) net program spending; and (3) the Secretary determines that the expansion would not deny or limit the coverage or provision of benefits.

- *Improved Quality of Care without Increased Spending:* As observed in the Third Annual Evaluation Report,[14] the HHVBP Model resulted in improved quality of care (for example, consistently increasing TPS scores) and a reduction in Medicare expenditures through three performance years of the HHVBP Model (CYs 2016 to 2018). The HHVBP Model's intervention has led to savings without evidence of adverse risks. The evaluation also found reductions in unplanned acute care hospitalizations and skilled nursing facility (SNF) visits, resulting in reductions in inpatient and SNF spending. Based on these findings, the Secretary determined that expansion of the HHVBP Model would reduce spending and improve the quality of care.

- *Impact on Medicare Spending:* The CMS Chief Actuary has certified that expansion of the HHVBP Model would

[11] OASIS is the instrument/data collection tool used to collect and report performance data by HHAs.

[12] *https://www.cms.gov/files/document/certification-home-health-value-based-purchasing-hhvbp-model.pdf.*

[13] *https://innovation.cms.gov/data-and-reports/2020/hhvbp-thirdann-rpt.*

[14] The HHVBP Third Annual Evaluation Report is available at *https://innovation.cms.gov/data-and-reports/2020/hhvbp-thirdann-rpt.*

produce Medicare savings if expanded to all States.[15]

• *No Alteration in Coverage or Provision of Benefits:* The HHVBP Model did not make any changes to coverage or provision of benefits for Medicare beneficiaries. Therefore, the Secretary has determined that expansion of the HHVBP Model would not deny or limit the coverage or provision of Medicare benefits for Medicare beneficiaries.

Consistent with our statutory authority, we would continue to test and evaluate the expanded HHVBP Model. In the future, we would assess whether the expanded implementation of HHVBP is continuing to reduce Medicare spending without reducing quality of care or to improve the quality of patient care without increasing spending, and could modify the expanded HHVBP Model as appropriate through rulemaking.

3. Overview

The proposed HHVBP Model expansion presents an opportunity to improve the quality of care furnished to Medicare beneficiaries nationwide through payment incentives to HHAs. If finalized, all Medicare-certified HHAs in the 50 States, District of Columbia and the territories would be required to participate in the expanded HHVBP Model beginning January 1, 2022. These HHAs would compete on value based on an array of quality measures related to the care that HHAs furnish.

The proposed Model expansion would be tested under section 1115A of the Act. Under section 1115A(d)(1) of the Act, the Secretary may waive such requirements of Titles XI and XVIII and of sections 1902(a)(1), 1902(a)(13), and 1903(m)(2)(A)(iii) of the Act as may be necessary solely for purposes of carrying out section 1115A of the Act with respect to testing models described in section 1115A(b) of the Act. The Secretary is not issuing any waivers of the fraud and abuse provisions in sections 1128A, 1128B, and 1877 of the Act or any other Medicare or Medicaid fraud and abuse laws for this Model expansion at this time. In addition, CMS has determined that the anti-kickback statute safe harbor for CMS-sponsored model arrangements and CMS-sponsored model patient incentives (42 CFR 1001.952(hh)(9)(ii)) will not be available to protect remuneration exchanged pursuant to any financial arrangements or patient incentives permitted under the Model. Thus, notwithstanding any other provisions of this proposed rule, all Medicare-certified HHAs in the 50 States, District of Columbia and the territories must comply with all applicable fraud and abuse laws and regulations.

We are proposing to use the section 1115A(d)(1) of the Act waiver authority to apply a reduction or increase of up to 5 percent to Medicare payments to Medicare-certified HHAs delivering care to beneficiaries in the 50 States, District of Columbia and the territories, depending on the HHA's performance on specified quality measures relative to its peers. Specifically, the expanded HHVBP Model proposes to utilize the section 1115A(d)(1) of the Act waiver authority to adjust the Medicare payment amounts under section 1895(b) of the Act. In accordance with the authority granted to the Secretary in section 1115A(d)(1) of the Act, we would waive section 1895(b)(4) of the Act only to the extent necessary to adjust payment amounts to reflect the value-based payment adjustments under this proposed expanded Model for Medicare-certified HHAs in the 50 States, District of Columbia and the territories. We may make changes to the payment adjustment percentage through rulemaking in future years of the expansion, as additional evaluation data from the HHVBP expanded Model become available, and we learn about performance within the Model under the expansion. The evaluation of the expanded Model would use a time series type approach to examine the outcomes of interest (cost or utilization) over time prior to the start of the intervention and follow that outcome after the start of the expansion.

a. Overview of Timing and Scope

As noted, we are proposing to begin the expanded HHVBP Model on January 1, 2022. Under this proposal, CY 2022 would be the first performance year and CY 2024 would be the first payment year, with payment adjustments in CY 2024 based on an HHA's performance in CY 2022. Performance year means the calendar year during which data are collected for the purpose of calculating a competing HHA's performance on applicable quality measures. Payment year means the calendar year in which the applicable percent, a maximum upward or downward adjustment, applies.

The proposed expanded Model would apply to all Medicare-certified HHAs in the 50 States, District of Columbia and the territories, which means that all Medicare-certified HHAs that provide services in the 50 States, District of Columbia and the territories would be required to compete in the expanded Model. We are proposing to codify this requirement at § 484.350. We are proposing to define a 'competing HHA' within the scope of the proposed expanded HHVBP Model as an HHA that has a current Medicare certification and is being paid by CMS for home health care services. We propose that all HHAs certified for participation in Medicare before January 1, 2021 would have their CY 2022 performance assessed and would be eligible for a CY 2024 payment adjustment. We propose to base participation in the expanded Model on CMS Certification Numbers (CCNs), meaning that the Total Performance Score as discussed further in section III.A.7.a. of this proposed rule and payment adjustment would be calculated based on an HHA's CCN.[16]

b. Overview of the Payment Adjustment

As proposed, the distribution of payment adjustments would be based on quality performance, as measured by both achievement and improvement, across a proposed set of quality measures constructed to minimize burden as much as possible and improve care. Competing HHAs that demonstrate they can deliver higher quality of care in a given performance year measured against a baseline year relative to peers nationwide (as defined by larger- versus smaller-volume cohorts based upon their unique beneficiary count in the prior calendar year), could have their HH PPS claims final payment amount adjusted higher than the amount that otherwise would be paid. Competing HHAs that do not perform as well as other competing HHAs in the same volume-based cohort might have their HH PPS claims final payment amount reduced and those competing HHAs that perform similarly to others in the same volume-based cohort might have no payment adjustment. This operational concept is similar in practice to what is used in the Hospital Value-Based Purchasing (HVBP) Program (76 FR 26531).

We expect that the risk of having payments adjusted in this manner would provide an incentive among all competing HHAs to provide significantly better quality through improved planning, coordination, and management of care. Under the expanded duration and scope of this Model, we would continue to examine

[15] The full CMS Actuary Report is available at *https://www.cms.gov/files/document/certification-home-health-value-based-purchasing-hhvbp-model.pdf.*

[16] HHAs are required to report OASIS data and any other quality measures by its own unique CMS Certification Number (CCN) as defined under Title 42, Chapter IV, Subchapter G, § 484.20 Available at URL *http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title42/42cfr484_main_02.tpl.*

whether the proposed adjustments to the Medicare payment amounts that would otherwise be made to competing HHAs would result in statistically significant improvements in the quality of care being delivered to Medicare beneficiaries, as well as reductions in Medicare spending. The degree of the payment adjustment would be dependent on the level of quality achieved or improved from the baseline year, with the highest upward performance adjustments going to competing HHAs with the highest overall level of performance based on either achievement or improvement in quality. The size of a competing HHA's payment adjustment for each year under the expanded Model would be dependent upon that HHA's performance with respect to the applicable performance year relative to other competing HHAs in the same volume-based cohort and relative to its own performance during the baseline year. Details are discussed in sections III.A.4, III.A.5, and III.A.7.a of this proposed rule.

In addition, at § 484.345 we propose to add the following definitions:

- Achievement threshold
- Applicable measure
- Applicable percent
- Baseline year
- Benchmark
- Competing home health agency
- Home health prospective payment system
- Improvement threshold
- Larger-volume cohort
- Linear exchange function
- Nationwide
- Payment adjustment
- Payment year
- Performance year
- Smaller-volume cohort
- Total Performance Score

4. Defining Cohorts for Benchmarking and Competition

Under the original HHVBP Model, we grouped HHAs into cohorts by State for setting benchmarks and achievement thresholds and by both State and smaller- versus larger-volume HHAs when determining the cohorts used for competing for payment adjustments, in accordance with § 484.330. For the nationwide expansion of the HHVBP Model, we are proposing to redefine the cohort structure to account for States, territories, and the District of Columbia with smaller numbers of HHAs, while also allowing for the use of volume-based cohorts in determining benchmarks, achievement thresholds, and payment adjustments.

a. Proposed Smaller- and Larger-Volume Cohorts

As discussed further in this section, we believe that separating smaller- and larger-volume HHAs into cohorts under the expanded Model would facilitate like comparisons by allowing for the majority of HHAs to receive benchmarks and compete for payment against other HHAs of similar size and based on the same set of measures. As under the original HHVBP Model, we propose to align the larger-volume cohort with the group of competing HHAs that administers the Home Health Care Consumer Assessment of Healthcare Providers and Systems (HHCAHPS) survey, in accordance with the HH QRP regulations concerning the HHCAHPS survey in § 484.245(b), and we propose to align the Model's smaller-volume HHA cohort with the group of HHAs that are exempt from submitting the HHCAHPS survey under HH QRP under § 484.245(b)(1)(iii)(A). Under the expanded HHVBP Model, we would not alter the HHCAHPS survey current scoring methodology or the participation requirements in any way. Details on HHCAHPS survey scoring methodology are available at: *https://homehealthcahps.org/Survey-and-Protocols/Survey-Materials.*[17]

The HH QRP requires, in part, that an HHA submit HHCAHPS survey data to CMS. An HHA that has fewer than 60 eligible unique HHCAHPS survey patients must annually submit their total HHCAHPS survey patient count to CMS to be exempt from the HHCAHPS survey reporting requirements for a calendar year. As under the original HHVBP Model, we propose to align with this HHCAHPS survey reporting requirement by defining the larger-volume cohort as those HHAs that are required to submit an HHCAHPS survey in the performance year. As under the original Model, we also propose to set an HHCAHPS survey measure minimum of at least 40 completed HHCAHPS surveys in the performance year for those HHAs to receive a score on the HHCAHPS survey measure, as reflected in proposed §§ 484.345 and 484.360. Accordingly, because smaller-volume HHAs are less likely to be assessed on the HHCAHPS survey measure, which would account for 30 percent of the overall performance score in the expanded Model, we believe that separating smaller- and larger-volume HHAs into distinct cohorts would allow for the majority of HHAs to compete against other HHAs of similar size and based on the same set of measures.

b. Proposed Cohorts for the Model Expansion

As discussed, we believe that applying separate larger- and smaller-volume cohorts within the expanded HHVBP Model would group HHAs that are of similar size and are more likely to receive scores on the same set of measures for purposes of setting benchmarks and achievement thresholds and determining payment adjustments. However, a valid cohort must have a sufficient number of HHAs to—(1) create a robust distribution of Total Performance Scores, which allows meaningful and reasonable translation into payment adjustments using the linear exchange function (LEF);[18] and (2) set stable, reliable benchmarks and achievement thresholds that are not heavily skewed by outliers. The LEF is designed so that the majority of the payment adjustment values fall closer to the median and a smaller percentage of HHAs receive adjustments at the higher and lower ends of the distribution. However, when only a small number of HHAs fall within a cohort, one HHA's outlier TPS could skew the payment adjustments and deviate from the intended design of the LEF payment methodology. As a result, a key consideration in defining the cohorts is ensuring sufficient HHA counts within each cohort.

Under the original Model, CMS applied a minimum of eight HHAs for any size cohort, such that a smaller-volume cohort must have a minimum of eight HHAs in order for the HHAs in that cohort to be compared only against each other, and not against the HHAs in the larger-volume cohort (81 FR 76742). This policy was based on an analysis of the minimum number of HHAs needed in a smaller-volume cohort in order to insulate that cohort from the effect of outliers. Expanding the HHVBP Model beyond the nine mid- to large-sized States included in the original Model requires us to re-examine these cohort definitions because, certain territories and the District of Columbia would fall short of the original Model's minimum of 8 HHAs to compose their own cohort even where the volume-based cohorts are combined. This was not an issue in the original Model because the nine selected States are relatively populous as compared to the smaller States,

[17] Detailed scoring information is contained in the Protocols and Guidelines manual posted on the HHCAHPS website and available at *https://homehealthcahps.org/Survey-and-Protocols/Survey-Materials.*

[18] The Linear Exchange Function (LEF) is used to translate an HHA's TPS into a percentage of the value-based payment adjustment earned by each HHA. For a more detailed description, please see section III.A.8. of this proposed rule.

territories, and the District of Columbia that would be included in the expanded Model. Based on CY 2019 Home Health Compare Star Ratings, we evaluated the viability of smaller- and larger-volume cohorts, as defined previously, for each of the 55 States, territories, and the District of Columbia. Based on our analysis, of the 110 potential cohorts based on both State and HHA volume for the expanded HHVBP Model, 46 of the 110 potential cohorts had too few HHAs to reliably meet the original Model minimum of 8 HHAs, after accounting for the risk of attrition from the expanded Model. Under this approach, for 42 of these 46 States and territories, the smaller-volume cohorts would need to be combined with the larger-volume cohorts in their States and territories, while 3 territories and the District of Columbia would need to be combined with other States or territories since they do not meet the 8 HHA minimum after consolidating the volume-based cohorts. See Table 24 for the counts of HHAs in each of the potential cohorts, if we were to apply separate State- and volume-based cohorts for each State, territory, and the District of Columbia under the expanded Model.

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TABLE 24: HHA COUNTS IN STATE/TERRITORY/DISTRICT OF COLUMBIA- AND VOLUME-BASED COHORTS BASED ON CY 2019 HOME HEALTH CARE COMPARE DATA

State	Large HHAs	Small HHAs	All HHAs	State	Large HHAs	Small HHAs	All HHAs
AK	12	1	13	MT	22	2	24
AL	114	1	115	NC	152	4	156
AR	90	2	92	ND	12	-	12
AZ	106	2	108	NE	40	8	48
CA	993	76	1,069	NH	20	1	21
CO	105	4	109	NJ	42	-	42
CT	74	-	74	NM	58	4	62
DC*	7	-	7	NV	97	8	105
DE	12	-	12	NY	105	-	105
FL	677	54	731	OH	287	10	297
GA	99	-	99	OK	183	10	193
GU*	4	-	4	OR	43	1	44
HI	14	-	14	PA	229	12	241
IA	94	7	101	PR	33	-	33
ID	42	1	43	RI	18	-	18
IL	399	64	463	SC	63	-	63
IN	138	11	149	SD	19	4	23
KS	84	5	89	TN	112	1	113
KY	90	-	90	TX	982	97	1,079
LA	167	-	167	UT	68	6	74
MA	127	5	132	VA	187	6	193
MD	49	2	51	VI*	1	-	1
ME	19	1	20	VT	10	-	10
MI	322	54	376	WA	57	-	57
MN	97	9	106	WI	73	-	73
MO	123	9	132	WV	50	1	51
MP*	2	-	2	WY	16	2	18
MS	45	-	45	**All**	**7,084**	**485**	**7,569**

*These territories and the District of Columbia fall short of the original HHVBP Model's minimum of 8 HHAs to compose their own cohort even where the volume-based cohorts are combined.

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As noted, under the original HHVBP Model, a minimum of eight HHAs is required for each size cohort. For the expanded HHVBP Model, we are proposing to establish cohorts prospectively and with sufficient HHA counts to prevent the need to combine multiple cohorts retrospectively. We propose to provide HHAs with their

applicable benchmarks and achievement thresholds prior to the start of or during the performance year so that they can be used to set performance targets to guide HHAs' quality improvement projects. To reliably define cohorts prospectively and to avoid regrouping multiple States, territories, or the District of Columbia into a single cohort retrospectively based solely on their lower HHA counts, we estimate that a minimum of 20 HHAs in each cohort would be necessary to ensure that attrition and variation in episode counts do not lead to insufficient HHA counts at the end of the performance year. Based on the data set forth in Table 24, 61 out of the 110 potential cohorts would have fewer than 20 HHAs in a size-based cohort, and 11 out of those potential cohorts would not meet the 20 HHA minimum after combining the size-based cohorts.

To allow for a sufficient number of HHAs in each volume-based cohort, for purposes of setting benchmarks and achievement thresholds and determining payment adjustments, we are proposing to use cohorts based on all HHAs nationwide, rather than by State as under the original Model. Referencing the CY 2019 data in Table 24, under this approach, 7,084 HHAs would fall within the larger-volume cohort and 485 HHAs fall within the smaller-volume cohort. These HHA counts would provide a sufficiently large number of values in each cohort to allow ranking of HHA performance scores and payment adjustment percentages across the range of −5 percent to +5 percent. Further, our analysis found that many of the smaller-volume HHAs would not receive a score on the HHCAHPS survey measures, which are proposed to account for 30percent of the overall TPS, while most of the larger-volume cohort HHAs would be scored on the full set of applicable measures. Accordingly, and as previously discussed, we believe the volume-based cohorts would allow for competition among HHAs across similar measures. Using nationwide rather than State/territory-based cohorts in performance comparisons would also be consistent with the Skilled Nursing Facility and Hospital VBP Programs, in addition to the Home Health Compare Star Ratings. Finally, this option would be the least operationally complex to implement.

For the reasons discussed, we believe the use of nationwide smaller- and larger-volume-based cohorts would allow for appropriate groupings of HHAs under the expanded Model while also providing sufficient numbers of HHAs in each cohort for purposes of setting stable and reliable benchmarks and achievement thresholds and allowing for a robust distribution of payment adjustments. However, we also considered an alternative approach of using State/territory-based cohorts, without volume-based groupings. Applying the State, territory, and District of Columbia-level cohorts, we found that 11 of the 55 potential cohorts would have fewer than 20 HHAs based on the CY 2019 Home Health Star Ratings data. As noted, we do not believe this would allow for a sufficient number of HHAs to develop prospective benchmarks and achievement thresholds. While one approach would be to exclude any States, territories, or the District of Columbia from the expanded Model for years in which there are fewer than 20 HHAs in the cohort, we believe such a policy would be inconsistent with the goal of including all eligible HHAs nationwide in the Model. Another option would be to consolidate those States, territories, and the District of Columbia with less than 20 HHAs in the cohort, and to calculate benchmarks, achievement thresholds, and payment adjustments based on that consolidated grouping of HHAs. We note that while slight differences do exist between quality measure scores based on geographic location, we do not believe that codifying these small differences into long-term performance standards is necessary to appropriately determine payment adjustments under the expanded Model.

We are proposing to establish nationwide volume-based cohorts for the expanded HHVBP Model, such that HHAs nationwide would compete within either the larger-volume cohort or the smaller-volume cohort. We propose to codify this policy at § 484.370, and to codify the proposed definitions of smaller-volume cohort and larger-volume cohort at § 484.345. Under this proposal, HHAs currently participating in the original HHVBP Model would no longer compete within just their State. We are also requesting comment on the alternative approach of applying State/territory-based cohorts only, without volume-based cohorts, which we may finalize after consideration of comments received.

We seek public comment on these proposals.

5. Proposed Payment Adjustment Percentage and Performance Assessment and Payment Adjustment Periods

a. Proposed Payment Adjustment

Under the original Model, the payment adjustment ranges from a minimum of 3 percent in 2018 to maximum of 8 percent in 2022. For the expanded Model, we are proposing that the maximum payment adjustment, upward or downward, would be 5 percent. We believe that beginning the expansion with a 5 percent maximum payment adjustment would strike a balance between the 3 percent maximum adjustment that applied for CY 2018, the first payment year of the original HHVBP Model, and the 7 percent maximum adjustment currently in place for CY 2021. As proposed in section III.A.3.a. of this proposed rule, the first payment year of the expanded HHVBP Model would be CY 2024 (January 1, 2024 through December 31, 2024), with payment adjustments based on performance in CY 2022 (January 1, 2022 through December 31, 2022). We may consider changes to the proposed 5 percent maximum payment adjustment percentage through rulemaking in future years of the expansion, as additional evaluation data from the original Model and expansion become available. We note that the CMS Actuary certification was based on evaluation of the Model when the maximum payment adjustment was 3 percent. However, in their certification memo, they indicated they believe the Model would result in savings at higher payment adjustment amounts as well.

We seek public comment on the proposed payment adjustment percentage.

b. Proposed Baseline Year

(1) General

For the expanded HHVBP Model, due to the potentially de-stabilizing effects of the COVID–19 public health emergency (PHE) on quality measure data in CY 2020, we propose that the baseline year would be CY 2019 (January 1, 2019 through December 31, 2019) for the CY 2022 performance year/CY 2024 payment year and subsequent years. The data from this baseline year would provide a basis from which each respective HHA's performance would be measured for purposes of calculating achievement and improvement points under the expanded Model. We may propose to update the baseline year for subsequent years of the expanded Model through future rulemaking. We would also propose the applicable baseline year for any additional quality measures that may be added to the measure set for the expanded HHVBP Model through future rulemaking.

We seek public comment on the proposed baseline year for the expanded Model.

(2) New HHAs

As noted, we are generally proposing that for the expanded Model, the baseline year would be CY 2019 (January 1, 2019 through December 31, 2019) for the CY 2022 performance year/CY 2024 payment year and subsequent years. For new HHAs, specifically those HHAs that are certified by Medicare on or after January 1, 2019, we are proposing that the baseline year under the expanded Model would be the HHA's first full CY of services beginning after the date of Medicare certification, with the exception of HHAs certified on January 1, 2019 through December 31, 2019, for which the baseline year would be CY 2021. Furthermore, we propose that new HHAs would begin competing under the expanded HHVBP Model in the first full calendar year following the full calendar year baseline year. For example, and as previously discussed, we are proposing that all HHAs certified for participation in Medicare before January 1, 2021 would have their CY 2022 performance assessed and would be eligible for a CY 2024 payment adjustment. For HHAs certified on January 1, 2020 through December 31, 2020, the baseline year would be CY 2021, the first full CY of services beginning after the date of Medicare certification. For those HHAs certified on January 1, 2019 through December 31, 2019, the baseline year would also be CY 2021, rather than CY 2020 (the first full CY of services beginning after the date of Medicare certification), due to the potentially destabilizing effects of the PHE on quality measure data in CY 2020. For an HHA certified by Medicare on January 1, 2021 through December 31, 2021, for example, the first full calendar year of services that would establish the HHA's baseline year would be CY 2022. The HHA's first performance year would be CY 2023 and the HHA's first payment year, based on CY 2023 performance, would be CY 2025. Table 25 shows the proposed HHA baseline, performance and payment years based on the HHA's Medicare-certification date through December 31, 2021.

TABLE 25: PROPOSED HHA BASELINE, PERFORMANCE AND PAYMENT YEAR BASED ON MEDICARE-CERTIFICATION DATE THROUGH DECEMBER 31, 2021

Medicare-certification Date	Baseline Year	Performance Year	Payment Year
Prior to January 1, 2019	2019	2022	2024
On January 1, 2019 - December 31, 2019	2021	2022	2024
On January 1, 2020 – December 31, 2020	2021	2022	2024
On January 1, 2021 – December 31, 2021	2022	2023	2025

We also propose to codify our proposal on new HHAs at § 484.350. We seek public comment on this proposal.

6. Quality Measures

a. General Considerations Used for the Selection of Quality Measures for the Expanded HHVBP Model

We plan to apply, to the extent possible, principles from CMS' Meaningful Measures Initiative in selecting the applicable measures as defined at § 484.345 to be included in the Model expansion. A central driver of the proposed applicable measure set is to have a broad, high impact on care delivery and support priorities to improve health outcomes, quality, safety, efficiency, and experience of care for patients. To frame the selection process, we also considered the domains of the CMS Quality Strategy [19] that maps to the six National Quality Strategy (NQS) [20] priority areas: Clinical quality of care; Care coordination; Population/community health; efficiency and cost reduction; safety; and, Patient and caregiver-centered experience.

We believe that Medicare-certified HHAs should be evaluated using measures designed to encompass multiple NQS domains, and provide future flexibility to incorporate and study newly developed measures over time. Additionally, so that measures for the expanded HHVBP Model take a more holistic view of the patient beyond a particular disease, functional status, State or care setting, we would prioritize outcome measures that have the potential to follow patients across multiple settings, reflect a multi-faceted approach, and foster the intersection of health care delivery and population health.

The proposed expanded Model measures mostly align with those under the HH QRP. However, we intend to consider new measures for inclusion in subsequent years of the expanded HHVBP Model through future rulemaking. We may consider adding new measures to the expanded HHVBP Model measure set that address gaps within the NQS domains or the home health service line and are good indicators of home health quality of care. When available, NQF endorsed measures would be used. The expanded Model's section 1115A of the Act authority also affords the opportunity to study other measures, such as, measures developed in other care settings or new to the home health industry, should CMS identify such measures. A key consideration behind this approach is to use measures that are readily available, and, in subsequent Model years, augment the applicable measure set with innovative measures that have the potential to be impactful and fill critical measure gap areas. This approach to quality measure selection aims to balance the burden of collecting data with the inclusion of new and important measures. We would carefully consider the potential burden on HHAs to report the measure data that is not already collected through existing quality measure data reporting systems and reiterate that we would propose any new measures through future rulemaking.

[19] *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Value-Based-Programs/CMS-Quality-Strategy.*

[20] For NQF endorsed measures see The NQF Quality Positioning System available at *http://www.qualityforum.org/QPS.* For non-NQF measures using OASIS see links for data tables related to OASIS measures at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits.*

b. Proposed Measure Set Beginning With the CY 2022 Performance Year/CY 2024 Payment Year and Subsequent Years

We propose that the initial applicable measure set for the expanded HHVBP Model for the CY 2022 performance year focus on patient outcome and functional status, utilization, and patient experience. The proposed measures were also used under the original Model (83 FR 56533). However, we note that no ''New Measures'' as defined in the original Model (80 FR 68674) are being proposed for data collection under the expanded Model beginning with the CY 2022 performance year given there was sufficient data collected on the ''New Measures'' under the original Model for analysis of the appropriateness for use in the home health setting. We note that any future additional measures proposed for the expanded HHVBP Model would not be considered ''New Measures'' as used in the original Model.

Beginning with the CY 2022 performance year/CY 2024 payment year and for subsequent years, we propose the following measures as detailed in Table 26 for inclusion in the expanded Model. The measure set also includes outcome measures, which illustrate the end result of care delivered to HHA patients and address an important quality aim for HHA patients. We believe the proposed measure set under the expanded HHVBP Model, where most measures currently align with HH QRP measures, supports enhancing quality because of the value-based incentives provided under the expanded Model. Further, we believe that the expanded Model measure set, as proposed, includes an array of measures that would capture the care that HHAs furnish and incentivize quality improvement. The measures in the proposed measure set are divided into measure categories based on their data source as indicated in Table 26: Claims-based, OASIS-based, and the HHCAHPS survey-based. We note that the HHCAHPS survey-based measure has five individual components. The term ''applicable measure'' applies to each of the five components for which a competing HHA has submitted a minimum of 40 completed HHCAHPS surveys (This is discussed in more detail in sections III.A.4.a., III.A.7.c., and III.A.7.d. of this proposed rule). That is, each component counts as one applicable measure towards the five measure minimum that is required for an HHA to receive a Total Performance Score (TPS) (this is discussed in more detail in section III.A.7.d of this proposed rule).

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TABLE 26: PROPOSED MEASURE SET FOR THE EXPANDED HHVBP MODEL (Beginning with the CY 2022 Performance Year/CY 2024 Payment Year and Subsequent Years*)

NQS Domains	Measure Full Title/Short Form Name (if applicable)	Measure Type	Measure Steward	Identifier	Data Source	Numerator	Denominator	Link to Measure Specifications
OASIS-based								
Clinical Quality of Care	Improvement in Dyspnea/Dyspnea	Outcome	NA	NA	OASIS (M1400)	Number of home health episodes of care where the discharge assessment indicates less dyspnea at discharge than at start (or resumption) of care.	Number of home health episodes of care ending with a discharge during the reporting period, other than those covered by generic or measure-specific exclusions.	https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits/Downloads/Home-Health-Outcome-Measures-Table-OASIS-D-11-2018c.pdf
Communication & Care Coordination	Discharged to Community	Outcome	NA	NA	OASIS (M2420)	Number of home health episodes where the assessment completed at the discharge indicates the patient remained in the community after discharge.	Number of home health episodes of care ending with discharge or transfer to inpatient facility during the reporting period, other than those covered by generic or measure-specific exclusions.	https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits/Downloads/Home-Health-Outcome-Measures-Table-OASIS-D-11-2018c.pdf
Patient Safety	Improvement in Management of Oral Medications/Oral Medication	Outcome	CMS	NQF 0176	OASIS (M2020)	Number of home health episodes of care where the value recorded on the discharge assessment indicates less impairment in taking oral medications correctly at discharge than at start (or resumption) of care.	Number of home health episodes of care ending with a discharge during the reporting period, other than those covered by generic or measure-specific exclusions.	https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits/Downloads/Home-Health-Outcome-Measures-Table-OASIS-D-11-2018c.pdf
Patient and Family Engagement	Total Normalized Composite Change in Mobility*/TNC Mobility	Composite Outcome	NA	NA	OASIS (M1840) (M1850) (M1860)	The total normalized change in mobility functioning across three OASIS items (toilet transferring, bed transferring, and ambulation/locomotion)	A prediction model is computed at the episode level. The predicted value for the HHA and the national value of the predicted values are calculated and are used to calculate the risk-adjusted rate for the HHA, which is calculated using this formula: HHA Risk Adjusted = HHA Observed + National Predicted – HHA Predicted.	https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/hhvbp%20technical%20specification%20resource%20for%20composite%20outcome%20measures_4.pdf

Table 27 provides more granular detail on the elements of the Home Health Care Consumer Assessment of Healthcare Providers and Systems (HHCAHPS) Survey measure.

NQS Domains	Measure Full Title/Short Form Name (if applicable)	Measure Type	Measure Steward	Identifier	Data Source	Numerator	Denominator	Link to Measure Specifications
Patient and Family Engagement	Total Normalized Composite Change in Self-Care**/TNC Self-Care	Composite Outcome	NA	NA	OASIS (M1800) (M1810) (M1820) (M1830) (M1845) (M1870)	The total normalized change in self-care functioning across six OASIS items (grooming, bathing, upper & lower body dressing, toilet hygiene, and eating)	A prediction model is computed at the episode level. The predicted value for the HHA and the national value of the predicted values are calculated and are used to calculate the risk-adjusted rate for the HHA, which is calculated using this formula: HHA Risk Adjusted = HHA Observed + National Predicted – HHA Predicted.	https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/hhvbp%20technical%20specification%20resource%20for%20composite%20outcome%20measures_4.pdf
Claims-based								
Efficiency & Cost Reduction	Acute Care Hospitalization During the First 60 Days of Home Health Use/ACH	Outcome	CMS	NQF 0171	CCW (Claims)	Number of home health stays for patients who have a Medicare claim for an unplanned admission to an acute care hospital in the 60 days following the start of the home health stay.	Number of home health stays that begin during the 12-month observation period. A home health stay is a sequence of home health payment episodes separated from other home health payment episodes by at least 60 days.	https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits/Downloads/Home-Health-Outcome-Measures-Table-OASIS-D-11-2018c.pdf
Efficiency & Cost Reduction	Emergency Department Use without Hospitalization During the First 60 Days of Home Health/ED Use	Outcome	CMS	NQF 0173	CCW (Claims)	Number of home health stays for patients who have a Medicare claim for outpatient emergency department use and no claims for acute care hospitalization in the 60 days following the start of the home health stay.	Number of home health stays that begin during the 12-month observation period. A home health stay is a sequence of home health payment episodes separated from other home health payment episodes by at least 60 days.	https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits/Downloads/Home-Health-Outcome-Measures-Table-OASIS-D-11-2018c.pdf
HHCAHPS Survey-based								
Patient & Caregiver-Centered Experience	Home Health Consumer Assessment Healthcare Providers and Systems (HHCAHPS) Survey	Outcome	CMS	NQF 0517	CAHPS	Survey-based. HHCAHPS has five component questions that together are used to represent one NQF-endorsed measure	Survey-based. HHCAHPS has five component questions that together are used to represent one NQF-endorsed measure	Links provided in Table 28

*Because the Total Normalized Composite Change in Mobility measure is a composite measure rather than simply an outcome measure, the terms "Numerator" and "Denominator" do not apply.
**Because the Total Normalized Composite Change in Self-Care measure is a composite measure rather than simply an outcome measure, the terms "Numerator" and "Denominator" do not apply.

TABLE 27: HHCAHPS SURVEY MEASURE COMPONENTS AND COMPONENT QUESTIONS

HHCAHPS Survey-based* Component Name/ Short Name and Component Question	Type	NQF ID	Data Source	Link to Component Specs/Response Categories
Care of Patients/Professional Care	Outcome	0517	CAHPS	https://cmit.cms.gov/CMIT_public/ViewMeasure?MeasureId=2062
Q9. In the last 2 months of care, how often did home health providers from this agency seem informed and up-to-date about all the care or treatment you got at home?				Never, Sometimes, Usually, Always
Q16. In the last 2 months of care, how often did home health providers from this agency treat you as gently as possible?				Never, Sometimes, Usually, Always
Q19. In the last 2 months of care, how often did home health providers from this agency treat you with courtesy and respect?				Never, Sometimes, Usually, Always
Q24. In the last 2 months of care, did you have any problems with the care you got through this agency?				Yes, No
Communications between Providers and Patients/Communication	Outcome	0517	CAHPS	https://cmit.cms.gov/CMIT_public/ViewMeasure?MeasureId=2580
Q2. When you first started getting home health care from this agency, did someone from the agency tell you what care and services you would get?				Yes, No
Q15. In the past 2 months of care, how often did home health providers from this agency keep you informed about when they would arrive at your home?				Never, Sometimes, Usually, Always
Q17. In the past 2 months of care, how often did home health providers from this agency explain things in a way that was easy to understand?				Never, Sometimes, Usually, Always
Q18. In the past 2 months of care, how often did home health providers from this agency listen carefully to you?				Never, Sometimes, Usually, Always
Q22. In the past 2 months of care, when you contacted this agency's office did you get the help or advice you needed?				Yes, No
Q23. When you contacted this agency's office, how long did it take for you to get the help or advice you needed?				Same day; 1 to 5 days; 6 to 14 days; More than 14 days
Specific Care Issues/Team Discussion	Outcome	0517	CAHPS	https://cmit.cms.gov/CMIT_public/ViewMeasure?MeasureId=2582
Q3. When you first started getting home health care from this agency, did someone from the agency talk with you about how to set up your home so you can move around safely?				Yes, No
Q4. When you started getting home health care from this agency, did someone from the agency talk with you about all the prescription medicines you are taking?				Yes, No
Q5. When you started getting home health care from this agency, did someone from the agency ask to see all the prescription medicines you were taking?				Yes, No
Q10. In the past 2 months of care, did you and a home health provider from this agency talk about pain?				Yes, No
Q12. In the past 2 months of care, did home health providers from this agency talk with you about the **purpose** for taking your new or changed prescription medicines?				Yes, No
Q13. In the last 2 months of care, did home health providers from this agency talk with you about **when** to take these medicines?				Yes, No
Q14. In the last 2 months of care, did home health providers from this agency talk with you about the **important side effects** of these medicines?				Yes, No

Overall rating of home health care/Overall Rating	Outcome	0517	CAHPS	https://cmit.cms.gov/CMIT_public/ViewMeasure?MeasureId=2581
Q20. What number would you use to rate your care from this agency's home health providers?				Use a rating scale (0-10) (0 is worst, 10 is best)
Willingness to recommend the agency/Willing to Recommend	Outcome	0517	CAHPS	https://cmit.cms.gov/CMIT_public/ViewMeasure?MeasureId=2583
Q25. Would you recommend this agency to your family or friends if they needed home health care?				Definitely no; Probably no; Probably yes; Definitely yes

*The HHCAHPS has five component questions that together are used to represent one NQF-endorsed measure. Detailed scoring information is contained in the Protocols and Guidelines manual posted on the HHCAHPS website and available at https://homehelathcahps.org/Survey-and-Protocols/Survey-Materials.

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(1) Additional Background on the Total Normalized Composite Measures

The proposed measure set includes two composite measures: Total Normalized Composite (TNC) Self-Care and TNC Mobility, which were included in the original HHVBP Model measure set in CY 2019, as finalized in the CY 2019 HH PPS final rule (83 FR 56529 through 56535). The methodology for these measures take into account patients who may not have goals for improvement.

The proposed TNC Self-Care measure computes the magnitude of change, either positive or negative, based on a normalized amount of possible change on each of six OASIS-based quality outcomes. These six outcomes are as follows:

- Improvement in Grooming (M1800)
- Improvement in Upper Body Dressing (M1810)
- Improvement in Lower Body Dressing (M1820)
- Improvement in Bathing (M1830)
- Improvement in Toileting Hygiene (M1845)
- Improvement in Eating (M1870)

The TNC Mobility measure computes the magnitude of change, either positive or negative, based on the normalized amount of possible change on each of three OASIS-based quality outcomes. These three outcomes are as follows:

- Improvement in Toilet Transferring (M1840)
- Improvement in Bed Transferring (M1850)
- Improvement in Ambulation/Locomotion (M1860)

For each TNC measure, we calculate at the episode level and then aggregate to the home health agency level using a five-step process: Steps 1 to 3 calculate the normalized change values for each applicable OASIS item at the episode level. Steps 4 and 5 aggregate these values to the agency level. As composite measures, the TNC Self-Care and TNC Mobility measures reflect multiple OASIS items, so there are no numerators or denominators for these two measures. A detailed description of the five steps can be found at: *https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/hhvbp%20computing%20the%20hhvbp%20composite%20measures.pdf.* We expect that HHAs already focus on improvement in such areas not just because such items are included in the OASIS, but because self-care and mobility are areas of great importance to patients and families. Improvement in such areas may allow beneficiaries to remain in the home setting (versus an institution) and contribute to beneficiaries' quality of life. The risk adjustment methodology for these two measures recalibrates the expectations for improvement by including risk factors for a wide variety of beneficiary-level factors, including age, risk for hospitalization, condition categories, living arrangements and caregivers available, pain, cognitive function, baseline functional status, and others. For instance, a beneficiary with impaired cognition would not be expected to improve in self-care as much as a beneficiary with intact cognition. In effect, the self-care improvement score would shift up slightly for a beneficiary with impaired cognition relative to a beneficiary without cognitive impairment to account for the difference in expectations. Both TNC measures' computations can be found at *https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/hhvbp%20computing%20the%20hhvbp%20composite%20measures.pdf* and the technical specifications can be found at: *https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/hhvbp%20technical%20specification%20resource%20for%20composite%20outcome%20measures_4.pdf.* Additional information on the predictive modeling and methodology for the composite measures can be found in the CY 2019 HH PPS final rule (83 FR 56529 through 56535).

We note that we had considered the inclusion of stabilization measures which are measures that identify all patients whose function has not declined, including both those who have improved or stayed the same in the original HHVBP Model's measure set and refer readers to the CY 2016 HH PPS final rule (80 FR 68669 through 68670) and the CY 2019 HH PPS final rule (83 FR 56529 through 56535). In the CY 2016 final rule, we explained that we considered using some of the stabilization measures for the original Model and found that the average HHA stabilization measure scores ranged from 94 to 96 percent and, with average rates of nearly 100 percent. We do not believe these high measure scores would allow for meaningful comparisons between competing-HHAs on the quality of care delivered. We acknowledge that skilled care may be necessary to improve a patient's current condition, to maintain the patient's current condition, or to prevent or slow further deterioration of the patient's condition. However, we believe that the two proposed TNC measures represent a new direction in how quality of patient care is measured in home health as patients who receive care from an HHA may have functional limitations and may be at risk for further decline in function because of limited mobility and ambulation.

(2) Additional Background on the Home Health Care Consumer Assessment of Healthcare Providers and Systems Survey Measure

The Home Health Care Consumer Assessment of Healthcare Providers and Systems Survey (HHCAHPS) survey is part of a family of CAHPS® surveys that asks patients to report on and rate their experiences with health care. The HHCAHPS survey specifically presents home health patients with a set of standardized questions about their home health care providers and about the quality of their home health care. The survey is designed to measure the experiences of people receiving home health care from Medicare-certified home health care agencies and meet the following three broad goals to: (1) Produce comparable data on the patient's perspective that allows objective and meaningful comparisons between HHAs on domains that are important to consumers; (2) create incentives through public reporting of survey results for agencies to improve their quality of care; and (3) enhance public accountability in health care by increasing the transparency of the quality of care provided in return for public investment through public reporting.[21]

We note that the HHCAHPS survey is also part of the HH QRP's data submission requirements, which are codified for that program at 42 CFR 484.245(b). As proposed, expanded HHVBP Model participants would not need to submit separate HHCAHPS survey measure data already submitted as a requirement under HH QRP, because the requirements as proposed for the expanded Model are aligned with those currently under HH QRP. For more details about the HHCAHPS Survey, please see *https://homehealthcahps.org/.*

We invite public comment on our proposed measure set.

c. Measure Modifications

During the expanded Model, we would monitor the quality measures for lessons learned and address any needed

[21] *https://homehealthcahps.org/General-Information/About-Home-Health-Care-CAHPS-Survey.*

adjustments or modifications to the expanded Model measure set.

(1) Proposed Substantive vs. Non-Substantive Changes Policy

Updates to measures may result from various sources including, for example, measure stewards and owners, new clinical guidelines, a public health emergency, CMS-identified, a technical expert panel (TEP), or NQF. How we incorporate those updates would depend on whether the changes are substantive or non-substantive.

With respect to what constitutes a substantive versus a non-substantive change, we expect to make this determination on a measure-by-measure basis. Examples of such non-substantive changes might include updated diagnosis or procedure codes, medication updates for categories of medications, broadening of age ranges, and changes to exclusions for a measure. We believe that non-substantive changes may include updates to measures based upon changes to guidelines upon which the measures are based. These types of maintenance changes are distinct from more substantive changes to measures that result in what can be considered new or different measures, and that they do not trigger the same agency obligations under the Administrative Procedure Act.

We propose that, in the event that an update to a measure is necessary in a manner that we consider to not substantially change the nature of the measure, we will use a sub-regulatory process to incorporate those updates to the measure specifications. Specifically, we would revise the information that is posted on the CMS website so that it clearly identifies the updates and provides links to where additional information on the updates can be found. In addition, we would provide sufficient lead time for HHAs to implement the changes where changes to the data collection systems would be necessary.

We are also proposing to use notice and comment rulemaking to adopt changes to measures that we consider to substantially change the nature of the measure. Examples of changes that we might consider to be substantive would be those in which the changes are so significant that the measure is no longer the same measure, or when a standard of performance assessed by a measure becomes more stringent, such as changes in acceptable timing of medication, procedure/process, test administration, or expansion of the measure to a new setting. We believe that our proposal adequately balances the need to incorporate changes to measures used in the expanded HHVBP Model in the most expeditious manner possible, while preserving the public's ability to comment on updates to measures that so fundamentally change a measure that it is no longer the same measure originally adopted. We note that CMS adopted a similar policy for the HH QRP in the CY 2015 HH PPS final rule (79 FR 66079 through 66081).

We invite public comment on our proposal.

d. Measure Removals

The measure set used for the expanded Model would be subject to change including the removal of measures during subsequent years. In this proposed rule, for greater transparency, we propose factors we would consider in proposing to remove a measure as well as a policy for when immediate suspension is necessary.

(1) Proposed Removal Factors

We propose to generally use the below removal factors when considering a quality measure for removal for use in the expanded HHVBP Model:

- Factor 1. Measure performance among HHAs is so high and unvarying that meaningful distinctions in improvements in performance can no longer be made (that is, topped out). To determine ''topped-out'' criteria, we will calculate the top distribution of HHA performance on each measure, and if the 75th and 90th percentiles are statistically indistinguishable, we will consider the measure topped-out.
- Factor 2. Performance or improvement on a measure does not result in better patient outcomes.
- Factor 3. A measure does not align with current clinical guidelines or practice.
- Factor 4. A more broadly applicable measure (across settings, populations, or conditions) for the particular topic is available.
- Factor 5. A measure that is more proximal in time to desired patient outcomes for the particular topic is available.
- Factor 6. A measure that is more strongly associated with desired patient outcomes for the particular topic is available.
- Factor 7. Collection or public reporting of a measure leads to negative unintended consequences other than patient harm.
- Factor 8. The costs associated with a measure outweigh the benefit of its continued use in the program.

With respect to Factor 8, under our Meaningful Measures Initiative, we are engaging in efforts to ensure that the expanded HHVBP Model measure set continues to promote improved health outcomes for beneficiaries while minimizing the overall costs associated with the program. We believe that these costs are multifaceted and include not only the burden associated with reporting, but also the costs associated with implementing and maintaining the expanded HHVBP Model. We have identified several different types of costs, including, but not limited to the following:

- Provider and clinician information collection burden and burden associated with the submitting/reporting of quality measures to CMS.
- The provider and clinician cost associated with complying with other HH programmatic requirements.
- The provider and clinician cost associated with participating in multiple quality programs, and tracking multiple similar or duplicative measures within or across those programs.
- The cost to CMS associated with the program oversight of the measure, including measure maintenance and public display.
- The provider and clinician cost associated with compliance with other Federal and State regulations (if applicable).

For example, it may be of limited benefit to retain or maintain a measure which our analyses show no longer meaningfully supports the expanded HHVBP Model goals (for example, no longer provides incentives for better quality care with greater efficiency). It may also be costly for HHAs to track confidential feedback and publicly reported information on a measure where we use the measure in more than one initiative, model, or program. We may also have to expend resources to maintain the specifications for the measure, including the tools needed to collect, validate, analyze, and publicly report the measure data.

When these costs outweigh the evidence supporting the continued use of a measure in the expanded HHVBP Model, we believe that it may be appropriate to remove the measure from the Model. Although we recognize that the expanded HHVBP Model is to encourage HHAs to improve beneficiary outcomes by incentivizing health care providers, we also recognize that this can have limited utility where, for example, the data is of limited use because it is not meaningful. In these cases, removing the measure from the expanded HHVBP Model may better accommodate the costs of expansion administration and compliance without sacrificing improved health outcomes.

We propose that we would remove measures based on Factor 8 on a case-by-case basis. For example, we may decide to retain a measure that is burdensome for HHAs to report if we conclude that the benefit to beneficiaries is so high that it justifies the reporting burden. Our goal is to move the expanded HHVBP Model forward in the least burdensome manner possible, while maintaining a parsimonious set of meaningful quality measures and continuing to incentivize improvement in the quality of care provided to patients.

We believe that even if one or more of the measure removal factors applies, we might nonetheless choose to retain the measure for certain specified reasons. Examples of such instances could include when a particular measure addresses a gap in quality that is so significant that removing the measure could result in poor quality. We would apply these factors on a case-by-case basis.

In addition, as noted previously, the authority to expand the HHVBP Model affords the opportunity to study new measures that are not currently collected or submitted to CMS by HHAs. Because of this, there may be other unforeseen reasons that necessitates the removal of a measure that is not currently captured in one of the factors noted previously. In such cases, we would still use notice and comment rulemaking to remove the measure and provide the reasons for doing so.

We seek public comment on our proposals.

(2) Proposed Measure Suspension Policy

Removal of an expanded HHVBP Model measure would take place through notice and comment rulemaking as proposed above unless we determine that a measure is causing concern for patient safety or harm. We propose that in the case of an expanded HHVBP Model measure for which there is a reason to believe that the continued collection raises possible patient safety concerns, we would promptly suspend the measure and immediately notify HHAs and the public through the usual communication channels, including listening sessions, memos, email notification, and Web postings. We would then propose to remove or modify the measure as appropriate during the next rulemaking cycle.

We request public comment on our proposal.

e. Future Topics or Measure Considerations

(1) Consideration To Align or Remove Measures With the HH QRP

We note that in section IV.C. of this proposed rule, the CMS proposes to replace the Acute Care Hospitalization During the First 60 Days of Home Health (ACH) measure and Emergency Department Use Without Hospitalization During the First 60 days of Home Health (ED Use) measure with the Home Health Within-Stay Potentially Preventable Hospitalization (PPH) for the HH QRP measure beginning with the CY 2023 under the in the HH QRP. We note that while both the ACH and ED Use measure are being proposed for removal under the HH QRP, these measures are being proposed for inclusion in the expanded HHVBP Model beginning with the CY 2022 performance year. We seek public comment on whether we should instead align the expanded HHVBP Model with the proposed changes for HH QRP by proposing to remove the same two measures from the expanded Model in a future year. We note that any measure removals would be proposed in future notice and comment rulemaking.

We request public feedback on this future consideration.

(2) Health Equity Considerations for the Expanded HHVBP Model

In section VIII.B. of this proposed rule, we include a Request for Information on ways to close the health equity gap in post-acute care quality reporting programs, including the HH QRP. We refer readers to that section for discussion of our current health equity efforts in quality measurement and reporting and potential modifications we have considered or may consider in the future. However, in recognition of persistent health disparities and the importance of closing the health equity gap, we request public comment on ways in which we could incorporate health equity goals and principles into the expanded HHVBP Model. Specifically, we seek comment on the challenges unique to value-based purchasing frameworks in terms of promoting health equity, and ways in which we could incorporate health equity goals into the expanded HHVBP Model.

f. Measure Submissions—Form, Manner, and Timing

We propose at § 484.355 that home health agencies will be evaluated using a set of quality measures, and data submitted under the expanded Model must be submitted in the form and manner, and at a time, specified by CMS. Additional details regarding specific types of measures are discussed later in this section.

As noted previously, the expanded HHVBP Model measures in the proposed measure set beginning with the CY 2022 performance year would use data currently already reported by HHAs. The proposed measure set includes OASIS [22] measures, submitted through the OASIS assessment, which is required to be submitted as part of the Medicare Conditions of Participation (CoPs), the HHCAHPS survey measure, which is required under the HH QRP, and claims-based measures, which are calculated by CMS based on claims data HHAs already submit for purposes of payment. In many cases, measures from the expanded HHVBP Model overlap with those in the HH QRP, and HHAs would only need to submit data once to fulfill requirements of both. However, as described in section III.6.a. of this proposed rule, in the future we may propose new measures that may not otherwise already be collected or submitted by HHAs.

We request comment on our proposal.

(1) Form, Manner, and Timing of OASIS Measure Data

CMS home health regulations, codified at § 484.250(a), require HHAs to submit to CMS OASIS data as is necessary for CMS to administer payment rate methodologies. All HHAs must electronically report all Outcome and Assessment Information Set (OASIS) [23] data collected in accordance with § 484.55(b), (c) and (d) in order to meet the Medicare CoPs, and as a condition for payment at § 484.205(c). The OASIS assessment contains data items developed to measure patient outcomes and improve home health care. HHAs submit the OASIS assessment in the internet Quality Improvement Evaluation System (iQIES) (*https://iqies.cms.gov/*). We note that the CoPs require OASIS accuracy and that monitoring and reviewing is done by CMS surveyors (§ 488.68(c)). It is important to note that to calculate quality measures from OASIS data, there must be a complete quality episode, which requires both a Start of Care (initial assessment) or Resumption of Care OASIS assessment and a Transfer or Discharge OASIS

[22] For detailed information on OASIS see the official CMS web resource available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits.*

[23] For detailed information on OASIS see the official CMS web resource available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits.*

assessment. Failure to submit sufficient OASIS assessments to allow calculation of quality measures, including transfer and discharge assessments, is a failure to comply with the CoPs § 484.225(i). HHAs do not need to submit OASIS data for patients who are excluded from the OASIS submission requirements Reporting Outcome and Assessment Information Set Data as Part of the Conditions of Participation for Home Health Agencies final rule (70 FR 76202) where we excluded patients—

- Receiving only non-skilled services;
- For whom neither Medicare nor Medicaid is paying for HH care (patients receiving care under a Medicare or Medicaid Managed Care Plan are not excluded from the OASIS reporting requirement);
- Receiving pre- or post-partum services; or
- Under the age of 18 years.

We are proposing that HHAs participating in the expanded HHVBP Model would also be required to submit OASIS data according to the requirements of the CMS home health regulations codified at § 484.250(a) and OASIS data described in § 484.55(b), (c) and (d). If finalized, this would mean that HHAs would not be required to submit additional data through OASIS specifically for the expanded Model compared to what is already required for COPs, and there would be no additional burden. We note that this proposed requirement also aligns with requirements under the Home Health QRP (82 FR 4578).

For the expanded Model, we propose that the underlying source data used to calculate an OASIS quality measure score beginning with the CY 2022 performance year comes from 12 months of OASIS assessment data from the applicable performance period via iQIES. The data extracted from iQIES for all OASIS measures, besides the two TNC measures, are aggregated to the monthly level for each HHA, separated by observed and predicted values used to calculate risk adjusted values. For the two TNC measures, we propose to use raw OASIS assessments to calculate applicable measure scores consistent with how we developed these measures.

We request comment on our proposals.

(2) Form, Manner, and Timing of HHCAHPS Survey Measure Data

Under the HH QRP, HHAs are required to contract with an approved, independent HHCAHPS survey vendor to administer the HHCAHPS on its behalf (42 CFR 484.245(b)(1)(iii)(B)) among other requirements.

For purposes of the expanded HHVBP Model, we propose similar requirements that align with the HH QRP HHCAHPS survey measure data reporting requirement at 484.245(b)(1)(iii). Specifically, under the expanded Model we propose that—

- HHAs must contract with an approved, independent HHCAHPS survey vendor to administer the HHCAHPS survey on its behalf;
- CMS approves an HHCAHPS survey vendor if the applicant has been in business for a minimum of 3 years and has conducted surveys of individuals and samples for at least 2 years;
- A ''survey of individuals'' is defined as the collection of data from at least 600 individuals selected by statistical sampling methods and the data collected are used for statistical purposes;
- No organization, firm, or business that owns, operates, or provides staffing for an HHA is permitted to administer its own HHCAHPS Survey or administer the survey on behalf of any other HHA in the capacity as an HHCAHPS survey vendor. Such organizations are not be approved by CMS as HHCAHPS survey vendors;
- Approved HHCAHPS survey vendors must fully comply with all HHCAHPS survey oversight activities, including allowing CMS and its HHCAHPS survey team to perform site visits at the vendors' company locations; and
- Patient count exemption: HHAs that have fewer than 60 eligible unique HHCAHPS survey patients must annually submit to CMS their total HHCAHPS survey patient count to CMS to be exempt from the HHCAHPS survey reporting requirements for a calendar year.

A CMS contractor provides the agency with the HHCAHPS survey measure score aggregated to the 12-months of data for the applicable performance period.

The list of approved HHCAHPS survey vendors is available at *https://homehealthcahps.org* or contact the HHCAHPS help desk *hhcahps@rti.org.* Again, we reiterate that these proposed requirements would align with those under the HH QRP and would not add additional burden to HHAs.

We also propose to codify these proposals at § 484.355(a)(1)(ii).

We request public comment on these proposals.

(3) Form, Manner, and Timing of Claims-Based Measures

Claims-based measures are derived from claims data submitted to CMS for payment purposes. Claims-based utilization measures provide information related to the use of health care services (for example, hospitals, emergency departments, etc.) resulting from a change in patient health status. We calculate claims-based measures based on claims data submitted to CMS for payment purposes. Therefore, HHAs do not need to submit additional information for purposes of calculating claims-based measures.

We propose that the underlying source data for claims-based measures is 12 months of claims data during the applicable performance period for purposes of payment under the expanded Model.

We request comment on our proposal.

(4) Proposed Data Reporting for Monitoring and Evaluation of the Expanded HHVBP Model

Consistent with requirements under the original HHVBP Model at§ 484.315(c), we propose that competing HHAs under the expanded HHVBP Model would be required to collect and report information to CMS necessary for the purposes of monitoring and evaluating this model as required by statute.[24] We also propose to codify this at § 484.355(b).

We seek public comment on these proposals.

(5) Proposal To Use Authority Under Section 1115A(d)(1) of the Act To Waive Provisions Outlined in 1890A(a)(1) and (3) Through (6) of the Act

In section III.A.11. of this proposed rule, we propose a public reporting framework for the expanded HHVBP Model that would include annual public reporting of quality performance data. This data includes national benchmarks and achievement thresholds, HHA-level performance results for HHAs that qualify for an annual payment adjustment that includes applicable quality measure scores, Total Performance Scores and percentile rankings, improvement thresholds, and payment adjustment percentages. Section 1890A(a)(1) through (6) of the Act set forth requirements regarding the pre-rulemaking process for the selection of quality and efficiency measures described in section 1890(b)(7)(B) of the Act, including quality and efficiency measures used in reporting performance information to the public. We are proposing to utilize the Center for Medicare and Medicaid Innovation's waiver authority under section 1115A(d)(1) of the Act to waive the steps outlined in section 1890A(a)(1) and (3) through (6) of the Act that

[24] See 1115A(b)(4) of the Act (42 U.S.C. 1315a).

pertain to the pre-rulemaking process for publicly reporting performance information to the extent necessary to test the proposed expanded Model.

Section 1115A(d)(1) of the Act allows the Secretary to waive certain statutory requirements ''as may be necessary solely for purposes of carrying out this section with respect to testing models described in subsection (b).'' Specifically, we propose to waive section1890A(a)(1) and (3) through (6) of the Act which pertains to: Convening multi-stakeholder groups to provide input to the Secretary on the use of quality and efficiency measures; transmitting the input from the multi-stakeholder groups to the Secretary; consideration of the input by the Secretary from the multi-stakeholder groups; publication in the **Federal Register** of the rationale on the quality and efficiency measures not endorsed for use; and, conduct an impact assessment every three years on the use of such measures.

We note that we are not proposing to waive step 2 of the 6 steps in the pre-rulemaking process. Step 2 pertains to the public availability of measures considered for selection. Section 1890A(a)(2) of the Act specifically applies to quality and efficiency measures under Title XVIII, whereas the expanded model would be implemented under section 1115A of the Act, which is in Title XI.

We are proposing to waive the steps outlined in sections 1890A(a)(1) and (3) through (6) of the Act to the extent necessary in order to allow maximum flexibility to continue to test the expanded HHVBP Model under authority of section 1115A of the Act. The timeline associated with completing the steps described by these provisions would impede our ability to support testing new measures in a timely fashion, as well as testing new ways to incentivize quality performance in the home health setting and a new way to pay for home health care services. We plan to continue to seek input from a Technical Expert Panel (TEP) and to monitor quality measure performance to inform potential measure set changes under the expanded Model. Waiving the five steps noted previously for the expanded HHVBP Model would allow for a more flexible timeline with more timely evaluation and monitoring of quality performance and results.

Flexibility in timing to adjust the quality measure set and/or methodology to respond to unexpected events and trends in home health care, as well as to respond timely to any stakeholder concerns, is critical to the success of the HHVBP Model expansion. The ongoing uncertainty levied by the COVID–19 pandemic, and similar events that may come in the future, requires us to maintain responsiveness to anomalies in the quality measure data. These challenges may require the flexibility to timely implement changes to ensure that measure sets continue to appropriately assess performance in light of external factors. In addition, trends in market consolidation and small business policies in the home health care industry could require certain adjustments to measure methodology, that is, minimum volume requirements, or require adjustment to the applicability of measures. The home health care sector is also becoming a more important source of care for beneficiaries who prefer to age in the community, rather than in an institution. This trend, in addition to the national shift in beneficiary demographics, could require flexibility in the quality measure set. This flexibility would be a key lever to adapt the Model to the unpredictable changes led by beneficiary preference, industry trends, and unforeseen nationwide events that HHAs are particularly sensitive to. We seek comment on our proposal to waive the steps outlined in section 1890A(a)(1) and (3) through (6) of the Act as applicable and to the extent necessary to test the proposed expanded Model.

7. Proposed Performance Scoring Methodology

a. Considerations for Developing the Proposed Total Performance Score Methodology

We considered several factors when we initially developed and subsequently refined the performance scoring methodology over the course of the original Model, and we are proposing to apply a similar methodology for the expanded HHVBP Model. We explain later in this section how we propose to calculate a ''performance score'' for each applicable measure for each competing HHA, which is defined as the achievement or improvement score (whichever is greater). The ''Total Performance Score,'' or ''TPS,'' is the numeric score, ranging from 0 to 100, awarded to each qualifying HHA based on the weighted sum of the performance scores for each applicable quality measure under the HHVBP Model expansion. The following principles guided the original Model's design, as well as these proposals for the expanded Model.

First, we believe the performance scoring methodology should be straightforward and transparent to HHAs, beneficiaries, and other stakeholders. HHAs should be able to clearly understand performance scoring methods and performance expectations to optimize quality improvement efforts. The public should also understand performance score methods to utilize publicly-reported information when choosing HHAs.

Second, we believe the performance scoring methodology for the proposed HHVBP Model expansion should be aligned appropriately with the quality measurements adopted for other Medicare value-based purchasing programs, including those introduced in the hospital and skilled nursing home settings. This alignment would facilitate the public's understanding of quality measurement information disseminated in these programs and foster more informed consumer decision-making about their health care choices.

Third, we believe that differences in performance scores must reflect true differences in performance. To make sure that this point is addressed in the performance scoring methodology for the proposed HHVBP Model expansion, we assessed quantitative characteristics of the measures, including the current state of measure development, number of measures, and the number and grouping of measure categories.

Fourth, we believe that both quality achievement and improvement must be measured appropriately in the performance scoring methodology for the expanded HHVBP Model. The proposed methodology specifies that performance scores under the expanded HHVBP Model would be calculated utilizing the higher of achievement or improvement scores for each measure, with achievement out of 10 points and improvement out of 9. We considered the impact of performance scores utilizing achievement and improvement on HHAs' behavior and the resulting payment implications. As under the original Model, using the higher of achievement or improvement scores would allow the Model expansion to recognize HHAs that have made improvements, though their measured performance score may still be relatively lower in comparison to other HHAs. By limiting the improvement score to a scale across 0 to 9, we prioritize achievement relative to improvement.

Fifth, we intend that the expanded Model would utilize the most currently available data to assess HHA performance, to the extent appropriate and feasible within the current technology landscape. We recognize that not all HHAs have the ability to submit data electronically or digitally

and that the proposed quality measure data would not be available instantaneously due to the time required to collect, submit, and process quality measurement information accurately; however, we intend to process data as efficiently as possible.

b. Proposed Performance Score Methodology

(1) Overview

The goal of the performance scoring methodology would be to produce a TPS for each qualifying HHA based on its raw scores on each applicable quality measure included in the expanded HHVBP Model. We would then use the HHA's TPS to determine the HHA's payment adjustment percentage. At a high level, the following summarizes the proposed steps for determining an HHA's TPS under the expanded Model, which is similar to the approach used under the original Model: (1) Each HHA would receive a raw quality measure score for each applicable measure during the performance year; (2) the HHA would receive an ''achievement score'' for each applicable measure, which is defined as a numeric value between 0 and 10 that quantifies an HHA's performance on a given quality measure compared to other HHAs in the same cohort in the baseline year (calculated using the achievement threshold and benchmark, as defined in section III.A.7.b.2. of this proposed rule); (3) each HHA would also receive an ''improvement score'' for each applicable measure, which is defined as a numeric value between 0 and 9, that quantifies an HHA's performance on a given quality measure compared to its own individual performance in the baseline year (the improvement threshold, as defined in section III.A.7.b.2. of this proposed rule); (4) each HHA would be assigned a ''performance score'' on each applicable measure that is the higher of the achievement score or the improvement score, as described in section III.A.7.b.2 of this proposed rule; and (5) each performance score would then be weighted, using each measure's assigned weight, and summed to generate the HHA's TPS, as described in section III.A.7.e. of this proposed rule. The result of this process would be a TPS for each competing HHA that can be translated into a payment adjustment percentage using the LEF applicable to each cohort, as described in section III.A.8. of this proposed rule.

Our proposal for the performance scoring methodology under the expanded HHVBP Model follows closely to that of the original Model. As discussed in more depth in the sections that follow, under the expanded HHVBP Model, we propose that we would assess each HHA's TPS based upon all applicable quality measures (defined below) in the expanded Model measure set in the applicable performance year. Each competing HHA would receive an interim assessment on a quarterly basis, as described in detail in section III.A.9.a. of this proposed rule. The performance scoring methodology would be used to determine an annual distribution of value-based payment adjustments among HHAs in a cohort so that HHAs achieving the highest performance scores would receive the largest upward payment adjustment. The proposed methodology includes three primary features, each of which is discussed in more detail in the sections that follow:

- The HHA's TPS would reflect all of the claims- and OASIS-based measures for which the HHA meets the minimum of 20 home health episodes of care per year and all of the individual components that compose an HHCAHPS survey measure for which the HHA meets the minimum of 40 HHCAHPS surveys received in the performance year, defined as ''applicable measures''.
- An HHA's TPS would be determined by weighting and summing the higher of that HHA's achievement or improvement score for each applicable measure as described in section III.A.7.b. of this proposed rule.
- The claims-based, OASIS assessment-based, and the HHCAHPS survey-based measure categories would be weighted 35 percent, 35 percent, and 30 percent, respectively, and would account for 100 percent of the TPS. If an HHA is missing a measure category or a measure within the OASIS-based measure category, the measures would be reweighted, as described further in section III.A.7.e. of this proposed rule.

As noted, we are proposing that many of the key elements from the original Model's performance scoring methodology would also apply for the expanded HHVBP Model, as we discuss in more detail in the sections that follow. The primary changes between the original Model and the expanded Model would be that first, because we are not proposing to require submission of the New Measures data, we would not consider New Measures in calculating the TPS under the expanded Model. The New Measures reporting currently accounts for 10 percent of the TPS under the original HHVBP Model. In addition, we are proposing small changes to the achievement and improvement score formulas to simplify their calculation and interpretation, without materially changing the output. We are also proposing to calculate benchmarks and achievement thresholds based on national volume-based cohorts, as opposed to the State-based cohorts under the original Model, to align with the proposal for volume-based cohorts as described in section III.A.4. of this proposed rule. Finally, we are proposing to change the potential score range for the TNC Mobility and TNC Self-Care measures from 0 to 15 points for achievement and 0 to 13.5 points for improvement as under the original Model, to 0 to 10 points for achievement and 0 to 9 points for improvement in the expanded Model. This change simplifies and aligns the calculation of the composite measure scores. The proposed weighting in the expanded Model, which follows the original Model, accounts for the intended increase in relative contribution from these composite measures to the TPS.

(2) Proposed Calculation of the Benchmark and Achievement Threshold

For scoring HHAs' performance on measures in the claims-based, OASIS-based, and the HHCAHPS survey-based categories, we propose similar elements of the scoring methodology as set forth in the original Model (as described in § 484.320), including allocating points based on achievement or improvement and calculating those points based on benchmarks and thresholds. As proposed in section III.A.5.b.1. of this proposed rule, with the exception of new HHAs, the baseline year would be CY 2019 (January 1, 2019 through December 31, 2019) for the CY 2022 performance period/CY 2024 payment year and subsequent years. All benchmarks and achievement thresholds would be set based on HHA performance in the designated baseline year.

We propose that to determine achievement points for each measure, HHAs would receive points along an achievement range, which is a scale between the achievement threshold and a benchmark. We propose to define the ''achievement threshold'' as the median (50th percentile) of all HHAs' performance scores on the specified quality measure during the baseline year, calculated separately for the larger- and smaller-volume cohorts. We propose to calculate the benchmark as the mean of the top decile of all HHAs' performance scores on the specified quality measure during the baseline year, calculated separately for the larger- and smaller-volume cohorts. Unlike the original Model, for the expanded HHVBP Model, we are proposing to use

a national sample separated into larger-volume and smaller-volume HHA cohorts to calculate both the achievement threshold and the benchmark, rather than calculating individual values for each selected State as in the original Model, as described in section III.A.4.b. of this proposed rule. We also propose that to determine improvement points for each measure, HHAs would receive points along an improvement range, which is a scale between an HHA's performance during the baseline year and the benchmark. The HHA's baseline year score is termed the ''improvement threshold.'' The benchmark is the same benchmark used in the achievement calculation. The achievement threshold and benchmarks for each cohort, and the improvement threshold for each HHA, calculated using baseline year performance scores, would be provided to the HHAs as soon as feasible. In addition, benchmarks, achievement thresholds, and improvement thresholds for each measure would be restated on each HHA's interim performance report (IPR). We also propose to codify the proposed definitions of achievement threshold, benchmark, and improvement threshold at § 484.345. We seek public comment on these proposals.

(i) Proposed Calculation of Achievement Score

In the original Model, we calculated the achievement score by dividing the difference between the HHA's performance score and the achievement threshold by the difference between the benchmark and the achievement threshold, multiplying the quotient by 9, and then taking the product and adding 0.5 (80 FR 68681).

Under the expanded HHVBP Model, we propose a similar approach, but with minor modifications intended to improve and simplify the calculation and the interpretation of the achievement score. Under the expanded Model, as under the original Model, we propose that an HHA could earn between 0 to 10 achievement points for each applicable measure based on its performance during the performance year relative to other HHAs in its cohort in the baseline years, quantified by the achievement threshold and the benchmark, as proposed in section III.A.7.b.2. of this proposed rule. We propose to calculate the achievement score using the following formula:

$$\text{Achievement Score} = 10 \times \left(\frac{\textit{HHA Performance Score} - \textit{Achievement Threshold}}{\textit{Benchmark} - \textit{Achievement Threshold}} \right)$$

Relative to the original Model, this proposed equation is simplified, for ease of calculation and interpretation, by multiplying it by 10, as opposed to 9, and by no longer adding 0.5. The performance rankings would not be materially affected by this change. Should the calculated achievement points exceed 10 in the equation, we propose that the maximum achievement points would be capped at 10 achievement points. As under the original Model, we propose to round each measure's achievement points up or down to the third decimal point under the expanded HHVBP Model. For example, an achievement score of 4.5555 would be rounded to 4.556. This ensures precision in scoring and ranking HHAs within each cohort. In determining an achievement score based on the HHA's raw quality measure score, we propose to apply the following rules to the achievement score calculation to ensure the achievement score falls within the range of 0 to 10 points to align with the simplified equation:

- An HHA with a raw quality measure score greater than or equal to the benchmark receives the maximum of 10 points for achievement.
- An HHA with a raw quality measure score greater than the achievement threshold (but below the benchmark) receives greater than 0 but less than 10 points for achievement (prior to rounding), by applying the achievement score formula.
- An HHA with a raw quality measure score that is less than or equal to the achievement threshold receives 0 points for achievement.

We are proposing to no longer calculate the achievement scoring for the TNC Self-Care and TNC Mobility measures out of 15 possible points, as under the original Model, and to instead simplify and align the calculation with other measures by calculating achievement scoring for the composite measures out of 10 possible points. The proposed weighting, consistent with the original Model, would already assign a larger contribution from these composite measures to the overall OASIS category score, as described in section III.A.7.e.(2).(iii). of this proposed rule. We also propose to codify these proposals at § 484.360. We seek public comment on these proposals.

(ii) Proposed Calculation of the Improvement Score

In the original Model, beginning with performance year 4, we calculated improvement scores by dividing the difference between the HHA's performance year score and the HHA's baseline year score by the difference between the benchmark and the HHA's baseline year score, multiplying the quotient by 9, and then taking the product and subtracting 0.5 to calculate the improvement score (83 FR 56543).

Similarly, under the expanded HHVBP Model, we propose to allocate 0 to 9 improvement points to an HHA for each applicable measure based upon how much an HHA's performance score in the performance year improved relative to its performance score during the baseline year. The expanded HHVBP Model aims to ensure that all HHAs provide high quality care and awarding more points for achievement than for improvement supports this goal. This continues to also align with the HVBP Program, where hospitals can earn a maximum of 9 improvement points if their measure score falls between the improvement threshold and the benchmark (76 FR 26515).

We propose to establish a unique improvement range for each measure and for each HHA that defines the difference between the HHA's baseline year score (referred to as the ''improvement threshold'') and the benchmark for the applicable measure, calculated for the applicable volume-based HHA cohort, which is the same benchmark used in the achievement scoring calculation. The following proposed improvement score formula quantifies the HHA's performance on each applicable measure in the performance year relative to its own performance in the baseline year by calculating the improvement score:

$$\text{Improvement Score} = 9 \times \left(\frac{\textit{HHA Performance Score} - \textit{HHA Improvement Threshold}}{\textit{Benchmark} - \textit{HHA Improvement Threshold}} \right)$$

Relative to the original Model, this proposed equation is simplified, for ease of calculation and interpretation, by no longer subtracting 0.5. Should the calculated points exceed 9, we propose that the maximum improvement points would be capped at 9 improvement points. Like the achievement points, we propose to round each measure's improvement points up or down to the third decimal point under the expanded HHVBP Model.

In calculating the improvement score based on the HHA's raw quality measure score, we are proposing to apply the following rules to the improvement score calculation to ensure the improvement score falls within the range of 0 to 9 points to align with the simplified equation:

- If the HHA's raw quality measure score is greater than or equal to the benchmark, the HHA would receive an improvement score of 9 points—an HHA with a raw quality measure score greater than or equal to the benchmark could still receive the maximum of 10 points for achievement.
- If the HHA's raw quality measure score is greater than its improvement threshold but below the benchmark (within the improvement range), the HHA would receive an improvement score that is greater than 0 and less than 9 (before rounding) based on the improvement score formula and as illustrated in the examples in the next section.
- If the HHA's raw quality measure score is less than or equal to or its improvement threshold for the measure, the HHA would receive 0 points for improvement.

We are proposing to no longer calculate the improvement scoring for the TNC Self-Care and TNC Mobility measures out of 13.5 possible points, as under the original Model, and to instead simplify and align the calculation with other measures by calculating improvement scoring for the composite measures out of 10 possible points. The proposed weighting, consistent with the original Model, would already assign a larger contribution from these composite measures to the overall OASIS category, as described in section III.A.7.e.(2).(iii). of this proposed rule. We also propose to codify these proposals at § 484.360. We seek public comment on these proposals.

(iii) Examples of Calculating Achievement and Improvement Scores

For illustrative purposes, the following examples demonstrate how the performance scoring methodology would be applied in the context of the measures in the claims-based, OASIS-based, and the HHCAHPS survey-based categories. These HHA examples are based on illustrative data from CY 2019 (for the baseline year) and hypothetical data for CY 2022 (for the performance year). The benchmark calculated for the Dyspnea measure is 97.676 for HHA A (calculated as the mean of the top decile of HHA performance from the CY 2019 baseline year for the volume-based cohort). The achievement threshold is 75.358 (calculated as the median or the 50th percentile of HHA performance from the CY 2019 baseline year for the same volume-based cohort).

Figure 4 shows the scoring for HHA 'A' as an example. HHA A's CY 2022 performance year score for the Dyspnea measure was 98.348, exceeding both the CY 2019 achievement threshold and benchmark, which means that HHA A earned the maximum 10 points based on its achievement score. Its improvement score is irrelevant in the calculation because the HHA's performance score for this measure exceeded the benchmark, and the maximum number of improvement points possible is 9.

Figure 4 also shows the scoring for HHA 'B.' HHA B's performance on the Dyspnea measure was 52.168 for the CY 2019 baseline year (HHA B's improvement threshold) and increased to 76.765 (which is above the achievement threshold of 75.358) for the CY 2022 performance year. To calculate the achievement score, HHA B would earn 0.630 achievement points, calculated as follows: $10 * (76.765 - 75.358)/(97.676 - 75.358) = 0.630$.[25] Calculating HHA B's improvement score yields the following result: Based on HHA B's period-to-period improvement, from 52.168 in the baseline year to 76.765 in the performance year, HHA B would earn 4.864 improvement points, calculated as follows: $9 * (76.765 - 52.168)/(97.676 - 52.168) = 4.864$.[26] Because the higher of the achievement and improvement scores is used, HHA B would receive 4.864 improvement points for this measure.

In Figure 5, HHA 'C' yielded a decline in performance on the TNC Self-Care measure, falling from 70.266 to 58.487. HHA C's performance during the performance year was lower than the achievement threshold of 75.358 and, as a result, HHA C would receive zero points based on achievement. It would also receive zero points for improvement because its performance during the performance year was lower than its improvement threshold.

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[25] The proposed formula for calculating achievement points is 10 * (HHA Performance Year Score – Achievement Threshold)/(Benchmark – Achievement Threshold).

[26] The proposed formula for calculating improvement points is 9 * (HHA Performance Year Score – HHA Improvement Threshold)/(HHA Benchmark – HHA Improvement Threshold).

FIGURE 4: EXAMPLE OF AN HHA EARNING POINTS BY ACHIEVEMENT OR IMPROVEMENT SCORING

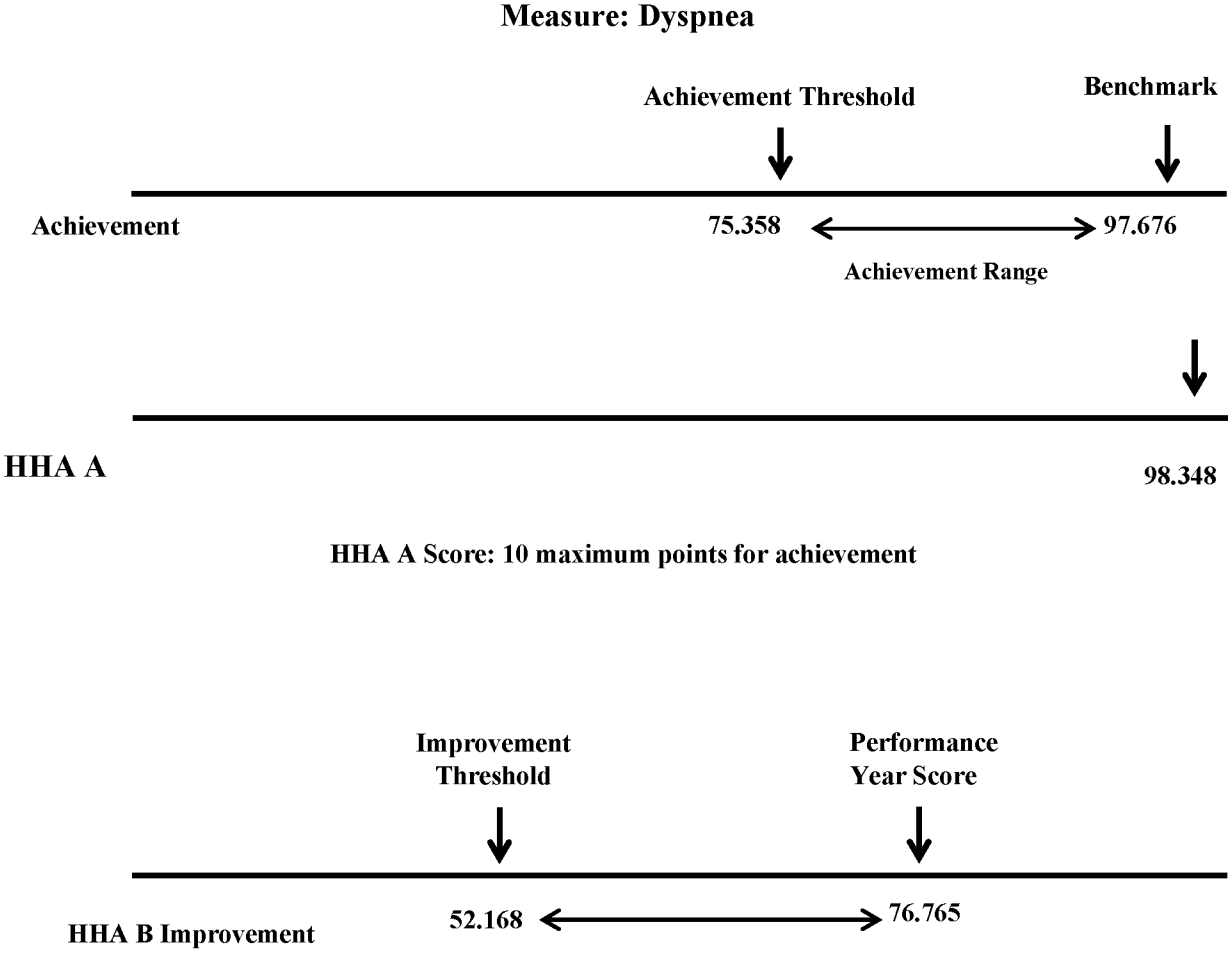
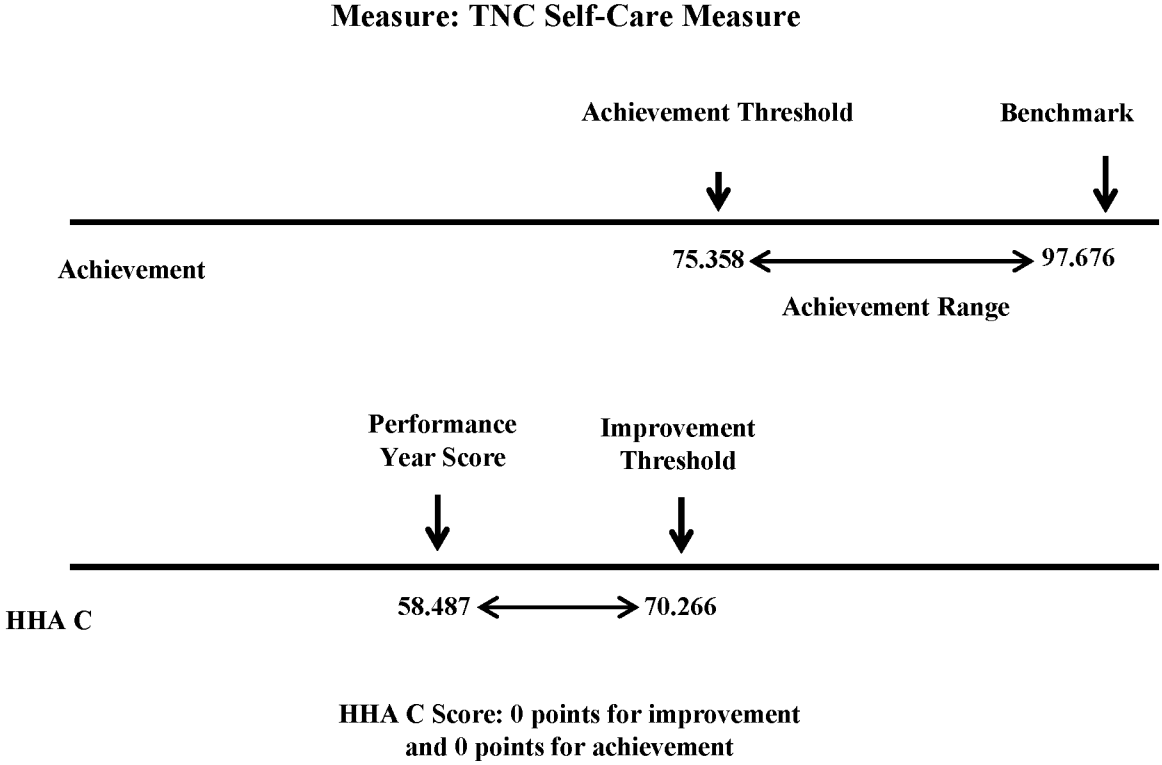


FIGURE 5: EXAMPLE OF AN HHA NOT EARNING POINTS BY ACHIEVEMENT OR IMPROVEMENT SCORING



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c. Minimum Threshold Number of Cases for Claims-Based, OASIS-Based, and HHCAHPS Survey-Based Measures To Receive a Measure Score

For the expanded Model, we are proposing to apply the same policies around minimum case counts for each measure as implemented under the original Model, as described in proposed § 484.345. We propose to continue to award an HHA the higher-of achievement or improvement points, as proposed previously, for ''applicable measures'' only. Under this proposal, for the measures included in the claims-based and OASIS-based measure categories, an ''applicable measure'' is one for which the HHA has provided a minimum of 20 home health episodes of care per year and, therefore, has at least 20 cases in the denominator. We are proposing this minimum to align with the original HHVBP Model and the measure specifications used for the Patient Quality of Care Star Ratings.[27] For the individual components that compose the HHCAHPS survey measure, an ''applicable measure'' means a component for which a competing HHA has submitted a minimum of 40 completed HHCAHPS surveys. A minimum of 40 completed HHCAHPS surveys for each applicable measure for the expanded Model represents a balance between providing meaningful data for payment adjustments and having more HHAs with sufficient numbers of measures with performance scores. Moreover, using a minimum of 40 completed HHCAHPS surveys for each applicable measure would align with the Patient Survey Star Ratings on Home Health Compare.[28]

We also propose to codify this proposed definition of an ''applicable measure'' at § 484.345. We seek public comment on these proposals.

d. Minimum Number of Applicable Measures for an HHA To Receive a Total Performance Score

For the expanded Model, we are proposing to apply the same policies around the minimum number of applicable measures to receive a TPS, as implemented under the original Model. We are proposing that, beginning with the CY 2022 performance year and for subsequent years, an HHA that does not meet the minimum threshold of cases or completed HHCAHPS surveys, as applicable, on five or more measures under the expanded Model would not receive a TPS or a payment adjustment based on that performance year. Under the expanded Model, this means 5 of the 12 possible applicable measures in the measure set, which includes two claims-based measures, 5 OASIS-based measures, and the 5 components from the HHCAHPS survey measure. HHAs without five applicable measures for a performance year would be paid for HHA services in an amount equivalent to the amount that would have been paid under section 1895 of the Act. We believe that a minimum of five applicable measures allows for a robust basis on which to adjust payment while also maximizing the number of HHAs eligible for the payment adjustment.

Although those HHAs that do not meet this minimum would not be subject to payment adjustments under the expanded Model, we propose that other applicable policies under the expanded HHVBP Model would still apply. We propose that these HHAs

[27] Centers for Medicare & Medicaid Services. (2020, April). Quality of Patient Care Star Ratings Methodology. Home Health Quality of Patient Care Star Ratings. *https://www.cms.gov/files/document/quality-patient-care-star-ratings-methodologyapril-2020.pdf.*

[28] Centers for Medicare & Medicaid Services. (2016, March). Technical Notes for HHCAHPS Star Ratings. Home Health HHCAHPS Star Ratings. *https://homehealthcahps.org/Portals/0/HHCAHPS_Stars_Tech_Notes.pdf.*

would receive IPRs for any measures that meet the definition of applicable measure, and they would continue to have future opportunities to compete for payment adjustments. Based on the most recent data available, the vast majority of HHAs are reporting on at least five applicable measures. In 2019, those with less than five applicable measures account for less than 2.4 percent of the claims made (and 2.0 percent of claims payments made) across the 9,526 HHAs delivering care nationwide.

We also propose to codify this proposal at § 484.360(c). We seek public comment on this proposal.

e. Proposed Weights for the Claims-Based, OASIS-Based, and HHCAHPS Survey Measures

Except for removing the New Measures category, for the expanded HHVBP Model, we are generally proposing the same policies regarding the weighting of measures and the re-distribution of weights when measures or measure categories are missing as under the original Model (83 FR 56536).

(1) Proposed Weighting and Re-Distribution of Weights Between the Measure Categories

In this proposed rule, we propose to group the expanded Model proposed measures into measure categories based on their data source as indicated in Table 28: Claims-based, OASIS-based, and the HHCAHPS survey-based. We propose that claims-based, OASIS-based, and the HHCAHPS survey-based categories would be weighted 35 percent, 35 percent, and 30 percent, respectively, when the HHA has applicable measures in all three categories and otherwise meets the minimum threshold to receive a TPS. Together, all three categories would account for 100 percent of the TPS. The measure weights reflect prioritization of the two claims-based measures because they may have a greater impact on reducing Medicare expenditures. In addition, we also place slightly more weight on the OASIS-based measures since they represent a larger variety of measures covering a range of quality topics as compared to the HHCAHPS survey measure.

We also propose that where an HHA is missing all measures from a single measure category, the weights for the remaining two measure categories would be redistributed such that the proportional contribution remains consistent with the original weights. For instance, some smaller-volume HHAs may be missing the HHCAHPS survey measure, which would require re-distributing weights to the claims-based (otherwise weighted 35 percent) and OASIS-based (otherwise weighted 35 percent) measure categories, such that the claims-based and OASIS-based measure categories would each be weighted at 50 percent of the total TPS. Where an HHA is missing the claims-based category, the OASIS-based (otherwise weighted 35 percent) and the HHCAHPS survey (otherwise weighted 30 percent) measure categories would be reweighted to 53.85 percent for the OASIS-based measures and 46.15 percent for the HHCAHPS survey measure.[29] [30] Finally, we propose that if two measure categories are missing, the remaining category would be weighted 100 percent. We refer readers to Table 29 for the distribution of measure category weights under various scenarios.

(2) Proposed Quality Measure Weights Within Measure Categories

Within the measure categories, we are proposing to weight certain individual measures differently than other measures in the same category.

(i) HHCAHPS Survey Measure Category

For the HHCAHPS survey measure category, we propose that all five components are weighted equally to determine the overall HHCAHPS survey measure percentage, which would contribute 30 percent to the overall TPS. This measure category would not require re-distribution of weights for the individual components because HHAs either meet the minimum requirement for number of completed surveys for all HHCAHPS survey measure components or they do not meet the minimum requirements.

(ii) Claims-Based Measure Category

For the claims-based measure category, we are proposing to weight the ACH measure at 75 percent, and the ED Use measure at 25 percent of the total measure weight for this measure category. We are proposing to place a higher weight on the ACH measure because it reflects a more severe health event and because inpatient hospitalizations generally result in more Medicare spending than the average emergency department visit that does not lead to an acute hospital admission. Like the HHCAHPS survey measure components, an HHA would either have sufficient volume for both claims-based measures to be applicable measures or it would have data for neither measure since both measures require the same minimum of 20 episodes per performance year. Consequently, re-distributing weights for either measure within the claims-based measure category should not be necessary.

(iii) OASIS-Based Measure Category

For the OASIS-based measure category, we propose to weight both the TNC Self Care and TNC Mobility measures at 25 percent each; and the Dyspnea, Discharged to Community, and Oral Medications measures at 16.67 percent each of the total measure weight for this measure category. Both the TNC Self-Care and TNC Mobility measures are composed of several measures that are consolidated into two composite measures; because of this, we are proposing to weight them slightly more than the other three measures, which are not composite measures, as under the original Model. Under this proposal, should any measures in the category be missing, we propose to re-distribute weights across the measures such that the original proportions are maintained. For instance, should an HHA be missing both the TNC Self-Care and Dyspnea measures, the remaining measures would be weighted as 42.85 percent for the TNC Mobility measure, 28.57 percent for the Discharged to Community measure, and 28.57 percent for the Oral Medications measure, which reflects the relative ratios of 25 percent to 16.67 percent to 16.67 percent, respectively.[31] [32] [33]

See Table 28 for a comprehensive list of the proposed within-category measure weights.

[29] OASIS-based measures reweighting = 35% original OASIS weight/(35% original OASIS weight + 30% original HHCAHPS weight) = 53.85% revised OASIS weight.

[30] HHCAHPS reweighting = 30% original HHCAHPS weight/(35% original OASIS weight + 30% original HHCAHPS weight) = 46.15% revised HHCAHPS weight.

[31] TNC Mobility reweighting = 25% original TNC Mobility weight/(25% original TNC Mobility weight + 16.67% original Discharged to Community weight + 16.67% original Oral Medications weight) = 42.85% revised TNC Mobility weight.

[32] Discharged to Community reweighting = 16.67% original Discharged to Community weight/(25% original TNC Mobility weight + 16.67% original Discharged to Community weight + 16.67% original Oral Medications weight) = 28.57% revised Discharged to Community weight.

[33] Oral Medications reweighting = 16.67% original Oral Medications weight/(25% original TNC Mobility weight + 16.67% original Discharged to Community weight + 16.67% original Oral Medications weight) = 28.57% revised Oral Medications weight.

TABLE 28: PROPOSED WITHIN-CATEGORY MEASURE WEIGHTS

Measure Category	Quality Measures	Within-category Weight (percentage)
OASIS	TNC Self-Care	25.00
	TNC Mobility	25.00
	Dyspnea	16.67
	Discharged to Community	16.67
	Oral Medications	16.67
Claims	ACH	75.00
	ED Use	25.00
HHCAHPS Survey	HHCAHPS Professional Care	20.00
	HHCAHPS Communication	20.00
	HHCAHPS Team Discussion	20.00
	HHCAHPS Overall Rating	20.00
	HHCAHPS Willingness to Recommend	20.00

Table 29 presents the proposed weights for the proposed measures and measure categories under various reporting scenarios.

TABLE 29: PROPOSED QUALITY MEASURE WEIGHTING AND RE-WEIGHTING SCHEDULE

	Measure Reporting Scenarios			
Measure	All Measures	No HHCAHPS	No Claims	No Claims or HHCAHPS
OASIS				
TNC Self-Care	8.75%	12.50%	13.46%	25.00%
TNC Mobility	8.75%	12.50%	13.46%	25.00%
Oral Medications	5.83%	8.33%	8.98%	16.67%
Dyspnea	5.83%	8.33%	8.98%	16.67%
Discharged to Community	5.83%	8.33%	8.98%	16.67%
Total for OASIS-based measures	*35.00%*	*50.00%*	*53.85%*	*100.00%*
Claims				
ACH	26.25%	37.50%	0.00%	0.00%
ED Use	8.75%	12.50%	0.00%	0.00%
Total for claims-based measures	*35.00%*	*50.00%*	*0.00%*	*0.00%*
HHCAHPS Survey Measure Components				
HHCAHPS Professional Care	6.00%	0.00%	9.23%	0.00%
HHCAHPS Communication	6.00%	0.00%	9.23%	0.00%
HHCAHPS Team Discussion	6.00%	0.00%	9.23%	0.00%
HHCAHPS Overall Rating	6.00%	0.00%	9.23%	0.00%
HHCAHPS Willingness to Recommend	6.00%	0.00%	9.23%	0.00%
Total for the HHCAHPS Survey-based measure	*30.00%*	*0.00%*	*46.15%*	*0.00%*

We also propose to codify these proposals at § 484.360. We seek public comment on these proposals.

f. Examples of the Total Performance Score Calculation

The following are two examples of the proposed performance score calculation, beginning with the assigned achievement vs. improvement points. The following describes the TPS calculations for HHA ''D'' and HHA ''E.''

In this first example, out of a possible 12 applicable measures, which includes two claims-based measures, five OASIS assessment-based measures, and five components that make up the HHCAHPS survey measure, HHA ''D'' has at least 20 episodes of care and received at least 40 completed HHCAHPS surveys in the 12-month performance year, which means the HHA received scores on all 12 quality

measures. Under the proposed scoring methodology outlined previously, for HHA D, the measure category weights would be as follows: 35 percent for the claims-based measures, 35 percent for the OASIS assessment-based measures, and 30 percent for the HHCAHPS Survey-based measures. See Table 30 for a detailed calculation of the TPS. For each measure in column 1, HHA D receives the highest of its achievement or improvement score, which is listed in column 2. Each applicable measure's weight is listed in column 3. To determine the weighted points in column 4, multiply the measure score in column 2 by the measure's weight in column 3 and then by 10. The total performance score is the sum of all the weighted points listed in column 4. In the case of HHA D, the TPS is 46.021.

TABLE 30: HHA D TOTAL PERFORMANCE SCORE EXAMPLE

① Quality Measure	② Points for Applicable Measures	③ Proposed Weight (percentage)	④ Weighted Points
OASIS			
TNC Self-care	7.661	8.75	6.703
TNC Mobility	5.299	8.75	4.637
Oral Medications	3.302	5.83	1.925
Dyspnea	4.633	5.83	2.701
Discharged to Community	0.618	5.83	0.360
Claims			
ACH	1.180	26.25	3.098
ED Use	0.000	8.75	0.000
HHCAHPS Survey Components			
HHCAHPS Professional Care	10.000	6.00	6.000
HHCAHPS Communication	10.000	6.00	6.000
HHCAHPS Team Discussion	10.000	6.00	6.000
HHCAHPS Overall Rating	5.921	6.00	3.553
HHCAHPS Willingness to Recommend	8.406	6.00	5.044
Total Performance Score		**100.00**	**46.021**

In the second example, HHA ''E'' has only seven applicable measures. Because it did not receive the minimum count of HHCAHPS surveys for all components, HHA E did not receive any scores on the HHCAHPS Survey components. Where an HHA is missing the HHCAHPS Survey components, the HHA's HHCAHPS Survey measure category is re-weighted at 0% and the remaining two measure categories are re-weighted such that their proportional contribution remains consistent with the original weights and the total of the weights sums to 100 percent. Based on the ratio of the original weights for the claims-based (35 percent) and the OASIS-based (35 percent) measure categories, each category contributes 50 percent to the TPS. See Table 30 for the detailed calculation of the TPS. For each applicable measure in column 1, HHA E received the highest of its achievement or improvement score, which is listed in column 2. Column 2 lists N/A for each of the HHCAHPS Survey measure components since this HHA had fewer than 40 HHCAHPS surveys in the performance year. Each applicable measure's weight is listed in column 3. To determine the weighted points in column 4, multiply the measure score in column 2 by the applicable measure's weight in column 3 and then by 10. The total performance score is the sum of all the weighted points listed in column 4. In the case of HHA E, the TPS is 27.750.

TABLE 31: HHA E TOTAL PERFORMANCE SCORE EXAMPLE

① Quality Measures	② Points for Applicable Measures	③ Proposed Re-Weighting (percentage)	④ Re-Weighted Points
OASIS			
TNC Self-care	7.661	12.5	9.576
TNC Mobility	5.299	12.5	6.624
Oral Medications	3.302	8.33	2.751
Dyspnea	4.633	8.33	3.859
Discharged to Community	0.618	8.33	0.515
Claims			
ACH	1.180	37.50	4.425
ED Use	0.000	12.50	0.000
HHCAHPS Survey Components			
HHCAHPS Professional Care	N/A	0.00	N/A
HHCAHPS Communication	N/A	0.00	N/A
HHCAHPS Team Discussion	N/A	0.00	N/A
HHCAHPS Overall Rating	N/A	0.00	N/A
HHCAHPS Willingness to Recommend	N/A	0.00	N/A
Total Performance Score		**100.00**	**27.750**

8. Proposed Payment Adjustment Methodology

We finalized the use of the Linear Exchange Function (LEF) for the original Model (80 FR 68686) because it was the simplest and most straightforward option to provide the same marginal incentives to all HHAs, and we believe the same to be true for the HHVBP Model expansion. The LEF is used to translate an HHA's TPS into a percentage of the value-based payment adjustment earned by each HHA. Performance measurement is based on a linear exchange function which only includes competing-HHAs.

Under the expanded HHVBP Model, we propose to codify at § 484.370 a methodology for applying value-based payment adjustments to home health services. We propose that payment adjustments would be made to the HH PPS final claim payment amount as calculated in accordance with HH PPS regulations at § 484.205 using a LEF, similar to the methodology utilized by the HVBP Program (76 FR 26533). We propose the function's intercept at zero percent, meaning those HHAs that have a TPS that is average in relationship to other HHAs in their cohort would not receive any payment adjustment. Under this proposal, payment adjustments for each HHA with a score above zero percent would be determined by the slope of the LEF. We propose to set the slope of the LEF for the given performance year so that the estimated aggregate value-based payment adjustments for that performance year are equal to 5% (the proposed maximum payment adjustment for CY 2024) of the estimated aggregate base operating payment amount for the corresponding payment year, calculated separately for the larger and smaller volume cohorts nationwide. The estimated aggregate base operating payment amount is the total amount of payments made to all the HHAs by Medicare nationwide in each of the larger- and smaller-volume cohorts.

We propose that the LEF would be calculated using the following steps, after calculating and ranking the Total Performance Score (TPS) (the range of the TPS is 0–100) for each HHA in the cohort:

- Step 1, Determine the 'Prior Year Aggregate HHA Payment Amount' that each HHA was paid in the prior year.
- Step 2, Determine the 'X-percent (the applicable payment year payment adjustment percent) Payment Reduction Amount' by multiplying the Prior Year Aggregate HHA Payment Amount per HHA by the 'X-percent Reduction Rate'; the sum of these amounts is the numerator of the LEF.
- Step 3, Determine the 'TPS Adjusted Reduction Amount' by multiplying the 'X-percent Payment Reduction Amount' by the TPS/100 . The sum of these amounts is the denominator of the LEF.
- Step 4, Calculate the LEF by dividing the sum of all HHAs' 'X-percent Payment Reduction Amount' by the sum of the 'TPS Adjusted Reduction Amount'.
- Step 5, Determine the 'Final TPS Adjusted Payment Amount' by multiplying the LEF by the 'TPS Adjusted Reduction Amount' for each HHA.
- Step 6, Determine the 'Quality Adjusted Payment Rate' by dividing the 'Final TPS Adjusted Payment Amount' by the 'Prior Year Aggregate HHA Payment Amount'.
- Step 7, Determine the 'Final Percent Payment Adjustment' that will be applied to the HHA payments by subtracting the 'X-percent Reduction Rate' from the 'Quality Adjusted Payment Rate'.

Table 32 provides an example of how the LEF would be calculated and how it would be applied to calculate the percentage payment adjustment to an HHA's TPS. For this example, we applied the maximum 5-percent payment adjustment proposed for the expanded HHVBP Model for the CY 2024 payment year.

Step #1 involves the calculation of the 'Prior Year Aggregate HHA Payment Amount' (C2 in Table 32) that each HHA was paid from claims data under the HH PPS in the year prior to the performance year. For the CY 2024 payment year, from claims data, all payments are summed together for each HHA for CY 2021, the year prior to the performance year.

Step #2 involves the calculation of the '5-percent Payment Reduction Amount' (C3 of Table 32 for each HHA, which is calculated by multiplying the 'Prior Year Aggregate HHA Payment Amount', from Step #1 by the '5-percent Payment Reduction Rate'. The aggregate of the '5-percent Payment Reduction Amount' is the numerator of the LEF.

Step #3 involves the calculation of the 'TPS Adjusted Reduction Amount' (C4 of Table 32) by multiplying the '5-percent Payment Reduction Amount' from Step #2 by the TPS (C1) divided by 100. The aggregate of the 'TPS Adjusted Reduction Amount' is the denominator of the LEF.

Step #4 involves calculating the LEF (C5 of Table 32) by dividing the sum of '5- percent Payment Reduction Amount' calculated in Step #2 by the sum of 'TPS Adjusted Reduction Amount' calculated in Step #3.

Step #5 involves the calculation of the 'Final TPS Adjusted Payment Amount' (C6 of Table 32) by multiplying the 'TPS Adjusted Reduction Amount' from Step #3 (C4) by the LEF from Step #4 (C5). The 'Final TPS Adjusted Payment Amount' is an intermediary value used to calculate 'Quality Adjusted Payment Rate'.

Step #6 involves the calculation of the 'Quality Adjusted Payment Rate' (C7 of Table 32) by dividing the 'Final TPS Adjusted Payment Amount' from Step #5 by the 'Prior Year Aggregate HHA Payment Amount' from Step #1. This is an intermediary step to determining the payment adjustment rate.

Step #7 involves the calculation of the 'Final Percent Payment Adjustment' (C8 of Table 32) by subtracting 5 percent from 'Quality Adjusted Payment Rate'. The 'Final Percent Payment Adjustment' would be applied to the HHA payments for the payment adjustment year. We propose that the payment adjustment percentage would be capped at no more than plus or minus 5 percent for the applicable performance year and the payment adjustment would occur on the final claim payment amount for the applicable payment year.

We also propose to codify this payment methodology policy at § 484.370. We invite comments on this proposal.

TABLE 32: 5-PERCENT REDUCTION SAMPLE

		Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
HHA	TPS	Prior Year Aggregate HHA Payment Amount*	5-Percent Payment Reduction Amount (C2*5 percent)	TPS Adjusted Reduction Amount (C1/100)*C3	Linear Exchange Function (LEF) (Sum of C3/ Sum of C4)	Final TPS Adjusted Payment Amount (C4*C5)	Quality Adjusted Payment Rate (C6/C2)	Final Percent Payment Adjustment +/- (C7-5%)
	(C1)	(C2)	(C3)	(C4)	(C5)	(C6)	(C7)	(C8)
HHA1	38	$100,000	$5,000	$1,900	1.931	$3,669	3.669%	-1.331%
HHA2	55	$145,000	$7,250	$3,988	1.931	$7,701	5.311%	0.311%
HHA3	22	$800,000	$40,000	$8,800	1.931	$16,995	2.124%	-2.876%
HHA4	85	$653,222	$32,661	$27,762	1.931	$53,614	8.208%	3.208%
HHA5	50	$190,000	$9,500	$4,750	1.931	$9,173	4.828%	-0.172%
HHA6	63	$340,000	$17,000	$10,710	1.931	$20,683	6.083%	1.083%
HHA7	74	$660,000	$33,000	$24,420	1.931	$47,160	7.146%	2.146%
HHA8	25	$564,000	$28,200	$7,050	1.931	$13,615	2.414%	-2.586%
Sum			$172,611	$89,379		$172,611		

*Example cases.

9. Performance Feedback Reports

We propose to use two types of reports that would provide information on performance and payment adjustments under the expanded HHVBP Model. These reports would mirror those we have distributed to HHAs under the original Model.

a. Proposed Interim Performance Report

The first report is the Interim Performance Report (IPR) that would be distributed to HHAs quarterly. The IPR would contain information on the interim quality measure performance based on the 12 most recent months of data available. The IPR would provide feedback to HHAs regarding performance relative to quality measure achievement thresholds and benchmarks and would provide competing HHAs the opportunity to assess and track their performance relative to their peers and their own past performance. HHAs would receive both a preliminary and final version of the IPR each quarter. The Final IPR would become available, as soon as administratively feasible, after the preliminary IPR is distributed and after recalculation requests are processed, in accordance with the process in section III.A.10. of this proposed rule (Appeal Processes).

Beginning with the data collected during the first quarter of CY 2022 (that is, data for the period January 1, 2022 to March 31, 2022), and for every quarter of the expanded HHVBP Model thereafter, we propose to provide each HHA with an IPR that contains information on its performance during the 12 most recent months of data available. We propose to provide the 12 most recent months of data because the

OASIS and claims data are available with different lag times and measures are reported in 12-month intervals on Care Compare. By using 12 months of data, we are able to remove seasonality issues and help to ensure a sufficient number of cases to provide meaningful information to HHAs. By providing HHAs with the most recent 12 months of data, the IPRs provide as close to real-time performance information as possible. We expect to make the first IPR available in July 2022 and make IPRs for subsequent quarters available in October, January, and April. The July 2022 IPR would be the first IPR issued that includes CY 2022 performance year data for the first quarter quality measure performance scores on the proposed OASIS-based measures and baseline data for the HHCAHPS survey and claims-based measures. We propose that the IPRs would include a competing HHA's expanded HHVBP Model-specific performance results with a comparison to other competing HHAs within its applicable nationwide cohort (larger- or smaller-volume). We propose that the IPRs would be made available to each HHA through a CMS data platform, such as the internet Quality Improvement and Evaluation System (iQIES), and would include each HHA's relative estimated ranking amongst its cohort along with measurement points and total performance score based on the 12 most recent months of data available. We note that the IPRs would likely differ from the final data used to assess performance during a given performance year because the time periods used to develop the IPR data (the 12 most recent months) would differ from the actual performance years under the expanded Model (for example, CY 2022 data used to determine CY 2024 payment adjustments).

These performance results would complement quality data sources provided through the iQIES and other quality tracking systems possibly being employed by HHAs to help drive quality improvement. The iQIES-generated reports would provide quality data earlier than the expanded HHVBP Model-specific performance reports (that is, IPR or Annual) because iQIES-generated reports are not limited by a quarterly run-out of data and a calculation of competing peer-rankings. The primary difference between iQIES-generated reports and expanded HHVBP Model-specific performance reports is that the Model-specific performance report we propose would consolidate the applicable performance measures used in the expanded HHVBP Model, provide a peer-ranking to other competing HHAs within the same volume-based cohort, and provide the TPS based on the interim data. In addition, Model-specific performance reports would provide the competing HHAs with a Scorecard and TNC Change Reference. The TNC Change Reference data would help HHAs gauge their performance on the individual OASIS items included in the two composite measures. It would also tell HHAs the percentage of episodes in which there was no change, positive change, or negative change for each OASIS item. The Scorecard would help HHAs better understand how each individual measure contributes to the TPS. For more information on the accessibility and functionality of the iQIES, please reference the iQIES manuals.[34] We note that all quality measures, except for the TNC Mobility and TNC Self-Care measures and the HHCAHPS survey measure, in the proposed measure set for the CY 2022 performance year of the expanded HHVBP Model are already made available in the iQIES. For the HHCAHPS survey measure, HHAs can access their Data Submission Reports on *https://homehealthcahps.org* under the ''For HHAs'' tab. We also suggest HHAs contact their survey vendor regarding data on the HHCAHPS survey measure.

We invite public comment on our proposals.

b. Proposed Annual TPS and Payment Adjustment Report

We propose that the second report, the Annual TPS and Payment Adjustment Report (Annual Report), would be made available to each of the competing HHAs in approximately August of each year preceding the payment adjustment year, expected beginning in August 2023. We propose to make the report available via a CMS data platform, such as the iQIES. The Annual Report would focus primarily on the HHA's payment adjustment percentage for the upcoming CY and include an explanation of when the adjustment would be applied and how this adjustment was determined relative to the HHA's performance scores. Each competing HHA would receive its own confidential Annual Report viewable only to that HHA. We propose that the Annual Report would have three versions: A Preview Annual Report, a Preliminary Annual Report (if applicable), and a Final Annual Report. We would make available to each competing HHA the Preview Annual Report in approximately August of each year preceding the calendar year for which the payment adjustment would be applied. We propose that HHAs would have 15 days to review and request recalculations in accordance with the proposed process discussed in section III.A.10. of this proposed rule (Appeal Processes). For HHAs that request a recalculation, we would make available a Preliminary Annual Report as soon as administratively feasible after the recalculation request is processed. If we do not receive a recalculation request as a result of the Preview Annual Report, a Preliminary Annual Report would not be issued. We propose that HHAs that receive a Preliminary Annual Report would have 15 days to review and submit a reconsideration request in accordance with the proposed process discussed in section III.A.10. of this proposed rule (Appeal Processes). As under the original Model, we propose to make available the Final Annual Report after all reconsideration requests are processed and no later than 30 calendar days before the payment adjustment takes effect annually, both for those HHAs that requested a reconsideration and all other competing HHAs.

Under this proposed approach, HHAs would be notified in advance of the first annual total performance score and payment adjustment being finalized for CY 2024. The total performance score and payment adjustment would be based on the CY 2022 performance year (January 1, 2022 to December 31, 2022), with the first payment adjustment to be applied to each HH PPS final claim payment amount as calculated in accordance with HH PPS policies as codified at § 484.205 for HHA services furnished January 1, 2024 through December 31, 2024.

Subsequent payment adjustments would be calculated based on the applicable full calendar year of performance data from the final IPRs, with competing HHAs notified and payments adjusted, respectively, every year thereafter. As a sequential example, the second payment adjustment would apply for services furnished January 1, 2025 through December 31, 2025, based on a full 12 months of the CY 2023 performance year. Notification of the second pending payment adjustment would occur in approximately August 2024 when the Preview Annual Report is issued, followed by the Preliminary (if applicable) and Final Annual Reports, as described previously.

Data related to performance on quality measures would continue to be provided for the baseline year and all performance years of the expanded

[34] iQIES manuals are available at *https://qtso.cms.gov/software/iqies/reference-manuals.*

Model via a CMS data platform, such as the iQIES (this platform would present and might archive the previously described IPR and Annual Reports).

Table 33 is a sample timeline showing the availability of each expanded HHVBP Model-specific performance report and the data included for the CY 2022 performance year and CY 2024 payment year.

TABLE 33: SAMPLE TIMELINE FOR CY 2022 PERFORMANCE YEAR AND CY 2024 PAYMENT YEAR BY REPORT TYPE AND DATA TYPE

Report Type (Approximate Date Issued)	OASIS-Based Measures	Claims-Based and HHCAHPS-Based Measures
July 2022 IPR (July 2022)	12 months ending 3/31/2022	Baseline data only
October 2022 IPR (Oct 2022)	12 months ending 6/30/2022	12 months ending 3/31/2022
January 2023 IPR (Jan 2023)	12 months ending 9/30/2022	12 months ending 6/30/2022
April 2023 IPR (April 2023)	12 months ending 12/31/2022	12 months ending 9/30/2022
July 2023 IPR (July 2023)	12 months ending 3/31/2023	12 months ending 12/31/2022
Annual TPS and Payment Adjustment Report (Aug 2023)*	12 months ending 12/31/2022	12 months ending 12/31/2022

*The Annual Report made available to HHAs in approximately August 2023 is the Preview Annual Report. The Final Annual Report is issued after the recalculation and reconsideration request periods and no later than 30 days prior to the calendar year which the payment adjustment will take effect.

We seek public comment on our proposals related to the Interim Performance and Annual Reports.

10. Appeals Processes

As codified at § 484.335, the appeals process under the original HHVBP Model allows HHAs to submit recalculation requests for the IPRs and Annual TPS and Payment Adjustment Report. Under this process, an HHA may also make a reconsideration request if it disagrees with the results of a recalculation request for the Annual TPS and Payment Adjustment Report. We refer the reader to the CY 2017 HH PPS final rule for further discussion of the appeals process under the original HHVBP Model (81 FR 76747 through 76750).

Under the expanded Model, we propose to use the same appeals process as the original Model. We propose that competing HHAs be provided the opportunity to appeal certain information provided in the IPRs and the Annual Report, as discussed in more detail in the following sections.

a. Proposed Recalculation Request Process

Under the expanded HHVBP Model, we propose that HHAs be provided two separate opportunities to review scoring information and request recalculations.

HHAs would have the opportunity to request a recalculation if a discrepancy is identified due to a CMS error in calculations after review of their: (1) Preliminary IPRs following each quarterly posting; or (2) Preview Annual Report. Specifically, we propose that an HHA would have 15 calendar days from the date either the Preliminary IPR or the Preview Annual Report is provided to request a recalculation of measure scores if it believes there is evidence of a discrepancy in the calculation of the measure. We propose that we would adjust the score if it is determined that the discrepancy in the calculated measure scores was the result of our failure to follow measurement calculation protocols. An HHA would also have the opportunity to request recalculation if it wishes to dispute the application of the formula to calculate the payment adjustment percentage.

Under this proposal, for both the Preliminary IPRs and the Preview Annual Report, competing HHAs would only be permitted to request scoring recalculations or, for the Preview Annual Report, to dispute the application of the formula used to calculate the payment adjustment percentage, and must include a specific basis for the requested recalculation. Any changes to underlying measure data cannot be made. We would not provide HHAs with the underlying source data utilized to generate performance measure scores.

We propose that HHAs that choose to request a recalculation would submit recalculation requests for both quarterly Preliminary IPRs and for the Preview Annual Reports via instructions provided on a CMS web page. We propose that the request form would be entered by the primary point of contact, a person who has authority to sign on behalf of the HHA.

We propose that recalculation requests (quarterly Preliminary IPR or Preview Annual Report recalculations)

must contain all of the following information:

- The provider's name, address associated with the services delivered, and CMS Certification Number (CCN).
- The basis for requesting recalculation to include the specific data that the HHA believes is inaccurate or the calculation the HHA believes is incorrect.
- Contact information for a person at the HHA with whom CMS or its agent can communicate about this request, including name, email address, telephone number, and mailing address (must include physical address, not just a post office box).
- A copy of any supporting documentation the HHA wishes to submit in electronic form via the Model-specific web page.

Following receipt of a recalculation request, we propose that CMS or its agent would—

- Provide an email acknowledgement, using the contact information provided in the recalculation request, to the HHA contact notifying the HHA that the request has been received;
- Review the request to determine validity, and determine whether the requested recalculation results in a score change altering performance measure scores or the HHA's TPS;
- If the recalculation request results in a performance measure score change, conduct a review of data and if an error is found, recalculate the TPS using the corrected performance data; and
- Provide a formal response to the HHA contact, using the contact information provided in the recalculation request, notifying the HHA of the outcome of the review and recalculation process. The Final IPR and Preliminary Annual Report would reflect any changes noted from recalculation process. As under the original Model, we anticipate providing this response as soon as administratively feasible following the submission of the request.

We are also proposing to codify the proposed recalculation process at § 484.375(a). We invite comment on our proposals.

b. Proposed Reconsideration Process

Under the expanded Model, we propose that if we determine that the original calculation was correct and deny the recalculation request for the scores presented in the Preview Annual Report, or if the HHA otherwise disagrees with the results of a CMS recalculation as reflected in the Preliminary Annual Report, the HHA may submit a reconsideration request for the Preliminary Annual Report. We propose that an HHA may request reconsideration of the outcome of a recalculation request for its Preliminary Annual Report only. We believe that the ability to review the IPRs and submit recalculation requests on a quarterly basis provides competing HHAs with a mechanism to address potential errors in advance of receiving their Preview Annual Report. Therefore, we expect that in many cases, the reconsideration request process proposed would result in a mechanical review of the application of the formulas for the TPS and the LEF, which could result in the determination that a formula was not accurately applied.

Under this proposal, the reconsideration request and supporting documentation would be required to be submitted via instructions provided on the CMS web page within 15 calendar days of CMS' notification to the HHA contact of the outcome of the recalculation request for the Preview Annual Report. This proposed timeframe would allow a decision on the reconsideration to be made prior to the generation of the final data files containing the payment adjustment percentage for each HHA and the submission of those data files to the Medicare Administrative Contractors (MACs) to update their provider files with the payment adjustment percentage. We believe that this would allow for finalization of the annual performance scores, TPS, and annual payment adjustment percentages in advance of the application of the payment adjustments for the applicable performance year. Reconsiderations would be conducted by a CMS designated official who was not involved with the original recalculation request.

We propose that the final TPS and payment adjustment percentage be provided to competing HHAs in a Final Annual Report no later than 30 calendar days in advance of the payment adjustment taking effect to account for unforeseen delays that could occur between the time the Annual Reports are posted and the appeals process is completed.

We are also proposing to codify the proposed reconsideration process at § 484.375(b).

We are soliciting comments on these proposals.

11. Public Reporting Under the Expanded HHVBP Model

a. Background

Consistent with our discussions on public reporting under the original Model in prior rulemaking, in the CY 2020 HH PPS final rule (84 FR 60552), we finalized a policy to publicly report on the CMS website the following two points of data from the final CY 2020 Annual Report for each participating HHA in the original Model that qualified for a payment adjustment for CY 2020: (1) The HHA's TPS from performance year 5; and (2) the HHA's corresponding performance year 5 TPS Percentile Ranking. We stated that these data would be reported for each such competing HHA by agency name, city, State, and by the agency's CCN (84 FR 60552 through 60553). We refer readers to section III.B.3. of this proposed rule, where we are proposing to modify our public reporting policy for the original Model, given our proposal in section III.B.2. of this proposed rule to not use CY 2020 data to make payment adjustments for CY 2022.

Publicly reporting performance data under the expanded Model would enhance the current home health public reporting processes, as it would better inform beneficiaries when choosing an HHA, while also incentivizing HHAs to improve performance. It would also be consistent with our practice of publicly reporting performance data under other value-based initiatives such as the SNF VBP and HVBP Programs (42 CFR 413.338) (42 CFR 412.163). CMS publicly reports both facility-specific SNF VBP Program performance information (such as achievement scores, improvement scores, rankings, and incentive payment multipliers), as well as aggregate-level program performance information on the CMS website (42 CFR 413.338). Similarly, for the HVBP Program, CMS publicly reports quality measures, baseline and performance years used, domain scores, total performance scores, and aggregate payment adjustment amounts on the CMS website (42 CFR 412.163).

Publicly reporting performance data for the expanded HHVBP Model would also be consistent with other agency efforts to ensure transparency and publicly report performance data. For example, the HH QRP requires HHAs to submit data in accordance with 42 CFR 484.245(b)(1). Furthermore, section 1895(b)(3)(B)(v)(III) of the Act requires, in part, that the Secretary establish procedures for making certain HH QRP data available to the public. HHAs have been required to collect OASIS data since 1999 and to report HHCAHPS data since 2012 (64 FR 3764 and 76 FR 68577). These data are available to providers, consumers, beneficiaries, and other stakeholders on the *Care Compare* Website.

b. Proposed Public Reporting for the Expanded Model

We believe that publicly reporting performance data under the expanded HHVBP Model would be an important way of incentivizing HHAs to improve quality performance under the Model. Therefore, we are proposing to publicly report performance data for the expanded HHVBP Model beginning with the CY 2022 performance year/CY 2024 payment adjustment and for subsequent years. For all years of the expanded HHVBP Model, we propose to publicly report the following information:

- Applicable measure benchmarks and achievement thresholds for each small- and large-volume cohort.
- For each HHA that qualified for a payment adjustment based on the data for the applicable performance year—
- Applicable measure results and improvement thresholds;
- The HHA's Total Performance Score (TPS);
- The HHA's TPS Percentile Ranking; and
- The HHA's payment adjustment for a given year.

We propose to report these data by State, CCN, and agency name through a CMS website. We note that quality measure results for many of the measures proposed to be included in the expanded HHVBP Model are already currently reported on *Care Compare;* however, we are proposing to also separately publicly report applicable measure results for such measures in the expanded HHVBP Model, because the public reporting periods for the Model would differ from those used for the HH QRP public reporting on *Care Compare.* We believe this would be clear and transparent for the public. In addition, to the extent that any new measures or measures that are otherwise not included in the HH QRP and are thus not already reported on *Care Compare* are included in the expanded HHVBP Model in the future, we propose to publicly report those measure results as well.

We would also provide definitions for the TPS and the TPS Percentile Ranking methodology, as well as descriptions of the scoring and payment adjustment methodology, on the CMS website to ensure the public understands the relevance of these data points and how they were calculated. We note that this information would include a broader range of data elements than we previously finalized to publicly report for the original HHVBP Model. We are proposing a broader range of data elements for the expanded HHVBP Model for several reasons. First, this publicly reported information would align more closely with the SNF VBP and HVBP Programs, both of which publicly report a broad range of information, including measure results and payment adjustment percentages. Second, we note that measure results for those quality measures included in the HH QRP are already publicly reported on the *Care Compare* website. We believe that publicly reporting the corresponding benchmarks for all expanded Model measures (including those aligned with the HH QRP as well as measures that may not be), by cohort, and other quality performance information for the expanded HHVBP Model would further promote transparency and incentivize quality improvements under the expanded Model.

We anticipate this information would be made available to the public on a CMS website on or after December 1, 2023, the date by which we would intend to complete the CY 2022 Annual Report appeals process and issuance of the Final Annual Report to each competing HHA. For each year thereafter, we anticipate following the same approximate timeline for publicly reporting the payment adjustment for the upcoming calendar year, as well as the related performance data as previously described.

As the expanded Model's performance data would be supplemental to the Home Health Quality of Patient Care and Patient Survey Star Ratings, and does not form a part of these or other star ratings, we intend to also include a reference to the Home Health Star Ratings available on the CMS website.

We also propose to codify these proposals at § 484.355(c).

We seek public comment on these proposals.

12. Extraordinary Circumstances Exception Policy

The nation, its communities, and its health care providers, on certain occasions, are forced to confront extreme and uncontrollable circumstances outside of their control that impact their ability to operate in the ordinary course of business for short-term, or sometimes even extended periods. The United States is currently responding to an outbreak of respiratory disease caused by a novel coronavirus, referred to as COVID–19, which creates serious public health threats that have greatly impacted the U.S. health care system, presenting significant challenges for stakeholders across the health care delivery system and supply chain. Other extraordinary events may also occur in the future that have a disruptive impact. These events may include other public health emergencies, large-scale natural disasters (such as, but not limited to, hurricanes, tornadoes, and wildfires), or other extreme and uncontrollable circumstances. Such events may strain health care resources, and CMS understands that HHAs may have limited capacity to continue normal operations and fulfill expanded HHVBP Model participation requirements. In situations such as these, we believe CMS should make adjustments to the requirements of the expanded HHVBP Model to ensure the delivery of safe and efficient health care.

Therefore, generally, we propose to adopt an extraordinary circumstances exception (ECE) policy for the expanded HHVBP Model that aligns, to the extent possible, with the existing HH QRP exceptions and extension requirements at 42 CFR 484.245(c). Section 484.245(c) permits HHAs to request and CMS to grant an exception or extension from the program's reporting requirements in the event of extraordinary circumstances beyond HHAs' control.

Specifically, we are proposing that for the expanded HHVBP Model, CMS may grant an exception with respect to quality data reporting requirements in the event of extraordinary circumstances beyond the control of the HHA. We are proposing that CMS may grant an exception as follows:

- An HHA that wishes to request an exception with respect to quality data reporting requirements must submit its request to CMS within 90 days of the date that the extraordinary circumstances occurred. Specific requirements for submission of a request for an exception would be available on the CMS website (*cms.gov*).
- CMS may grant an exception to one or more HHAs that have not requested an exception if: CMS determines that a systemic problem with CMS data collection systems directly affected the ability of the HHA to submit data; or if CMS determines that an extraordinary circumstance has affected an entire region or locale.

We would strive to provide our formal response notifying the HHA of our decision within 90 days of receipt of the HHA's ECE request, however, the number of requests we receive and the complexity of the information provided would impact the actual timeframe to make ECE determinations. When an ECE for HHAs in the nation, region or locale is granted, CMS would communicate the decision through routine channels to HHAs and vendors, including, but not

limited to, the PAC QRP listserv, Open Door Forum MLN Connects, and notices on the CMS *Home Health Quality Reporting Spotlight webpage.* Specific instructions for requesting exceptions or extensions would be provided on the CMS website.

We also propose to codify our ECE policy at § 484.355(d).

We seek public comment on our proposals.

B. Provisions Under the Home Health Value-Based Purchasing (HHVBP) Original Model

1. Background

The last year of data collection for the original Model ended on December 31, 2020 and the last payment adjustment year of the original Model would end on December 31, 2022. Payment adjustments are based on each HHA's TPS in a given performance year, which is comprised of performance on: (1) A set of measures already reported via the Outcome and Assessment Information Set (OASIS),[35] completed Home Health Consumer Assessment of Healthcare Providers and Systems (HHCAHPS) surveys, and select claims data elements; and (2) three New Measures for which points are achieved for reporting data. Payment adjustments for a given year are based on the TPS calculated for performance two years' prior. Under current policy for the original Model, the CY 2022 payment adjustments would be based on CY 2020 (performance year 5) performance. The maximum payment adjustment for CY 2022 is upward or downward 8 percent.

In the interim final rule with comment period that appeared in the May 8, 2020 **Federal Register** (May 2020 COVID–19 IFC) (85 FR 27553 through 27554; 85 FR 70328 through 70330), in response to the COVID–19 PHE to assist HHAs while they direct their resources toward caring for their patients and ensuring the health and safety of patients and staff, we adopted a policy to align the original Model data submission requirements with any exceptions or extensions granted for purposes of HH QRP during the COVID–19 PHE. We also established a policy for granting exceptions to the New Measures data reporting during the COVID–19 PHE, including the codification of these changes at § 484.315(b).

The original Model utilizes some of the same quality measure data that are reported by HHAs for the HH QRP, including HHCAHPS survey data. The other measures used in the original Model are calculated using OASIS data; claims-based data; and New Measure data. In response to the COVID–19 PHE, on March 27, 2020, CMS issued public guidance (*https://www.cms.gov/files/document/guidance-memo-exceptions-and-extensions-quality-reporting-and-value-based-purchasing-programs.pdf*) excepting HHAs from the requirement to report HH QRP data for Q4 2019 and Q1–Q2 2020. Under our policy to align the original Model data submission requirements with any exceptions or extensions granted for purposes of the HH QRP during the COVID–19 PHE, HHAs in the nine original Model States were not required to separately report measure data for these quarters for purposes of the original Model. Specific to the original Model, we granted an exception for reporting New Measures data for the April 2020 (data collection period October 1, 2019–March 31, 2020) and July 2020 (data collection period April 1, 2020–June 30, 2020) New Measure submission periods. We further noted that HHAs may optionally submit part or all of these data by the applicable submission deadlines.

We acknowledged that the exceptions to the HH QRP reporting requirements, as well as the modified submission deadlines for OASIS data and our exceptions for the New Measures reporting requirements, may impact the calculation of performance under the original Model for performance year 5 (CY 2020). We also noted that while we are able to extract the claims-based data from submitted Medicare FFS claims, we may need to assess the appropriateness of using the claims data submitted for the period of the COVID–19 PHE for purposes of performance calculations under the original Model. We further explained that we are evaluating possible changes to our payment methodologies for CY 2022 in light of this more limited data, such as whether we would be able to calculate payment adjustments for participating HHAs for CY 2022, including those that continue to report data during CY 2020, if the overall data is not sufficient, as well as whether we may consider a different weighting methodology given that we may have sufficient data for some measures and not others. We stated that further, we are also evaluating possible changes to our public reporting of CY 2020 performance year data. We stated that we intend to address any such changes to our payment methodologies for CY 2022 or public reporting of data in future rulemaking.

2. Proposal on CY 2022 Payment Adjustments

For the reasons discussed in this section, we are proposing not to use the CY 2020 (performance year 5) data for purposes of payment adjustments under the HHVBP Model and to instead end the original Model early, with the CY 2021 payment year. Specifically, we are proposing that we would not use the annual TPS calculated using the performance year 5 data to apply payment adjustments for CY 2022 and to instead end the original Model early, such that HHAs in the nine original Model States would not have their HH PPS claims payments adjusted by the current maximum payment adjustment factor of upward or downward 8 percent in CY 2022.

In light of the data reporting exceptions under the HHVBP Model for Q1 and Q2 2020 in response to the COVID–19 PHE, as discussed previously, we reviewed available quality data from Q1 and Q2 2020 as compared to Q1 and Q2 2019 for the nine original Model States to determine whether it may be appropriate to use data from the time period during which data reporting exceptions were in place (Q1 and Q2 2020). The comparison showed a decrease of 8.9 percent in OASIS assessments. We could not directly compare HHCAHPS results from Q1 and Q2 because our data are calculated on a 12-month rolling basis. However, we also examined claims data during this same time period to determine whether volume and utilization patterns changed and observed a 20.2 percent decrease in claims-based home health stays in Q1 and Q2 2020 as compared to Q1 and Q2 2019. The change in volume and utilization was observed across time (that is, the change was not limited to a certain point of time during the Q1 and Q2 2020 time period) and within and across States. We believe these changes could be the result of the impacts of the COVID–19 PHE, including patients avoiding care or dying, reduced discharges to the home, and increased use of telehealth in lieu of in-person home health care. We also observed a 10.5 percent decrease in New Measures data submissions for Q1 and Q2 2020 as compared to Q1 and Q2 2019, consistent with what we would expect given the New Measures reporting exceptions we issued for this time period.

Based on the patterns we observed for the first two quarters of CY 2020, we do not believe it would be appropriate to utilize data from that time period to calculate a TPS for CY 2020 that would

[35] OASIS is the instrument/data collection tool used to collect and report performance data by HHAs.

be used to make payment adjustments in CY 2022. The changes in volume and utilization could skew performance assessments on quality measures for HHAs, such that the calculated TPS may not accurately reflect the quality of care provided by the HHAs. Additionally, we are concerned that because the COVID–19 PHE has not impacted all HHAs equally, implementing payment adjustments based on the impacted data for the period of the COVID–19 PHE could unfairly penalize certain HHAs.

We also considered whether to use only Q3 and Q4 CY 2020 quality measure data to calculate CY 2020 annual total performance scores for CY 2022 payment adjustments. However, we believe that using only two quarters of data may not be sufficiently representative of the care provided by the HHA during a given calendar year for purposes of calculating quality measure scores and determining payment adjustments under the Model, and could potentially disadvantage those HHAs in an area of a State more heavily affected by the pandemic in Q3 and Q4 of CY 2020. In addition, as HHAs in different States continued to be impacted by the COVID–19 PHE during the second half of CY 2020, we believe patterns of home health care may also have continued to be impacted during that timeframe, similar to the changes we observed for the Q1 and Q2 2020 time period. As more data become available from the latter half of CY 2020, we will continue to examine home health care patterns in the nine original Model States in order to determine whether the same patterns we observed in the Q1 and Q2 2020 data persisted into the latter half of the year, and to assess whether it would be appropriate to utilize such data for CY 2022 payment adjustments. Finally, we note that several commenters on the exceptions policies that we adopted in the May 2020 COVID–19 IFC requested that we not use any performance data from CY 2020 and terminate or suspend the original Model early (85 FR 70328 through 70330).

After consideration of these issues, we are proposing to not apply any payment adjustments for CY 2022 of the original HHVBP Model based on data reported in CY 2020 and to instead end the original Model early, with the CY 2021 payment adjustment year. As noted, we will continue to examine data for CY 2020 as it becomes available in order to determine whether it would be appropriate to utilize such data for CY 2022 payment adjustments, in accordance with current Model policies. We will also continue to provide HHAs with the Interim Performance Reports with CY 2020 performance data and the Annual Report with the calculated TPS and payment adjustment amount based on the CY 2020 performance data, consistent with our current policies. If we finalize our proposal, as previously discussed, we would not use the TPS calculated using the performance year 5 data to apply payment adjustments for CY 2022.

We note that if we finalize this proposal to end the original Model early, the evaluation would include the period through CY 2019 (performance year 4) and CY 2021 (payment year 4). As we are proposing to not use CY 2020 (performance year 5) data to calculate CY 2022 (payment year 5) payment adjustments, these years would not be evaluated.

We believe that our proposed policy to not use CY 2020 performance year data to determine payment adjustments under the HHVBP Model would be consistent with how other quality reporting and VBP programs are proposing to utilize data that has been significantly affected by circumstances caused by the COVID–19 PHE. In the FY 2022 Hospice proposed rule (86 FR 19755), we proposed to modify the HH QRP public display policy to display fewer quarters of data than what was previously finalized for certain HH QRP measures for the January 2022 through July 2024 refreshes (86 FR 19755 through 19764). For the January 2022 refresh, data for OASIS-based and certain claims-based measures would include Q3 2020 through Q1 2021 data. For HHCAHPS, data would cover the four quarters Q3 2020 through Q2 2021. We note that Q1 2020 and Q2 2020 data would not be included in the proposed Care Compare refresh schedule for any measures. The SNF VBP program proposed in the FY 2022 SNF PPS proposed rule (86 FR 19954) to suppress the use of the SNF readmission measure (SNFRM) for scoring and payment adjustment purposes for the FY 2022 program year. The HVBP program proposed in the FY 2022 IPPS/LTCH PPS proposed rule (86 FR 25469 through 25496) to suppress the use of a number of measures for the FY 2022 or FY 2023 program years for purposes of scoring and payment adjustments, along with proposals to revise the baseline periods for certain measures due to the extraordinary circumstances exception we granted in response to the COVID–19 PHE.

We are proposing to amend at § 484.305 the definition of ''*applicable percent*'' by removing paragraph (5) of the definition ((5) For CY 2022, 8 percent) to reflect our proposal not to apply any payment adjustments for FY 2022 and to end the original Model early.

We invite public comment on our proposal.

3. Public Reporting Under the Original Model

In the CY 2020 HHS PPS final rule (84 FR 60551 through 60553), we finalized a policy to publicly report on the CMS website the following two points of data from the final CY 2020 performance year 5 Annual Report for each participating HHA in the Model that qualified for a payment adjustment for CY 2020: (1) The HHA's TPS from performance year 5; and (2) the HHA's corresponding performance year 5 TPS Percentile Ranking. We stated that these data would be reported for each such competing HHA by agency name, city, State, and by the agency's CMS Certification Number (CCN). We expected that these data would be made public after December 1, 2021, the date by which we intended to complete the CY 2020 Annual Report appeals process and issuance of the final Annual Report to each HHA.

For the reasons discussed in section III.B.2. of this proposed rule, we are proposing to not use CY 2020 data for CY 2022 payment adjustments under the HHVBP Model. Consistent with this proposal, we are also proposing to modify our existing policy and not publicly report performance data for the HHAs included in the original Model. We do not believe that it would be appropriate to publicly report performance data for a time period for which HHAs would not be held financially accountable for quality, nor do we believe that reporting data for this time period would assist beneficiaries and other public stakeholders in making informed choices about HHA selection, as the patterns of care during CY 2020 may not be representative of performance under the original Model as a whole due to the COVID–19 PHE. However, as discussed in section III.A.11. of this proposed rule, we are proposing to begin public reporting for the expanded HHVBP Model with the CY 2022 performance year data, continuing for all performance years thereafter.

We are proposing to amend § 484.315 to reflect our proposal not to publicly report performance data from the CY 2020 performance year by removing paragraph (d). We seek comments on this proposal.

IV. Home Health Quality Reporting Program (HH QRP) and Other Home Health Related Provisions

A. Vaccinations for Home Health Agency Health Care Personnel

Health Care Personnel (HCP) are at risk of carrying COVID–19 infection to patients, experiencing illness or death as a result of COVID–19 themselves, and transmitting it to their families, friends, and the general public. We believe Home Health Agencies should educate and promote vaccination among their HCP as part of their efforts to assess and reduce the risk of transmission of COVID–19. HCP vaccination can potentially reduce illness that leads to work absence and limit disruptions to care. Centers for Disease Control and Prevention. Overview of Influenza Vaccination among Health Care Personnel (*https://www.cdc.gov/flu/toolkit/long-term-care/why.htm*). Data from influenza vaccination demonstrates that provider uptake of the vaccine is associated with that provider recommending vaccination to patients, Measure Application Committee Coordinating Committee Meeting Presentation (*http://www.qualityforum.org/Project_Pages/MAP_Coordinating_Committee.aspx*). We believe HCP COVID–19 vaccination among Home Health staff could similarly increase uptake among that patient population.

B. Advancing Health Information Exchange

The Department of Health and Human Services (HHS) has a number of initiatives designed to encourage and support the adoption of interoperable health information technology and to promote nationwide health information exchange to improve health care and patients' access to their health information. To further interoperability in post-acute care settings, CMS and the Office of the National Coordinator for Health Information Technology (ONC) participate in the Post-Acute Care Interoperability Workgroup (PACIO) (*https://pacioproject.org/*) to facilitate collaboration with industry stakeholders to develop Fast Healthcare Interoperability Resources (FHIR) standards. These standards could support the exchange and reuse of patient assessment data derived from the minimum data set (MDS), inpatient rehabilitation facility patient assessment instrument (IRF–PAI), long-term care hospital continuity assessment record and evaluation (LCDS), outcome and assessment information set (OASIS), and other sources, including the Hospice Outcome and Patient Evaluation Assessment (HOPE) if implemented in the Hospice Quality Reporting Program through future rulemaking. The PACIO Project has focused on FHIR implementation guides for functional status, cognitive status and new use cases on advance directives and speech, and language pathology. We encourage PAC provider and health IT vendor participation as these efforts advance.

The CMS Data Element Library (DEL) continues to be updated and serves as the authoritative resource for PAC assessment data elements and their associated mappings to health IT standards such as Logical Observation Identifiers Names and Codes and Systematized Nomenclature of Medicine. The DEL furthers CMS' goal of data standardization and interoperability. These interoperable data elements can reduce provider burden by allowing the use and exchange of healthcare data; supporting provider exchange of electronic health information for care coordination, person-centered care; and supporting real-time, data driven, clinical decision-making. Standards in the Data Element Library (*https://del.cms.gov/DELWeb/pubHome*) can be referenced on the CMS website and in the ONC Interoperability Standards Advisory (ISA). The 2021 ISA is available at *https://www.healthit.gov/isa.*

The 21st Century Cures Act (Cures Act) (Pub. L. 114–255, enacted December 13, 2016) requires HHS to take new steps to enable the electronic sharing of health information ensuring interoperability for providers and settings across the care continuum. The Cures Act includes a trusted exchange framework and common agreement (TEFCA) provision [36] that will enable the nationwide exchange of electronic health information across health information networks and provide an important way to enable bi-directional health information exchange in the future. For more information on current developments related to TEFCA, we refer readers to *https://www.healthit.gov/topic/interoperability/trusted-exchange-framework-and-common-agreement* and *https://rce.sequoiaproject.org/*.

The ONC final rule entitled ''21st Century Cures Act: Interoperability, Information Blocking and the ONC Health IT Certification Program'' (85 FR 25642) published May 1, 2020, (hereinafter ''ONC Cures Act Final Rule'') implemented policies related to information blocking required under Section 4004 of the 21st Century Cures Act. Information blocking is generally defined as a practice by a health IT developer of certified health IT, health information network, health information exchange, or health care provider that, except as required by law or specified by the Secretary of HHS as a reasonable and necessary activity that does not constitute information blocking, is likely to interfere with, prevent, or materially discourage access, exchange, or use of electronic health information.[37] For a healthcare provider (as defined in 45 CFR 171.102), specifies that the provider knows that the practice is unreasonable as well as likely to interfere with, prevent, or materially discourage access (see 45 CFR 171.103, exchange, or use of electronic health information. To deter information blocking, health IT developers of certified health IT, health information networks and health information exchanges whom the HHS Inspector General determines, following an investigation, have committed information blocking, are subject to civil monetary penalties of up to $1 million per violation. Appropriate disincentives for health care providers need to be established by the Secretary through rulemaking. Stakeholders can learn more about information blocking at *https://www.healthit.gov/curesrule/final-rule-policy/information-blocking.* ONC has posted information resources including fact sheets (*https://www.healthit.gov/curesrule/resources/fact-sheets*), frequently asked questions (*https://www.healthit.gov/curesrule/resources/information-blocking-faqs*), and recorded webinars (*https://www.healthit.gov/curesrule/resources/webinars*).

We invite providers to learn more about these important developments and how they could affect HHAs.

C. Home Health Quality Reporting Program (HH QRP)

1. Background and Statutory Authority

The HH QRP is authorized by section 1895(b)(3)(B)(v) of the Act. Section 1895(b)(3)(B)(v)(II) of the Act requires that, for 2007 and subsequent years, each HHA submit to the Secretary in a form and manner, and at a time, specified by the Secretary, such data

[36] ONC, *Draft 2 Trusted Exchange Framework and Common Agreement, https://www.healthit.gov/sites/default/files/page/2019-04/FINALTEFCAQTF41719508version.pdf.*

[37] For other types of actors (health IT developers of certified health IT and health information network or health information exchange, as defined in 45 CFR 171.102), the definition of ''information blocking'' (see 45 CFR 171.103) specifies that the actor ''knows, or should know, that such practice is likely to interfere with access, exchange, or use of electronic health information.''

that the Secretary determines are appropriate for the measurement of health care quality. To the extent that an HHA does not submit data in accordance with this clause, the Secretary shall reduce the home health market basket percentage increase applicable to the HHA for such year by 2 percentage points. As provided at section 1895(b)(3)(B)(vi) of the Act, depending on the market basket percentage increase applicable for a particular year, the reduction of that increase by 2 percentage points for failure to comply with the requirements of the HH QRP and further reduction of the increase by the productivity adjustment (except in 2018 and 2020) described in section 1886(b)(3)(B)(xi)(II) of the Act may result in the home health market basket percentage increase being less than 0.0 percent for a year, and may result in payment rates under the Home Health PPS for a year being less than payment rates for the preceding year.

For more information on the policies we have adopted for the HH QRP, we refer readers to the following rules:

- CY 2007 HH PPS final rule (71 FR 65888 through 65891).
- CY 2008 HH PPS final rule (72 FR 49861 through 49864).
- CY 2009 HH PPS update notice (73 FR 65356).
- CY 2010 HH PPS final rule (74 FR 58096 through 58098).
- CY 2011 HH PPS final rule (75 FR 70400 through 70407).
- CY 2012 HH PPS final rule (76 FR 68574).
- CY 2013 HH PPS final rule (77 FR 67092).
- CY 2014 HH PPS final rule (78 FR 72297).
- CY 2015 HH PPS final rule (79 FR 66073 through 66074).
- CY 2016 HH PPS final rule (80 FR 68690 through 68695).
- CY 2017 HH PPS final rule (81 FR 76752).
- CY 2018 HH PPS final rule (82 FR 51711 through 51712).
- CY 2019 HH PPS final rule with comment period (83 FR 56547).
- CY 2020 HH PPS final rule with comment period (84 FR 60554).
- CY 2021 HH PPS final rule (85 FR 70326 through 70328).

2. General Considerations Used for the Selection of Quality Measures for the HH QRP

For a detailed discussion of the considerations we historically use for measure selection for the HH QRP quality, resource use, and others measures, we refer readers to the CY 2016 HH PPS final rule (80 FR 68695 through 68696). In the CY 2019 HH PPS final rule with comment (83 FR 56548 through 56550) we also finalized the factors we consider for removing previously adopted HH QRP measures.

3. Quality Measures Currently Adopted for the CY 2022 HH QRP

The HH QRP currently includes 20 measures for the CY 2022 program year, as outlined in Table 28 of the CY 2020 . HH PPS final rule (84 FR 60555).[38] [39]

TABLE 28: MEASURES CURRENTLY ADOPTED FOR THE CY 2022 HH QRP

Short Name	Measure Name & Data Source
OASIS-based	
Ambulation	Improvement in Ambulation/Locomotion (NQF #0167).
Application of Falls	Application of Percent of Residents Experiencing One or More Falls with Major Injury (Long Stay) (NQF #0674).
Application of Functional Assessment	Application of Percent of Long-Term Care Hospital (LTCH) Patients with an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function (NQF #2631).
Bathing	Improvement in Bathing (NQF #0174).
Bed Transferring	Improvement in Bed Transferring (NQF # 0175).
DRR	Drug Regimen Review Conducted With Follow-Up for Identified Issues- Post Acute Care (PAC) HH QRP.
Drug Education	Drug Education on All Medications Provided to Patient/Caregiver during All Episodes of Care.
Dyspnea	Improvement in Dyspnea.
Influenza	Influenza Immunization Received for Current Flu Season
Oral Medications	Improvement in Management of Oral Medications (NQF #0176).
Pressure Ulcer/Injury	Changes in Skin Integrity Post-Acute Care
Timely Care	Timely Initiation Of Care (NQF #0526).
TOH - Provider	Transfer of Health Information to Provider-Post-Acute Care[40]
TOH - Patient	Transfer of Health Information to Patient-Post-Acute Care[41]
Claims-based	
ACH	Acute Care Hospitalization During the First 60 Days of HH (NQF #0171).
DTC	Discharge to Community-Post Acute Care (PAC) Home Health (HH) Quality Reporting Program (QRP) (NQF #3477)
ED Use	Emergency Department Use without Hospitalization During the First 60 Days of HH (NQF #0173).
MSPB	Total Estimated Medicare Spending Per Beneficiary (MSPB)—Post Acute Care (PAC) HH QRP.
PPR	Potentially Preventable 30-Day Post-Discharge Readmission Measure for HH Quality Reporting Program.
HHCAHPS-based	
CAHPS Home Health Survey	CAHPS® Home Health Care Survey (experience with care) (NQF #0517)[42] - How often the HH team gave care in a professional way. - How well did the HH team communicate with patients. - Did the HH team discuss medicines, pain, and home safety with patients. - How do patients rate the overall care from the HHA. - Will patients recommend the HHA to friends and family.

[38] The HHCAHPS has five component questions that together are used to represent one NQF-endorsed measure.

[39] Data collection delayed due to the COVID–19 public health emergency for the TOH-Patient and TOH-Provider.

[40] Data collection delayed due to the COVID–19 public health emergency for the TOH-Patient and TOH-Provider.

[41] *Ibid.*

[42] The HHCAHPS has five component questions that together are used to represent one NQF-endorsed measure.

4. Proposed Changes for the HH QRP

a. Proposal To Remove the Drug Education on All Medications Provided to Patient/Caregiver Measure Beginning With the CY 2023 HH QRP

The CMS Meaningful Measures framework seeks to identify the highest priorities for quality measurement and improvement and reduce where possible the burden on providers and clinicians.[43] In line with our meaningful measures initiative, we are proposing to remove the Drug Education on All Medications Provided to Patient/Caregiver During All Episodes of Care measure from the HH QRP under measure removal factor 1: Measure performance among HHAs is so high and unvarying that meaningful distinctions in improvements in performance can no longer be made.

In the CY 2010 HH PPS final rule (74 FR 58096), we adopted the Drug Education on all Medications Provided to Patient/Caregiver measure, an OASIS-based measure, beginning with the CY 2010 HH QRP. This process measure reports the percentage of home health quality episodes during which the patient/caregiver was instructed on how to monitor the effectiveness of drug therapy, how to recognize potential adverse effects, and how and when to report problems (at the time of or at any time since the most recent SOC/ROC assessment). This measure is calculated using data collected on OASIS Item M2016.[44]

The Drug Education on all Medications Provided to Patient/Caregiver measure has very high measure performance such that it meets our Meaningful Measure Removal Factor 1: Measure performance among HHAs is so high and unvarying that meaningful distinctions in improvements in performance can no longer be made. The mean and median agency performance scores for this measure, from January 1, 2019 to December 31, 2019 were 97.1 percent and 99.2 percent, respectively. The mean and median agency performance score for this measure in 2010 were 85.4 percent and 97.0 percent respectively. This indicates that an overwhelming majority of patients (or their caregivers) in an HHA received drug education on all medications and demonstrated improvement over time. In addition, during the same timeframe, the 75th percentile measure score (99.9 percent) and the 90th percentile measure score (100 percent) were statistically indistinguishable from each other, meaning that measure scores do not meaningfully distinguish between HHAs.[45] Further, the truncated coefficient of variation for this measure was 0.03, suggesting that it is not useful to draw distinctions between individual agency performance scores for this measure.[46]

We note that the HH QRP also has another measure that we believe better addresses the Meaningful Measure area of medication management. The Improvement in Management of Oral Medications (#0176) measure is an NQF-endorsed outcome measure that assesses the percentage of home health quality episodes during which the patient improved in the ability to take their oral medications correctly. The OASIS item used for this measure (M2020) is currently collected at Start of Care, Resumption of Care and Discharge. The M2020 Management of Oral Medications assessment item asks about the patient's current ability to prepare and take all oral medications reliably and safely, including administration of the correct dosage at the appropriate times/intervals. This measure focuses on improving medication management through medication education provided to the patient. The measure performance statistics demonstrate good variation among providers and room for improvement: From January 1, 2019 to December 31, 2019, the mean and median agency performance scores for this measure was 69.4 percent and 71.9 percent, respectively; the 75th percentile measure score (79.7 percent); the 90th percentile measure score (87 percent); and the truncated coefficient of variation for this measure was 0.17. Thus, we believe this outcome measure The Improvement in Management of Oral Medications (NQF #0176) both better addresses quality issues of medication education and has better performance measure properties than the Drug Education on all Medications Provided to Patient/Caregiver process measure. Additionally, the Drug Education on All Medications Provided to Patient/Caregiver during All Episodes of Care measure was removed from the HH Quality of Patient Care Star Ratings in April 2019 (now Care Compare) and replaced by the Improvement in Management of Oral Medications measure (NQF #0176). The removal of Drug Education on All Medications Provided to Patient/Caregiver process measure from the HH Quality of Patient Care Star Ratings in April 2019 and replacement with the Improvement in Management of Oral Medications ensured that there was not a gap in this important topic area.

We propose to remove the Drug Education on all Medications Provided to Patient/Caregiver measure under measure removal factor 1: Measure performance among HHAs is so high and unvarying that meaningful distinctions in improvements in performance can no longer be made, beginning with the CY 2023 HH QRP.

If finalized as proposed, HHAs would no longer be required to submit OASIS Item M2016, Patient/Caregiver Drug Education Intervention for the purposes of this measure beginning January 1, 2023.[47] If finalized as proposed, data for this measure would be publicly reported on Care Compare through October 1, 2023, after which it would be removed from the site.

We invite public comments on the proposal to remove Drug Education on All Medications Provided to Patient/Caregiver During All Episodes of Care measure beginning with the CY 2023 HH QRP.

b. Proposal To Replace the Acute Care Hospitalization During the First 60 Days of Home Health (NQF #0171) Measure and Emergency Department Use Without Hospitalization During the First 60 Days of Home Health (NQF #0173) Measure With the Home Health Within Stay Potentially Preventable Hospitalization Measure Beginning With the CY 2023 HH QRP

In the CY 2017 HH PPS final rule, we finalized a policy for replacing quality measures in the HH QRP. Specifically, we defined ''replace'' to mean adopting a different quality measure in place of a quality measure currently in the HH QRP based on one or more of the HH QRP's measure removal factors (81 FR 76754 through 76754). We are proposing to replace the Acute Care Hospital During the First 60 Days of Home Health (NQF #0171) measure and the

[43] *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/CMS-Quality-Strategy.*

[44] Home Health Quality Reporting Program Measure Calculations and Reporting User's Manual *https://www.cms.gov/files/document/hh-qrp-qm-users-manual-v1-addendum.pdf.*

[45] Analysis of Home Health OASIS episodes from 2010 to 2019.

[46] The truncated coefficient of variation (TCV) is the ratio of the standard deviation to the mean of the distribution of all scores, excluding the 5 percent most extreme scores. A small TCV (≤0.1) indicates that the distribution of individual scores is clustered tightly around the mean value, suggesting that it is not useful to draw distinctions between individual performance scores.

[47] The removal or addition of an item from the OASIS instrument is subject to public comment and approval from OMB. We cannot cease reporting of this measure any earlier given the need to extend OASIS–D and submit another PRA package in January 2022 for OMB approval for OASIS–E beginning January 1, 2023.

Emergency Department Use Without Hospitalization During the First 60 Days of Home Health (NQF #0173) measure under measure removal factor 6: A measure that is more strongly associated with desired patient outcomes for the particular topic is available, with the Home Health Within Stay Potentially Preventable Hospitalization Measure beginning with the CY 2023 HH QRP.

The proposed Home Health Within Stay Potentially Preventable Hospitalization (which we will refer to as the ''PPH'' measure) measure assesses the agency-level risk-adjusted rate of potentially preventable inpatient hospitalization or observation stays for Medicare fee-for-service (FFS) beneficiaries that occur within a home health (HH) stay for all eligible stays for an agency. This proposed measure is claims-based, requiring no additional data collection or submission burden for HHAs. Our approach for defining potentially preventable hospital admissions is described in more detail in this section of this rule in the Measure Calculations section. A HH stay is defined as a sequence of HH payment episodes that are within 2 days or fewer from an adjacent payment episode. Payment episodes separated from other HH payment episodes by greater than 2 days are considered separate stays. Full details of the PPH specifications may be found at ''Proposed PPH Measure Specifications for the CY 2022 HH QRP NPRM'' at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits/Home-Health-Quality-Measures*.

(1) Background

Hospitalizations among the Medicare population are common, costly, and often preventable.[48] [49] [50] The Medicare Payment Advisory Commission (MedPAC) and a study by Jencks et al. estimated that 17–20 percent of Medicare beneficiaries discharged from the hospital were readmitted within 30 days. Among these hospital readmissions, MedPAC has estimated that 76 percent were considered potentially avoidable and associated with $12 billion in Medicare expenditures.[51] [52] An analysis of data from a nationally representative sample of Medicare FFS beneficiaries receiving HH services in 2004 show that HH patients receive significant amounts of acute and post-acute services after discharge from HH care.[53] Focusing on readmissions, Madigan and colleagues studied data on 74,580 Medicare HH patients and found that the 30-day rehospitalization rate was 26 percent, with the largest proportion related to a cardiac-related diagnosis (42 percent).[54] A study of data on dually eligible Medicare and Medicaid beneficiaries hospitalizations from nursing home and home and community based services waiver programs found that 39 percent of admissions were potentially avoidable.[55]

Analysis of the home health patient population has revealed some key factors associated with hospitalizations from HH including functional disability, primary diagnoses of heart disease, and primary diagnosis of skin wounds.[56] An additional beneficiary characteristic that is associated with a potential for hospitalization is the time since a beneficiary's most recent hospitalization [57] and chronic conditions such as chronic obstructive pulmonary disease and congestive heart failure.[58] How HHAs address these factors, including how HHAs address chronic conditions present before the HH stay, can determine whether beneficiaries can successfully avoid hospitalizations.[59] Understanding these factors can help HHAs design strategies to address avoidable hospitalizations.

Observation stays are also increasing nationally and can have costly financial impacts, especially for patients.[60] [61] Patients admitted for an observation stay can often be treated in the same medical units and have similar medical needs as a patient admitted for inpatient care, but the service is billed as outpatient services and does not count as a referent patient stay in the calculations of readmissions.[62] Limitation of observation stays should be a goal of HHAs along with efforts to limit inpatient hospitalizations.

We have addressed emergency department use, hospitalizations, and readmissions with a number of home health measures. Measures including the Acute Care Hospitalization During the First 60 Days of Home Health (NQF #0171); Emergency Department Use without Hospitalization During the First 60 days of Home Health (NQF #0173); and the Potentially Preventable 30-Day Post-Discharge Readmission Measure for the HH QRP. The HH QRP has long sought to address hospitalization and emergency department use by home health patients since decreasing hospitalizations and use of the emergency department are important areas of quality to promote patient health outcomes and reduce unnecessary healthcare costs. Before the adoption of the Acute Care Hospitalization during the First 60 Days of Home Health (NQF #0171) and Emergency Department Use Without Hospitalization During the First 60 days of Home Health (NQF #0173) measures, the HH QRP utilized OASIS-based iterations of these measures. In the CY 2012 HH PPS Final Rule (76 FR 68526), CMS adopted the Emergency Department Use Without Hospitalization During the First 60 Days of Home Health claims-based measure to replace the OASIS-based Emergency Department Use Without Hospitalization measure since the claims data offered a more robust source of data for the measure. The M2300 item

[48] Friedman, B. and J. Basu. The rate and cost of hospital readmissions for preventable conditions. Med Care Res Rev, 2004. 61(2): p. 225–40.

[49] Moy, E., Chang, E., and Barret, M. Potentially Preventable Hospitalizations—United States, 2001–2009. MMWR, 2013, 62(03);139–143.

[50] Jencks, S.F., M.V. Williams, and E.A. Coleman. Rehospitalizations among Patients in the Medicare Fee-for-Service Program. New England Journal of Medicine, 2009. 360(14): p. 1418–1428.

[51] *Ibid*.

[52] MedPAC, Payment policy for inpatient readmissions, in Report to the Congress: Promoting Greater Efficiency in Medicare. 2007: Washington DC p. 103–120.

[53] Wolff, J.L., Meadow, A., Weiss, C.O., Boyd, C.M., Leff, B. Medicare Home Health Patients' Transitions Through Acute And Post-Acute Care Settings.'' *Medicare Care* 11(46) 2008; 1188–1193.

[54] Madigan, E.A., N.H. Gordon, et al. Rehospitalization in a national population of home health care patients with heart failure.'' *Health Serv Res* 47(6): 2013; 2316–2338.

[55] Walsh, E.G., J.M. Wiener, et al. (2012). ''Potentially avoidable hospitalizations of dually eligible Medicare and Medicaid beneficiaries from nursing facility and Home- and Community-Based Services waiver programs.'' *J Am Geriatric Soc* 60(5): 821–829.

[56] Lohman M.C., Cotton, B.P., Zagaria, A.B., Bao, Y., Greenberg, R.L., Fortuna, K.L., Bruce, M.L. Hospitalization Risk and Potentially Inappropriate Medications among Medicare Home Health Nursing Patients,(2017) J Gen Intern Med. 32(12):1301–1308.

[57] Hua M., Gong, M.N., Brady J., Wunsch, H. Early and late unplanned rehospitalizations for survivors of critical illness(2015) Critical Care Medicine;43(2):430–438.

[58] Dye C., Willoughby D., Aybar-Damali B., Grady C., Oran R., Knudson A. Improving Chronic Disease Self-Management by Older Home Health Patients through Community Health Coaching (2018). Int J Environ Res Public Health. 15(4): 660.

[59] Lohman M.C., Cotton, B.P., Zagaria, A.B., Bao, Y., Greenberg, R.L., Fortuna, K.L., Bruce, M.L. Hospitalization Risk and Potentially Inappropriate Medications among Medicare Home Health Nursing Patients, (2017) J Gen Intern Med. 32(12):1301–1308.

[60] Lind K.D., Noel-Miller C.M., Sangaralingham L.R., Shah N.D., Hess E.P., Morin P., Fernanda Bellolio M. Increasing Trends in the Use of Hospital Observation Services for Older Medicare Advantage and Privately Insured Patients. Med Care Res Rev. 2019. Apr;76(2):229–239.

[61] Feng Z., Wright B., Mor V. Sharp rise in Medicare enrollees being held in hospitals for observation raises concerns about causes and consequences. Health Aff (Millwood). 2012. Jun;31(6):1251–9.

[62] Sabbatini A.K., Wright B. Excluding Observation Stays from Readmission Rates—What Quality Measures Are Missing, New England Journal of Medicine, 31;378(22):2062–2065.

used to calculate OASIS-based ED Use QM was deemed to be insufficiently reliable in capturing emergency department visits. In the CY 2013 HH PPS Final Rule (77 FR 67902), CMS adopted the Acute Care Hospitalization During the First 60 Days of Home Health claims-based measure to replace the OASIS-based Acute Care Hospitalization measure since it made the determination that claims data provided a more robust data source for accurately measuring acute care hospitalizations.

The Acute Care Hospitalization During the First 60 Days of Home Health measure (NQF #0171) and Emergency Department Use Without Hospitalization During the First 60 days of Home Health (NQF #0173) measure are claims-based and were an improvement on addressing issues related to emergency department use and acute hospitalization but they also had limitations related to issues of attribution. In prior feedback from an NQF technical review panel on the Emergency Department Use Without Hospitalization During the First 60 days of Home Health (NQF #1073), concerns were raised regarding the HHAs' ability to prevent an emergency department visit, especially for visits that do not result in a hospitalization. While some evidence suggests that care coordination and HHA engagement can impact emergency department use by patients, experts raised concerns that there were several drivers of emergency department use outside the control of an HHA that could result in an emergency department visit.[63]

Concerns related to attribution were also raised by reviewers of the Acute Care Hospitalization during the First 60 Days of Home Health when the measure was reviewed for NQF endorsement by the Steering Committee at the National Voluntary Consensus Standards for Care Coordination 2012 meetings. Reviewers acknowledged the difficulty in determining appropriate attribution for hospitalization between different providers and settings, especially when evaluating all cause hospitalization that does not require the reason for hospitalization to be related to the reason for home health care.[64]

The proposed PPH measure addresses the limitations of the Emergency Department Use Without Hospitalization During the First 60 Days of Home Health (NQF #0173) and Acute Care Hospitalization During the First 60 Days of Home Health measures (NQF #0171). First, the PPH proposed measure assesses potentially preventable observation stays instead of just emergency department use. As noted previously, observation stays are costly clinical events that require a patient to be monitored by a medical team. Limiting the occurrence of avoidable observation stays would improve patient outcomes and reduce costs. The PPH measure is focused on the subset of observation stays that technical experts determined could be addressed by HHA intervention. Similarly, the PPH proposed measure focuses on the subset of inpatient hospitalizations that could be avoided by HHA intervention. We believe the proposed PPH measure will better provide an assessment on HH quality by focusing on observation stays and acute hospitalizations that could be prevented by HHA intervention.

Several general methods have been developed to assess potentially avoidable or preventable hospitalizations and readmissions for the Medicare population. These include the Agency for Healthcare Research and Quality's (AHRQ's) Prevention Quality Indicators,[65] approaches developed by MedPAC, and proprietary approaches, such as the 3MTM algorithm for potentially preventable hospitalizations.[66] [67] [68] The existing literature addresses both hospital readmissions more broadly and potentially avoidable hospitalizations for specific settings like long-term care and highlights issues relevant to the development of potentially preventable hospitalization measures for a post-acute care setting such as home health.[69] [70]

(2) Stakeholder and Technical Expert Panel (TEP) Input

A TEP convened by our measure contractor provided recommendations on the technical specifications of this proposed measure, including the development of an approach to define potentially preventable hospital admission and observation stays for HH. TEP meetings were held in April, June, and December 2018. The TEP supported the definition of potentially preventable developed by the measure development team for both inpatient admissions and observation stays. The TEP further provided extensive guidance in refining the list of primary conditions that lead to the inpatient admission or observation stay that could be reasonably deemed preventable by HHA intervention. Details from the TEP meetings, including TEP members' ratings of conditions proposed as being potentially preventable, are available in the TEP summary report available on the CMS website at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/MMS/Downloads/PPH-TEP-Summary-Report-Final-101019.pdf.*

We also solicited stakeholder feedback on the development of this measure through a public comment period held from November 18 through December 16, 2019. The major comment received focused on considering the implication of implementation of the Patient Diagnosis Group Model on the specifications of this measure. CMS has undertaken a review of the implications on the new payment model on this and other claims-based QMs in the HH QRP and determined that the claims-based QMs are not adversely affected by the new model.

(3) Measure Application Partnership (MAP) Review

Our pre-rulemaking process includes making publicly available a list of quality and efficiency measures, called the Measures under Consideration (MUC) List that the Secretary is considering adopting through the Federal rulemaking process for use in Medicare programs. This allows multi-stakeholder groups to provide recommendations to the Secretary on the measures included on the list. The PPH quality measure was published in the 2019 MUC list for the HH QRP.[71]

The PPH quality measure was presented to the 2019 NQF-convened Measure Application Process (MAP) Post-Acute Care/Long-Term Care (PAC–LTC) workgroup and the MAP

[63] National Voluntary Consensus Standards for Care Coordination 2012 Draft Technical Report. Available from *https://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=70600.*

[64] Ibid.

[65] Prevention Quality Indicators Overview. Available at: *https://www.qualityindicators.ahrq.gov/modules/pqi_resources.aspx.*

[66] Goldfield, N.I., McCullough, E.C., Hughes, J.S., et al. Identifying potentially preventable readmissions. Health Care Finan. Rev. 30(1):75–91, 2008. Available from *http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4195042/.*

[67] National Quality Forum: Prevention Quality Indicators Overview. 2008.

[68] MedPAC: Online Appendix C: Medicare Ambulatory Care Indicators for the Elderly. pp. 1–12, prepared for Chapter 4, 2011. Available from *http://www.medpac.gov/documents/reports/Mar11_Ch04_APPENDIX.pdf?sfvrsn=0.*

[69] Gao, J., Moran, E., Li, Y.-F., et al. Predicting potentially avoidable hospitalizations. Med. Care 52(2):164–171, 2014. doi:10.1097/MLR.0000000000000041.

[70] Walsh, E.G., Wiener, J.M., Haber, S., et al. Potentially avoidable hospitalizations of dually eligible Medicare and Medicaid beneficiaries from nursing facility and home-and community-based services waiver programs. J. Am. Geriatr. Soc. 60(5):821–829, 2012. doi:10.1111/j.1532–5415.2012.03920.

[71] *https://www.cms.gov/files/document/2019muc-listclearancerpt.pdf.*

recommended conditional support for rulemaking for a single measure under consideration for the HH QRP, MUC2019–34 PPH. The MAP conditionally supported MUC2019–34 PPH, pending NQF review and endorsement. CMS clarified that it intends to eventually replace related measures, NQF 0171 Acute Care Hospitalization during the First 60 Days of Home Health and NQF 0173 Emergency Department Use (ED Use) Without Hospitalization During the First 60 days of Home Health with the PPH measure under consideration.

The MAP agreed that the PPH measure adds value to the HH QRP's measure set by adding measurement of potentially preventable hospitalizations and observation stays that may occur at any point in the home health stay. No measure in the program currently provides this information.

The MAP encouraged the consideration of including Medicare Advantage patients in future iterations of the measure. CMS is supportive of this suggestion when reliable Medicare Advantage data is available nationally. The MAP also encouraged the NQF All-Cause Admissions and Readmissions Standing Committee to consider the definition for preventable hospitalization to ensure HHAs can take adequate steps to improve these outcomes. The issue of what could be determined to be potentially preventable by HHAs was discussed extensively at multiple TEP meetings. The TEP adopted a listing of conditions that could be prevented by standard care HHAs are required to provide. The MAP encouraged CMS to provide detailed performance feedback to providers to help providers differentiate the causes of hospitalizations for quality improvement purposes. More information about the MAP's recommendations for this measure is available at *https://www.qualityforum.org/Publications/2020/02/MAP_2020_Considerations_for_Implementing_Measures_Final_Report_-_PAC_LTC.aspx.*

At the time of the MAP, the initial risk-adjustment model tested measure validity and reliability as identified in the measure specifications document, as previously provided. Testing results were very strong and showed more robust results than outcome measures previously finalized through rulemaking including the Acute Care Hospitalization During the First 60 Days of Home Health (NQF # 0171) measure and the Emergency Department Use Without Hospitalization During the First 60 days of Home Health (NQF #0173) measure.

(4) Quality Measure Calculation

We reviewed established scientific research, analyzed home health claims data, and obtained input from a technical expert panel (TEP) to develop a definition and list of conditions for which types of hospital admissions are potentially preventable. The defining of potentially preventable hospitalization relies on the previously developed conceptual framework that certain diagnoses, proper management, and care of the condition by the home health agency, combined with appropriate, clearly explained, and implemented discharge instructions and referrals, can potentially prevent a patient's admission to the hospital. On the basis of this framework, the team followed the working conceptual definition for potentially preventable hospitalizations for home health created during the development of the HH QRP measure Potentially Preventable 30-Day Post-Discharge Readmission Measure for HH Quality Reporting Program. Although not specific to PAC or hospitalizations, the team used AHRQ Prevention Quality Indicators (PQIs) and Ambulatory Care Sensitive Conditions (ACSCs) as a starting point for this work. The list of ACSCs consists of conditions for which hospitalization can potentially be prevented, given good outpatient care and early intervention.[72]

We also performed analyses on Medicare claims data to identify the most frequent diagnoses associated with admissions among home health beneficiaries, and then applied the conceptual potentially preventable hospitalization definition to evaluate whether these common conditions for a hospitalization may be considered potentially preventable. This list of conditions identified from literature and claims analysis formed the preliminary potentially preventable hospitalization definition. We grouped these conditions based on clinical rationale, and the major groups are: (1) Inadequate management of chronic conditions; (2) Inadequate management of infections; (3) Inadequate management of other unplanned events; and (4) Inadequate injury prevention.

Additional details regarding the definition for potentially preventable hospitalizations are available in the document titled ''Proposed PPH Measure Specification for the CY 2022 HH QRP NPRM'' available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits/Home-Health-Quality-Measures.*

This proposed PPH measure is focused on inpatient admissions or observation stays that are potentially preventable (PP) and unplanned. Thus, planned admissions are not counted in the numerator. Planned inpatient admissions and observation stays are defined largely by the definition used for the Hospital Wide Readmission [73] and Potentially Preventable Within Stay Readmission Measure for Inpatient Rehabilitation Facilities [74] measures.

The process for classifying a planned inpatient admission or observation stay is determined based on the following parameters. If an inpatient or outpatient claim contains a code for a procedure that is frequently a planned procedure, then that inpatient admission or observation stay is designated a planned inpatient admission or observation stay and is not included in the numerator. Similarly, if an inpatient or outpatient claim contains a code for a diagnosis that is frequently associated with a planned admission, then that inpatient admission or observation stay is designated to be a planned inpatient admission or observation stay and also not included in the numerator. However, the planned inpatient admission or observation stay is reclassified as unplanned if the claim also contains a code indicating one or more acute diagnoses from a specified list that is included in the criteria material described in the next sentence. Full details on the planned admissions criteria used, including the CMS Planned Readmission Algorithm and additional procedures considered planned for post-acute care, can be found in the document titled ''Proposed PPH Measure Specification for the CY 2022 HH QRP NPRM'' at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits/Home-Health-Quality-Measures.*

The risk adjustment modeling estimates the effects of patient characteristics, comorbidities, and select health care variables on the probability of potentially preventable inpatient hospital admission or observation stay. More specifically, the risk-adjustment model for HHAs entails the following:

[72] Agency for Healthcare Research and Quality: AHRQ Quality Indicators—Guide to Prevention Quality Indicators: Hospital Admission for Ambulatory Care Sensitive Conditions. AHRQ Pub. No. 02–R0203. Rockville, MD. Agency for Healthcare Research and Quality, 2001.

[73] *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HospitalQualityInits/Measure-Methodology.html.*

[74] *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.*

- Demographic characteristics (age, sex, original reason for Medicare entitlement).
- Care received during prior proximal hospitalization [75] (if applicable) (including the length of the hospitalization and principal diagnoses during the prior proximal hospitalization).
- Other care received within a year of stay (including number of prior acute discharges, number of outpatient emergency department visits, number of skilled nursing visits, number of inpatient rehabilitation facility visits, number of long term care hospital visits, and comorbidities from a prior proximal hospitalization [if applicable] or other visits in the last year).

The proposed measure is calculated using a calendar year of Medicare FFS data. In addition, we propose a minimum of 20 eligible HH stays as defined in the introduction to this proposal for public reporting of the proposed measure. All HH stays during the year time window, except those that meet the exclusion criteria, would be included in the measure. The PPH observation window begins from the start of HH stay and spans to 1 day after discharge. Data from all HH stays beginning from 1/1/2016–12/31/2016 was used for the PPH measure development. For technical information about this proposed measure including information about the measure calculation, risk adjustment, and exclusions, we refer readers to our Proposed PPH Measure Specification for the CY 2022 HH QRP NPRM at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits/Home-Health-Quality-Measures*.

To meet the requirements of the CMS Meaningful Measures framework which seeks to identify the highest priorities for quality measurement and improvement and to reduce where possible the burden on providers and clinicians,[76] we are proposing to remove the Acute Care Hospitalization During the First 60 Days of Home Health (NQF #0171) measure and the Emergency Department Use Without Hospitalization During the First 60 days of Home Health (NQF #0173) measure and replace them with the PPH measure. We are proposing to remove these two measures from the HH QRP beginning with the CY 2023 HH QRP under our measure removal Factor 6: A measure that is more strongly associated with desired patient outcomes for the particular topic is available.

The Acute Care Hospitalization During the First 60 Days of Home Health (NQF #0171) and Emergency Department Use Without Hospitalization During the First 60 days of Home Health (NQF #0173) measures are both claims-based and have some notable limitations related to appropriate attribution of the acute hospitalization or emergency department visit to an HHA. These measures focus on hospitalization regardless of whether a HHA could provide care that could prevent the visit whereas the proposed PPH measure addresses the limitations of these measures by focusing on inpatient admissions and observation stays that research establishes could be prevented by HHA care provided to patients they serve.

We propose to remove the Acute Care Hospitalization during the First 60 Days of Home Health (NQF #0171) measure and Emergency Department Use Without Hospitalization During the First 60 days of Home Health (NQF #0173) measure and replace them with the Home Health Within-Stay Potentially Preventable Hospitalization claims-based measures beginning with the CY 2023 HH QRP.

We invite public comments on this proposal.

c. Proposed Schedule for Publicly Reporting Quality Measures Beginning With the CY 2022 HH QRP

Section 1899B(g)(1) of the Act requires, in part, that the Secretary provide for public reporting of PAC provider performance, including HHAs, on quality measures under section 1899B(c)(1) of the Act, including by establishing procedures for making available to the public information regarding the performance of individual PAC providers with respect to such measures. Section 1899B(g)(2) of the Act requires, in part, that CMS give HHAs opportunity to review and submit corrections to the data and information to be made public under section 1899B(g)(1) of the Act prior to such data being made public. Section 1899B(g)(3) of the Act requires that such procedures provide that the data and information with respect to a measure and PAC provider is made publicly available beginning not later than 2 years after the applicable specified application date applicable to such measure and provider.

In the CY 2018 HH PPS final rule, we adopted the Percent of Residents Experiencing One or More Falls with Major Injury measure beginning with the CY 2020 HH QRP under section 1899B(c)(1)(D) of the Act (82 FR 51727 through 51730). Under section 1899B(a)(2)(E)(i)(IV)(bb) of the Act, the specified application date for HH QRP measures adopted under section 1899B(c)(1)(D) of the Act is January 1, 2019; two years after this date is January 1, 2021.

We also adopted in the CY 2018 HH PPS final rule the Application of Percent of Long-Term Care Hospital Patients with an Admission and Discharge Functional Assessment measure beginning with the CY 2020 HH QRP (82 FR 51722 through 51727) under section 1899B(c)(1)(A) of the Act. Under section 1899B(a)(2)(E)(i)(I)(cc) of the Act, the specified application date for HH QRP measures adopted under section 1899B(c)(1)(A) of the Act is January 1, 2019; two years after this date is January 1, 2021.

We propose to publicly report the Percent of Residents Experiencing One or More Major Falls with Injury measure and Application of Percent of Long-Term Care Hospital Patients with an Admission and Discharge Functional Assessment and a Care Plan that Addresses Function (NQF #2631) measure beginning in April 2022.

As required by section 1899B(g)(2) of the Act, to date CMS has made these two measures available for review by HHAs on the HH confidential feedback reports. The Percent of Residents Experiencing One or More Major Falls with Injury measure was added to the HHA Review and Correct Report effective 04/01/2019, and the HHA Outcome Measures Report effective 01/01/2020. The measure Application of Percent of Long-Term Care Hospital Patients with an Admission and Discharge Functional Assessment and a Care Plan that Addresses Function (NQF #2631) was added to the HHA Review and Correct Report effective 04/01/2019, and the HHA Process Measures Report effective 01/01/2020. HHAs' HH QRP measure scores for these two measures would additionally be made available for review on the HH Provider Preview Report, which would be issued in January 2022, three months in advance of the inaugural display of these measures on Care Compare.

We invite public comments on our proposed schedule to publicly display these measures.

[75] Prior proximal hospitalizations for this measure are defined as inpatient stays within 30 days prior to home health admission.

[76] *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/CMS-Quality-Strategy*.

d. Proposed Revised Compliance Date for Certain HH QRP Reporting Requirements

(1) Background

In the May 8, 2020 **Federal Register** (85 FR 27550), we published an interim final rule with comment period titled ''Medicare and Medicaid Programs, Basic Health Program, and Exchanges; Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency and Delay of Certain Reporting Requirements for the Skilled Nursing Facility Quality Reporting Program'' (which we will refer to as ''IFC–2''). In IFC–2, we delayed the compliance date for certain reporting requirements under the HH QRP (85 FR 27595 through 27596). Specifically, we delayed the requirement for HHAs to begin reporting the Transfer of Health (TOH) Information to PAC and the TOH Information to Patient-PAC measures and the requirement for HHAs to begin reporting certain Standardized Patient Assessment Data Elements to January 1st of the year that is at least one full calendar year after the end of the COVID–19 Public Health Emergency (PHE). CMS also delayed the adoption of the updated version of the Outcome and Assessment Information Set (OASIS) assessment instrument (OASIS–E) for which HHAs would report the Transfer of Health (TOH) measures and certain Standardized Patient Assessment Data Elements.

Under IFC–2, HHAs must use OASIS–E to begin collecting data on the two TOH Information measures beginning with discharges and transfers on January 1st of the year that is at least one full calendar year after the end of the COVID–19 PHE. HHAs must also begin collecting data on certain Standardized Patient Assessment Data Elements on the OASIS–E, beginning with the start of care, resumption of care, and discharges (except for the hearing, vision, race, and ethnicity Standardized Patient Assessment Data Elements, which would be collected at the start of care only) on January 1st of the year that is at least one full calendar year after the end of the COVID–19 PHE. The delay to begin collecting data for these measures was to provide relief to HHAs from the added burden of implementing an updated instrument during the COVID–19 PHE. We wanted to provide maximum flexibilities for HHAs to respond to the public health threats posed by the COVID–19 PHE, and to reduce the burden in administrative efforts associated with attending trainings, training their staff, and working with their vendors to incorporate the updated assessment instruments into their operations.

At the time we finalized the policy in the IFC–2, we believed that the delay in collection of the TOH Information measures and Standardized Patient Assessment Data Elements would not have a significant impact on the HH QRP. However, the COVID–19 PHE showed the important need for these TOH Information measures and Standardized Patient Assessment Data Elements under the HH QRP. The PHE's disproportionate impact on minority populations demonstrates the importance of analyzing this impact and the needs for these populations to improve quality of care within HHAs, especially during a public health emergency.

(2) Current Assessment of HHAs

To accommodate the COVID–19 PHE, CMS has provided additional guidance and as a result HHAs have adopted new processes as well as modified existing processes. For example, HHAs currently have the option to complete what was required to be a face-to-face encounter to qualify for home health via telehealth and the completion of aspects of required comprehensive assessments via telehealth.[77] CMS also supported PAC providers, including HHAs, by providing requested flexibilities in the delivery of care in response to the PHE. In addition, we assisted providers by conducting sessions for HHAs to share best practices that agencies have identified to address many of the challenges posed by the PHE.

Based upon other flexibilities such as the examples provided and the adoption of best practices, and since finalizing IFC–2, HHAs are in a better position to accommodate reporting of the TOH measures and certain Standardized Patient Assessment Data Elements. Also, recent reports (not available at the time CMS IFC–2 was finalized) suggest that HHAs have the capacity to begin reporting the TOH measures and certain Social Determinant of Health (SDOH) Standardized Patient Assessment Data Elements.[78] Since IFC–2 was finalized, the industry has identified a growing demand for home health services and has noted their ability to meet this demand.[79] [80] [81] [82]

In addition, after evaluating the impact of the compliance date under IFC–2, feasibility around data collection by HHAs, and the support needs of providers during the COVID–19 PHE, we have determined that HHAs now have the administrative capacity to attend trainings, train their staff, and work with their vendors to incorporate the updated assessment instrument, the OASIS–E into their operations.

We now believe that based upon the processes adopted by HHAs, as previously described, the flexibilities afforded to HHAs since the beginning of the COVID–19 PHE, and the importance of the data to the HH QRP, it would be appropriate to modify the compliance date finalized in IFC–2. This may support future activities under Executive Order 13985, entitled ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,'' issued January 20, 2021 (*https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government*).

3. Proposal To Collect the Transfer of Health Information to Provider-PAC Measure, the Transfer of Health Information to Patient-PAC Measure, and Certain Standardized Patient Assessment Data Elements Beginning January 1, 2023

We are proposing to revise the compliance date from IFC–2 to January 1, 2023. This revised date would begin the collection of data on the Transfer of Health Information to Provider-PAC measure and Transfer of Health Information to Patient-PAC measure, and certain Standardized Patient Assessment Data Elements on the updated version of the OASIS assessment instrument referred to as OASIS–E. This revised date of January 1, 2023, which is a two-year delay from this original compliance date finalized in the CY 2020 HH PPS final rule (84 FR 60557 through 60610), balances the support that HHAs needed during much of the COVID–19 PHE as CMS provided flexibilities to support HHAs along with the need to collect this important data.

The need for the Standardized Patient Assessment Data Elements and Transfer of Health data have shown to be even more pressing with issues of inequities that the COVID–19 PHE laid bare. This

[77] *https://www.cms.gov/files/document/03092020-covid-19-faqs-508.pdf.*

[78] *https://www.healthaffairs.org/do/10.1377/hblog20201214.543463/full/.*

[79] *https://www.hartfordbusiness.com/article/demand-for-home-health-care-surges-amid-covid-19-shifting-industry-landscape.*

[80] *https://www.forbes.com/sites/sethjoseph/2020/08/05/home-health-care-is-a-bright-light-during-covid-19-with-an-even-brighter-future/?sh=2bfa2c513891.*

[81] *https://www.wsj.com/articles/demand-for-in-home-care-rises-during-coronavirus-11588003076.*

[82] *https://www.csbj.com/premier/businessnews/healthcare/covid-19-boosts-demand-for-home-health-care/article_c65d2b4e-3b17-11eb-a46e-97a2079b065f.html.*

data that includes addressing SDOH provides information that is expected to improve quality of care for all. Consequently, we are proposing to revise the compliance date to reflect this balance and assure that this data collection begins on January 1, 2023.

As stated in the CY 2020 HH PPS final rule, CMS will provide the training and education for HHAs to be prepared for this implementation (84 FR 60554). In addition, if CMS adopts a January 1, 2023 compliance date, CMS would release a draft of the updated version of the OASIS instrument, OASIS–E, in early 2022.

Based upon our evaluation, we propose that HHAs would collect the Transfer of Health Information to Provider Post-Acute Care measure, the Transfer of Health Information to Patient-PAC measure, and certain Standardized Patient Assessment Data Elements beginning January 1, 2023. We propose that, accordingly, HHAs would begin collecting data on the two TOH measures beginning with discharges and transfers on January 1, 2023 on the OASIS–E. We also propose that HHAs would begin collecting data on the six categories of Standardized Patient Assessment Data Elements on the OASIS–E, with the start of care, resumption of care, and discharges (except for the hearing, vision, race, and ethnicity Standardized Patient Assessment Data Elements, which would be collected at the start of care only) beginning on January 1, 2023.

We invite public comment on these proposals.

D. Proposed Changes to the Home Health Conditions of Participation

1. Background and Statutory Authority

Since March, 2020, CMS has issued a number of regulatory waivers in response to the COVID–19 PHE under our statutory authority granted by section 1135 of the Act. That statute permits the Secretary to waive certain statutes and regulations during a public health emergency declared by the President, in order to expand healthcare system capacity while continuing to maintain public and patient safety, and to hold harmless providers and suppliers who may be unable to comply with existing regulations after a good faith effort. Specifically, the Secretary may temporarily waive or modify certain Medicare, Medicaid, and Children's Health Insurance Program (CHIP) requirements to ensure: Sufficient health care items and services are available to meet the needs of individuals enrolled in Medicare, Medicaid and CHIP in the emergency area during the emergency period. In such circumstances, providers can be reimbursed and exempted from sanctions under these programs (absent any determination of fraud or abuse).

We issued a variety of regulatory waivers that pertained to most CMS-certified providers and suppliers during the COVID–19 PHE, including HHAs. Sections 1861(o) and 1891 of the Act authorize the Secretary to establish the requirements that an HHA must meet to participate in the Medicare Program, and these conditions of participation (CoPs) are set forth in regulations at 42 CFR part 484. We waived selected requirements for HHAs within part 484 for the duration of the PHE. While some of these waivers simply delay certain administrative deadlines, others directly impact the provision of patient care. We have identified waivers related to the requirements for the supervision of home health aides at § 484.80(h)(1) and (2) that we believe would be appropriate as permanent policy. These proposed changes and their respective background information are discussed in detail.

In addition, in order to implement section 115 of Division CC of the CAA 2021, we are proposing to modify the requirements for the home health initial assessment visit and comprehensive assessment. This statutorily-required modification allows an occupational therapist to complete the initial and comprehensive assessments for Medicare patients when occupational therapy is ordered with another rehabilitation therapy service (speech language pathology or physical therapy) that establishes program eligibility. This would only be permitted if skilled nursing services have not been ordered.

2. Provisions of the Proposed Regulations

We propose the following revisions to the HHA CoPs.

a. Home Health Aide Supervision

Home health aides deliver a significant portion of direct home health care. Ensuring that aide services are meeting the patient's needs is a critical part in maintaining safe, quality care. At § 484.80(h)(1) and (2), we differentiate aide supervision requirements based on the level of care required by the patient. Aides caring for a patient receiving skilled care from nurses or therapists must currently have an on-site supervisory visit every 14 days, while aides caring for a patient who is not receiving skilled care must have an on-site supervisory visit every 60 days.

We believe the current 14-day on-site supervisory visit requirement when a patient is receiving skilled services is an important component to assessing the quality of care and services provided by the HHA aide, and to ensure that aide services are meeting the patient's needs. Currently, the regulations require that the 14-day supervisory assessment be conducted by the registered nurse (RN) or other appropriate skilled professional who is familiar with the patient, the patient's plan of care and the written care instructions as described in 484.80(g). However, we believe it is important to permit HHA's to complete this assessment virtually, in the rare circumstance that an onsite visit cannot be coordinated within the 14-day time period.

We propose that HHAs be permitted to use interactive telecommunications systems for purposes of aide supervision, on occasion, not to exceed 2 virtual supervisory assessments per HHA in a 60-day period. We are proposing to revise the language at § 484.80(h)(1)(i) to require that if a patient is receiving skilled care (that is, skilled nursing, physical or occupational therapy, or speech language pathology services), the home health aide supervisor (RN or other appropriate skilled professional) must complete a supervisory assessment of the aide services being provided, either onsite (that is, an in person visit) or by using interactive telecommunications systems to ensure aides are furnishing care in a safe and effective manner, no less frequently than every 14 days. The home health aide does not need to be present during this supervisory assessment. As outlined in regulation at § 484.80(h)(4), the home health aide supervisory assessment is required to ensure that the aide is furnishing care in a safe and effective manner, such as: Following the patient's plan of care for completion of tasks assigned to the home health aide; maintaining an open communication process with the patient, representatives, caregivers, and family; demonstrating competency with assigned tasks; complying with infection prevention and control policies and procedures; reporting changes in the patient's condition; and honoring the patient's rights. We are proposing the define interactive telecommunications systems as multimedia communications equipment that includes, at a minimum, audio and video equipment permitting two-way, real-time interactive communication between the patient and distant site physician or practitioner. The use of interactive telecommunications systems for the aide supervisory assessment must not exceed 2 virtual supervisory

assessments per HHA in a 60-day period, regardless of the number of aides or patients associated with a given HHA. If the supervising individual notes an area of concern during the 14-day supervisory assessment, the supervising individual must make an on-site in-person visit to the location where the patient is receiving care while the aide is performing care, in order to observe and assess the aide as required at § 484.80(h)(1)(ii) and (iii).

While we are proposing to allow this flexibility, we expect that in most instances, the HHAs would plan to conduct the 14-day supervisory assessment during an on-site, in person visit, and that the HHA would use interactive telecommunications systems option only for unplanned occurrences that would otherwise interrupt scheduled in-person visits. Examples of circumstances in which a scheduled on-site in-person visit may not be able to be rescheduled timely within the 14-day window could include a severe weather occurrence, a patient requests to change the date of the scheduled visit, or unexpected staff illness or absence on the planned day for the visit.

We are not proposing changes to the requirements for annual aide assessments at § 484.80(h)(1)(iii). In addition to the regularly-scheduled 14-day supervisory assessment and as-needed observation visits for aides providing care to patients receiving skilled services, HHAs are required to make an annual on-site, in person, visit to a patient's home to directly observe and assess each home health aide while he or she is performing patient care activities. The HHA is required to observe each home health aide annually with at least one patient.

We are also proposing revisions to the supervisory assessment requirements for aides providing care to patients who are not receiving skilled care services. At § 484.80(h)(2), we currently require that if home health aide services are provided to a patient who is not receiving skilled care, the RN must make an on-site visit to the location where the patient is receiving care from such aide. Such visits must occur at least once every 60 days in order to observe and assess each home health aide while he or she is providing care. This supervisory visit must be performed by a RN because these patients are not otherwise receiving HHA services from other professionals, such as therapists. We continue to receive feedback that this requirement is overly burdensome for the patient and the HHA if multiple home health aides provide care to the same patient. For instance, if a patient has three different home health aides providing care, the nurse is currently required to observe and assess each of the three home health aides while the aide is giving care to the patient. This circumstance would entail three separate nursing supervision visits on the same patient every 60 days. While we believe that the HHA's observation of an aide providing direct care to the patient is important to ensure quality, requiring a patient to receive three separate supervision visits every 60 days may be onerous on the patient and the HHA.

We propose to maintain the first part of this requirement, that the registered nurse must make a visit in person every 60 days, but would remove the requirement that the RN must directly observe the aide in person during those visits. We would accomplish this by removing the language from 42 CFR 484.80(h)(2) that states, ''in order to observe and assess each home health aide while he or she is performing care,'' and replacing it with ''to assess the quality of care and services provided by the home health aide and to ensure that services meet the patient's needs''. In addition, we propose to further revise the requirement to state that the home health aide would not need to be present during this visit. We believe that these proposed revisions from an on-site (direct) observation of each aid while performing care to an indirect supervision visit to assess the adequacy of the aide care plan, the patient's perception of services provided, and hear any concerns from the patient; may better support the patients' needs by allowing for open communication between the nurse and patient. If a deficiency in the aide services are assessed, the agency must conduct and the home health aide must complete, retraining and a competency evaluation for the deficient and all related skills.

In order to ensure appropriate RN supervision of HHA aides caring for patients who are not receiving skilled services, we propose to add a new requirement to 42 CFR 484.80(h)(2) that would require the RN to make a semi-annual on-site visit to the location where a patient is receiving care in order to directly observe and assess each home health aide while he or she is performing care. This semi-annual in-person assessment would occur twice yearly for each aide, regardless of the number of patients cared for by that aide.

Supervisory visits allow professionals to evaluate whether aides are providing appropriate care as ordered by the patient's plan of care. When RNs or qualified professionals identify a deficiency in aide services, § 484.80(h)(3) requires that the agency conduct, and the home health aide complete, retraining and a competency evaluation related to the deficient skill(s).

We propose to maintain this requirement at 484.80(h)(3), but to modify it by adding ''and all related skills.'' We believe that when a deficient area(s) in the aide's care are assessed and verified by the RN, additional related competencies may reflect deficient practice areas that should be addressed. For example, if the patient informs the nurse that they almost fell when the aide was transferring them from bed to a chair, the nurse should assess the aide's technique for transferring a patient in other circumstances beyond transfer to a chair, such as transferring from a bed to bedside commode or to a shower chair.

We request public comment on our proposed changes to allow virtual supervisory assessments of home health aides for patients receiving skilled care at § 484.80(h)(1)(i), and for the proposed changes to supervision, competency assessment, and retraining for aides providing care to patients receiving all levels of HHA care. We especially welcome comments from patients and caregivers who have experienced virtual supervisory assessments of home health aides during the PHE.

b. Permitting Occupational Therapists To Conduct the Initial Assessment Visit and Complete the Comprehensive Assessment for Home Health Agencies Under the Medicare Program

On December 27, 2020, the CAA, 2021 was signed into law. Division CC, section 115 of the CAA 2021 requires CMS to permit an occupational therapist to conduct the initial assessment visit and complete the comprehensive assessment under the Medicare program, but only when occupational therapy is on the home health plan of care with either physical therapy or speech therapy and skilled nursing services are not initially on the plan of care. We are proposing to conforming regulation text changes at § 484.55(a)(2) and (b)(3), respectively to implement this provision.

Currently, the requirement at § 484.55(a)(2) states, ''When rehabilitation therapy service (speech language pathology, physical therapy, or occupational therapy) is the only service ordered by the physician or allowed practitioner who is responsible for the home health plan of care, and if the need for that service establishes program eligibility, the initial assessment visit may be made by the appropriate rehabilitation skilled

professional.'' We are proposing to add additional language that allows the occupational therapist to complete the initial assessment for Medicare patients when skilled nursing is not initially on the plan of care, but occupational therapy is ordered with another rehabilitation therapy service (speech language pathology or physical therapy) that establishes program eligibility as a need for occupational therapy alone would not initially establish program eligibility under the Medicare home health benefit (see section 1814(a)(2)(c) and 1835(a)(2)(A) of the Act). Similarly, at § 484.55(b)(3), we are proposing to modify our regulatory language to allow an occupational therapist to complete the comprehensive assessment for Medicare patients when ordered with another qualifying rehabilitation therapy service (speech language pathology or physical therapy) that establishes program eligibility and when skilled nursing is not initially part of the plan of care. It should be noted that the statutory requirements for establishing Medicare program eligibility have not changed. Therefore, only the need for skilled nursing, physical therapy or speech language pathology services can initially establish eligibility for Medicare home health care. However, occupational therapy can maintain eligibility for Medicare home health care after the need for skilled nursing, physical therapy, and speech language pathology services have ceased (see sections 1814(a)(2)(C) and 1835(a)(2)(A) of the Act).

c. Adequacy of Aide Staffing

As stated earlier, ensuring that aide services are meeting the patient's needs is a critical part in maintaining safe, quality care. However, in 2019 MedPAC reported that between 1998 and 2017 home health visits declined by 88 percent. CMS seeks information about the adequacy of aide staffing and requests comments on the following:

- Whether home health agencies employ or arrange for (under contract) home health aides to provide aide services;
- The number of home health aides per home health agency (both directly employed and under contract), and whether the number has increased or decreased over the past 5–10 years;
- The average number of aide hours per beneficiary with aide service ordered on the plan of care;
- The effect of the public health emergency on the ability of HHAs to employ home health aides or arrange for (under contract) the provision of home health aide services.

V. Home Infusion Therapy Services: Annual Payment Updates for CY 2022

A. Home Infusion Therapy Payment Categories

Section 5012 of the 21st Century Cures Act (''the Cures Act'') (Pub. L. 114–255), which amended sections 1834(u), 1861(s)(2) and 1861(iii) of the Act, established a new Medicare home infusion therapy services benefit, effective January 1, 2021. The Medicare home infusion therapy services benefit covers the professional services, including nursing services, furnished in accordance with the plan of care, patient training and education not otherwise covered under the durable medical equipment benefit, remote monitoring, and monitoring services for the provision of home infusion therapy furnished by a qualified home infusion therapy supplier.

Section 50401 of the Bipartisan Budget Act (BBA) of 2018 amended section 1834(u) of the Act by adding a new paragraph (7) that established a home infusion therapy services temporary transitional payment for eligible home infusion suppliers for certain items and services furnished in coordination with the furnishing of transitional home infusion drugs beginning January 1, 2019. The temporary transitional payment began on January 1, 2019 and ended the day before the full implementation of the home infusion therapy services benefit on January 1, 2021.

For the full implementation of the home infusion therapy services benefit on January 1, 2021, CMS established a unit of single payment for each infusion drug administration calendar day in the individual's home. In accordance with section 1834(u)(1)(A)(ii) of the Act, a unit of single payment must be established for different types of infusion therapy, taking into account variation in utilization of nursing services by therapy type. Furthermore, section 1834(u)(1)(B)(ii) of the Act required that the single payment amount reflect factors such as patient acuity and complexity of drug administration. In the CY 2020 HH PPS final rule with comment period (84 FR 60628), we finalized our proposal to maintain the three payment categories that were utilized under the temporary transitional payments for home infusion therapy services. The three payment categories group home infusion drugs by J-code based on therapy type. The single payment amount for each payment category varies by utilization of nursing services and reflects patient acuity and complexity of drug administration, and; therefore, ultimately reflects variations in infusion drug administration services. Payment category 1 comprises certain intravenous infusion drugs for therapy, prophylaxis, or diagnosis, including antifungals and antivirals; inotropic and pulmonary hypertension drugs; pain management drugs; and chelation drugs. Payment category 2 comprises subcutaneous infusions for therapy or prophylaxis, including certain subcutaneous immunotherapy infusions. Payment category 3 comprises intravenous chemotherapy infusions and other highly complex intravenous infusions. We are not proposing to make any changes to the three payment categories in CY 2022.

The categories and associated J-codes can be found in the MLN Matters article entitled ''Billing for Home Infusion Therapy Services On or After January 1, 2021'' (MM11880).[83] This list will be updated as new drugs and biologicals are added to the DME LCD and determined to be ''home infusion drugs.'' The list of home infusion drugs and their respective payment categories do not need to be updated through rulemaking when a new drug is added to the DME LCD for External Infusion Pumps (L33794).[84]. The payment category may be determined by the DME MAC for any subsequent home infusion drug additions to the DME LCD for External Infusion Pumps (L33794)[85] as identified by the following NOC codes: J7799 (Not otherwise classified drugs, other than inhalation drugs, administered through DME) and J7999 (Compounded drug, not otherwise classified). Payment category 1 would include any appropriate subsequent intravenous infusion drug additions, payment category 2 would include any appropriate subsequent subcutaneous infusion drug additions, and payment category 3 would include any appropriate subsequent intravenous chemotherapy or other highly complex drug or biologic infusion additions.

Section 1861(iii)(3)(C) of the Act defines a home infusion drug as a parenteral drug or biological administered intravenously or subcutaneously for an administration period of 15 minutes or more, in the home of an individual through a pump that is an item of DME. Such term does not include the following: (1) Insulin

[83] Billing for Home Infusion Therapy Services On or After January 1, 2021 (MM11880). *https://www.cms.gov/files/document/mm11880.pdf.*

[84] Local Coverage Determination (LCD): External Infusion Pumps (L33794). *https://www.cms.gov/medicare-coverage-database/details/lcd-details.aspx?LCDId=33794.*

[85] Local Coverage Determination (LCD): External Infusion Pumps (L33794). *https://www.cms.gov/medicare-coverage-database/details/lcd-details.aspx?LCDId=33794.*

pump systems; and (2) a self-administered drug or biological on a self-administered drug (SAD) exclusion list. Division CC, section 117 of CAA 2021 amended section 1861(iii)(3)(C) of the Act so that the previously detailed SAD exclusion in the definition of home infusion drug would not apply to a self-administered drug or biological on a SAD exclusion list if such drug or biological was included as a transitional home infusion drug under subparagraph (A)(iii) of section 1834(u)(7), and was identified by a HCPCS code described in subparagraph (C)(ii) of such section.

In the CY 2021 HH PPS final rule (85 FR 70337), we stated that Hizentra®, a subcutaneous immunoglobulin, was not included in the definition of ''home infusion drugs'' under the benefit beginning January 1, 2021, because it was listed on a SAD exclusion list maintained by the Medicare Administrative Contractors (MACs). We also stated that if it is removed from all the SAD exclusion lists, Hizentra® could be added to the home infusion drugs list in the future. After publication of the CY 2021 HH PPS Final Rule on November 4, 2020, CAA 2021 was signed into law on December 27, 2020. Division CC, section 117 of CAA 2021 amended the definition of home infusion drugs in Section 1861(iii)(3)(C) of the Act as previously noted.

Hizentra® was included as a transitional home infusion drug according to the definition of such drug in section 1834(u)(7)(A)(iii) of the Act, and was identified by a HCPCS code (J1559) described in subparagraph (C)(ii) of such section of the Act. Therefore, consistent with the statutorily amended definition of ''home infusion drug'', the home infusion therapy services related to the administration of Hizentra® are covered under payment category 2 under both the temporary transitional payment from 2019 to 2020, and the permanent benefit beginning January 1, 2021.

It is important to note that the list of home infusion drugs is maintained by the DME MACs, and the drugs or their respective payment categories for purposes of the home infusion therapy services benefit do not need to be updated through rulemaking every time a new drug is added to the DME LCD for External Infusion Pumps (L33794). For these routine updates, CMS will implement such changes through the subregulatory change request process.

B. Payment Adjustments for CY 2022 Home Infusion Therapy Services

1. Home Infusion Therapy Geographic Wage Index Adjustment

Section 1834(u)(1)(B)(i) of the Act requires that the single payment amount be adjusted to reflect a geographic wage index and other costs that may vary by region. In the CY 2020 HH PPS final rule with comment period (84 FR 60629) we finalized the use of the geographic adjustment factor (GAF) to adjust home infusion therapy payments for differences in geographic area wages rates based on the location of the beneficiary. We remind stakeholders that the GAFs are a weighted composite of each Physician Fee Schedule (PFS) localities work, practice expense (PE) and malpractice (MP) expense geographic practice cost indices (GPCIs) using the national GPCI cost share weights. The periodic review and adjustment of GPCIs is mandated by section 1848(e)(1)(C) of the Act. At each update, the proposed GPCIs are published in the PFS proposed rule to provide an opportunity for public comment and further revisions in response to comments prior to implementation. The GPCIs and the GAFs are updated triennially with a 2-year phase in and were last updated in the CY 2020 PFS final rule. The next full update to the GPCIs and the GAFs will be in the CY 2023 PFS proposed rule. For CY 2022, there will be changes to the GAF values for the majority of localities located in California because CY 2022 is the last year of a 5-year incremental transition for the majority of the California localities implemented in 2017 in accordance with the Protecting Access to Medicare Act of 2014 (PAMA 2014). The CY 2022 PFS proposed GAFs will be available on the PFS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/PhysicianFeeSched.*

In the CY 2020 HH PPS final rule with comment period (84 FR 60629) we stated that the application of the GAF would be budget neutral so there is no overall cost impact by applying a budget-neutrality factor. We propose to continue this practice and apply the GAF budget-neutrality factor to the home infusion therapy service payment rates whenever there are changes to the GAFs in order to eliminate the aggregate effect of variations in the GAFs. For CY 2022, the GAF standardization factor would equal the ratio of the estimated national spending total using the CY 2021 GAF to the estimated national spending total using the CY 2022 GAF. Estimates of national spending totals would use home infusion therapy benefit utilization data for CY 2020. The CY 2022 GAF was not available in time for this proposed rule. We will calculate the CY 2022 GAF standardization factor that will be used in updating the payment amounts for CY 2022 and we will include this information in a forthcoming change request that would be issued to implement the CY 2022 home infusion therapy services payment amounts. The CY 2022 GAF values will be posted as an addendum on the PFS website at: *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/PhysicianFeeSched* under the supporting documentation section of the CY 2022 Medicare Physician Fee Schedule Final Rule and posted on the Home Infusion Therapy Billing and Rates web page.[86]

2. Consumer Price Index

Subparagraphs (A) and (B) of section 1834(u)(3) of the Act specify annual adjustments to the single payment amount that are required to be made beginning January 1, 2022. In accordance with these sections we are required to increase the single payment amount from the prior year (that is, CY 2021) by the percentage increase in the CPI–U for the 12-month period ending with June of the preceding year, reduced by a productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act as the 10-year moving average of changes in annual economy-wide private nonfarm business multifactor productivity. Section 1834(u)(3) of the Act further states that the application of the productivity adjustment may result in a percentage being less than 0.0 for a year, and may result in payment being less than such payment rates for the preceding year.

The CPI–U for the 12-month period ending with June of the preceding year is not available at the time of this proposed rulemaking. The CPI–U for the 12-month period ending in June of 2021 and the corresponding productivity adjustment will be updated in the final rule.

3. Initial and Subsequent Visit Adjustment

In the CY 2020 HH PPS final rule with comment period (84 FR 60627), we finalized our policy that the payment amounts for each of the three payment categories for the first home infusion therapy visit by the qualified home infusion therapy supplier in the patient's home will be increased by the average difference between the PFS

[86] Home Infusion Therapy Services Billing and Rates. *https://www.cms.gov/medicare/home-infusion-therapy-services/billing-and-rates.*

amounts for E/M existing patient visits and new patient visits for a given year, resulting in a small decrease to the payment amounts for the second and subsequent visits, using a budget neutrality factor. We remind stakeholders that effective January 1, 2021 there were changes to the office/outpatient E/M visit code set (CPT codes 99201 through 99215) used to calculate the initial and subsequent visit payment amounts for home infusion therapy. These changes were adopted from the new coding, prefatory language, and interpretive guidance framework that has been issued by the AMA's CPT Editorial Panel (see *https://www.ama-assn.org/practice-management/cpt/cpt-evaluation-and-management*) and include the deletion of code 99201 (Level 1 office/outpatient visit, new patient), and new values for CPT codes 99202 through 99215. The initial visit percentage increase will still be calculated using the average difference between the PFS amounts for E/M existing patient visits and new patient visits for a given year; however, only new patient E/M codes 99202 through 99205 were used in the calculation, as the final policy indicates that the calculation is based on the relative difference between the average of the new and existing patient E/M codes. For CY 2021, the initial visit percentage increase was calculated using the average difference between the CY 2021 PFS amounts for office/outpatient E/M existing patient visits (99211 through 99215) and the CY 2021 PFS amounts for office/outpatient E/M new patient visits (99202 through 99205). In the CY 2021 HH PPS final rule (85 FR 70340), we estimated a 19 percent increase in the first visit payment amount and a 1.18 percent decrease in subsequent visit amounts based on the average difference between the CY 2021 proposed PFS E/M codes amounts for new and existing patients. The percent increase remained 19 percent for the first visit payment amount and the percent decrease remained 1.18 percent for subsequent visit amounts using the final PFS E/M rates for new and existing patients.

However, Division N, section 101 of CAA 2021 added section 1848(t)(1) of the Act, which applied a 3.75 percent increase in PFS payment amounts only for CY 2021.[87] Division CC, section 113 of CAA 2021 also delayed the implementation of an add-on E/M code G2211 until CY 2024. Because the PFS relative value units (RVUs) are budget neutral, this delay in the implementation of the add-on code changed the RVUs for all codes under the PFS, including the E/M codes used to calculate the home infusion therapy service payment initial visit percent increase. The updated RVUs and conversion factor after the changes implemented by the CAA 2021 were used to recalculate the CY 2021 payment amounts for home infusion therapy services, and the percent difference used to calculate the initial visit percentage increase. As a result, the initial home infusion therapy service visits increase was updated to 20 percent and the decrease for subsequent visits was updated to 1.3310. We note that the change in the percent increase for initial visits was driven by the delay of the code G2211. While the updated payment amounts (after the changes implemented by the CAA 2021) for the office/outpatient E/M codes were used to recalculate the initial visit increase, removing the 3.75 percent does not impact the average difference between the office/outpatient E/M codes for new patient visits and existing patient because the increase was applied equally. Therefore, after removing the adjustment, the percent increase remains 20 percent for the initial visit payment amounts and a 1.3310 percent decrease for all subsequent visit payment amounts.

In the CY 2021 final rule (85 FR 70298, 70339) we also stated that we would increase the payment amounts for each of the three payment categories for the first home infusion therapy visit by the qualified home infusion therapy supplier in the patient's home by the average difference between the PFS amounts for E/M existing patient visits and new patient visits for a given year. Section 1834 (u)(3) of the Act requires the rates from the previous year to be updated by the percentage increase in the CPI–U for the 12-month period ending in June of 2021 reduced by a productivity adjustment beginning in 2022. Therefore, CMS is to update the established payment rates for CY 2021 by the percentage increase in the CPI–U reduced by the productivity adjustment without recalculating the percent difference each year using the updated values for the PFS E/M codes for CY 2022 payment purposes. For CY 2022, we are proposing to maintain the 20 percent increase calculated for the initial home infusion therapy service visits and the 1.3310 percent decrease calculated for subsequent visits after implementation of the changes mandated by the CAA 2021, which we previously noted did not impact these percentages. Table 34 shows the updated E/M visit codes and the final unadjusted PFS payment amounts (without the 3.75 percent increase implemented by the CAA 2021) for CY 2021, for both new and existing patients, used to determine the increased payment amount for the first visit. We invite comments on our proposal to maintain the percentages calculated for initial and subsequent home infusion therapy service visits calculated after implementing the changes mandated by the CAA 2021.

[87] Medicare Learning Network Connects ''Special Edition: Physician Fee Schedule Update'' (Jan 7, 2021). *https://www.cms.gov/files/document/2021-01-07-mlnc-se.pdf.*

TABLE 34: AVERAGE PERCENT DIFFERENCE BETWEEN PFS E/M CODES FOR NEW AND EXISTING PATIENTS

New Patient E/M Code	Unadjusted CY 2021 PFS Rates	Existing Patient E/M Code	Unadjusted CY 2021 PFS Rates	Percent Difference
		99211	$22.20	NA
99202	$71.30	99212	$54.82	30%
99203	$109.64	99213	$89.12	23%
99204	$163.79	99214	$126.46	30%
99205	$216.25	99215	$176.57	22%
Total	$560.98		$469.17	20%

Source: The unadjusted CY 2021 PFS rates are calculated based on the updated CY 2021 RVUs which were recalculated after the removal of code G2211 and the unadjusted PFS Conversion Factor which is calculated by removing the 3.75 percent increase in PFS payments for CY 2021. The RVUs used in CY 2021 Final Rule are taken from CY 2021 PFS Final Rule Addendum B, version dated December 29, 2020 (Available at: https://www.cms.gov/files/zip/cy-2021-pfs-final-rule-addenda-updated-12292020.zip; Accessed on 3/17/2021).

C. CY 2022 Payment Amounts for Home Infusion Therapy Services

As noted previously, Division N, section 101 of CAA 2021 amended added section 1848(t)(1) of the Act, which applied and modified the CY 2021 PFS rates by providing a 3.75 percent increase in PFS payment amounts only for CY 2021.[88] For CY 2022, CMS will remove the 3.75 percent increase from the PFS amounts used to establish the CY 2021 home infusion therapy payment rates and use the unadjusted CY 2021 rates for these CY 2022 payment amounts will be updated for CY 2022 in accordance with section 1834(u)(3) of the Act using the percentage increase in the CPI–U for the 12-month period ending in June of 2021 reduced by the productivity adjustment, adjusted for MFP.

The final home infusion therapy 5-hour payment amounts will be released in a forthcoming change request CR and posted on the Home Infusion Therapy Billing and Rates web page.[89] For more in-depth information regarding the finalized policies associated with the scope of the home infusion therapy services benefit and conditions for payment, we refer readers to the CY 2020 HH PPS final rule with comment period (84 FR 60544).

[88] Medicare Learning Network Connects ''Special Edition: Physician Fee Schedule Update'' (Jan 7, 2021). *https://www.cms.gov/files/document/2021-01-07-mlnc-se.pdf.*

[89] Home Infusion Therapy Services Billing and Rates. *https://www.cms.gov/medicare/home-infusion-therapy-services/billing-and-rates.*

VI. Medicare Provider and Supplier Enrollment Changes

A. Background—Provider and Supplier Enrollment Process

1. General Discussion

Section 1866(j)(1)(A) of the Act requires the Secretary to establish a process for the enrollment of providers and suppliers in the Medicare program. The overarching purpose of the enrollment process is to help confirm that providers and suppliers seeking to bill Medicare for services and items furnished to Medicare beneficiaries meet Federal and State requirements to do so. The process is, to an extent, a ''gatekeeper'' that helps prevent unqualified and potentially fraudulent individuals and entities from being able to enter and inappropriately bill Medicare. Since 2006, we have taken various steps via rulemaking to outline our enrollment procedures. These regulations are generally incorporated in 42 CFR part 424, subpart P (currently §§ 424.500 through 424.570 and hereafter occasionally referenced as subpart P). They address, among other things, requirements that providers and suppliers must meet to obtain and maintain Medicare billing privileges.

One such requirement (outlined in § 424.510) is that the provider or supplier must complete, sign, and submit to its assigned Medicare Administrative Contractor (MAC) (hereafter occasionally referenced as ''Medicare contractor'' or simply ''contractor'') the appropriate enrollment application, typically the Form CMS–855 (OMB Control No. 0938–0685). The Form CMS–855, which can be submitted via paper or electronically through the internet-based Provider Enrollment, Chain, and Ownership System (PECOS) process (SORN: 09–70–0532, Provider Enrollment, Chain, and Ownership System) collects important information about the provider or supplier; such data includes, but is not limited to, general identifying information (for example, legal business name), licensure and/or certification data, and practice locations. After receiving the provider's or supplier's initial enrollment application, CMS or the MAC will review and confirm the information thereon and determine whether the provider or supplier meets all applicable Medicare requirements. We believe this screening process has greatly assisted CMS in executing its responsibility to prevent Medicare fraud, waste, and abuse.

As already mentioned, over the years we have issued various final rules pertaining to provider and supplier enrollment. These were intended not only to clarify or strengthen certain components of the enrollment process but also to enable us to take further action against providers and suppliers: (1) Engaging (or potentially engaging) in fraudulent or abusive behavior; (2) presenting a risk of harm to Medicare beneficiaries or the Medicare Trust Funds; or (3) that are otherwise unqualified to furnish Medicare services or items. Consistent therewith, and as further discussed in section VI.B. of this proposed rule, we propose several changes to our existing provider enrollment regulations in this proposed rule.

2. Legal Authorities

There are two principal sources of legal authority for our proposed provider enrollment provisions. Section 1866(j) of the Act provides specific authority with respect to the enrollment process for providers and suppliers. Sections 1102 and 1871 of the Act furnish general authority for the Secretary to prescribe regulations for the efficient administration of the Medicare program.

B. Proposed Provisions

1. Effective Dates

We propose to codify in regulation certain effective date practices discussed in CMS Publication 100–08, Program Integrity Manual (PIM) (or in other subregulatory guidance). We believe that incorporating these topics into 42 CFR part 424 would furnish needed clarification and allow the provider community to furnish public comments thereon.

a. Effective Date of Billing Privileges

Section 424.520 outlines the effective date of billing privileges for provider and supplier types that are eligible to enroll in Medicare. Paragraph (d) thereof sets forth the applicable effective date for physicians, non-physician practitioners (NPP), physician organizations, NPP organizations, ambulance suppliers, opioid treatment programs, and home infusion therapy suppliers. This effective date is the later of: (1) The date of filing of a Medicare enrollment application that a Medicare contractor subsequently approved; or (2) the date that the provider or supplier first began furnishing services at a new practice location. In a similar vein, § 424.521(a) States that the seven previously mentioned provider and supplier types can retrospectively bill for services when they have met all program requirements (including State licensure requirements), and services were provided at the enrolled practice location for up to—

- Thirty days prior to their effective date if circumstances precluded enrollment in advance of providing services to Medicare beneficiaries; or
- Ninety days prior to their effective date if a Presidentially-declared disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 100–707, enacted November 23, 1988), 42 U.S.C. 5121–5206 (Stafford Act), precluded enrollment in advance of providing services to Medicare beneficiaries.

In essence, these provisions afford the affected providers and suppliers a limited ability to ''back bill'' for services furnished before the contractor approves the provider's or supplier's application. This reflects CMS' recognition that circumstances can prevent a provider's or supplier's enrollment prior to the furnishing of Medicare services. With this in mind, CMS, under the applicable PIM guidance, had applied the effective date policies in §§ 424.520(d) and 424.521(a) to the following additional supplier types: (1) Part B hospital departments; (2) Clinical Laboratory Improvement Amendment labs; (3) intensive cardiac rehabilitation facilities; (4) mammography centers; (5) mass immunizers/pharmacies; (6) radiation therapy centers; (7) physical therapists; (8) occupational therapists; and (9) speech language pathologists.

For the reasons previously discussed, we propose to add these nine supplier types to the scope of §§ 424.520(d) and 424.521(a). The specific regulatory changes would be as follows.

First, the title and opening paragraph of § 424.520(d) currently reads: *(d)* Physicians, non-physician practitioners, physician and non-physician practitioner organizations, ambulance suppliers, opioid treatment programs, and home infusion therapy suppliers. The effective date for billing privileges for physicians, non-physician practitioners, physician and non-physician practitioner organizations, ambulance suppliers, opioid treatment programs, and home infusion therapy suppliers is the later of . . . . Rather than add the nine aforementioned supplier types to the seven provider and supplier types already listed within this language (thus making the latter unnecessarily long), we propose to shorten and simplify the language to state that the effective date of billing privileges for the provider and supplier types identified in paragraph (d)(2) of this section is the later of the following. Consistent with this proposed change, we would also do the following:

- Redesignate existing § 424.520(d)(1) and (2) as, respectively, new § 424.520(d)(1)(i) and (ii).
- List the 16 previously referenced provider and supplier types as new § 424.520(d)(2)(i) through (xvi).

Second, the title of § 424.521 would be changed from ''Request for payment by physicians, non-physician practitioners, physician and non-physician organizations, ambulance suppliers, opioid treatment programs, and home infusion therapy suppliers'' to ''Request for payment by certain provider and supplier types.''

Third, the opening language of current § 424.521(a) reads ''Physicians, non-physician practitioners, physician and non-physician practitioner organizations, ambulance suppliers, opioid treatment programs, and home infusion therapy suppliers may retrospectively bill for services when the physician, non-physician practitioner, physician or non-physician organization, ambulance supplier, opioid treatment program, or home infusion therapy supplier—.'' We propose to revise this language to state that the providers and suppliers identified in paragraph (a)(2) of this section may retrospectively bill for services when the provider or supplier.

Fourth, we propose to—

- Redesignate existing § 424.521(a)(1) and (2) as, respectively, new § 424.521(a)(1)(i) and (ii); and
- List the 16 aforementioned provider and supplier types as new § 424.521(a)(2)(i) through (xvi).

b. Effective Dates of Reassignments and Form CMS–855O Enrollments

(1) Reassignments

A Form CMS–855R application (OMB Control No. 0938–0685) must be completed for any individual supplier (reassignor) who wishes to reassign his or her Part B benefits to an eligible entity or individual (reassignee) under § 424.80. (This frequently occurs when, for example, a physician joins a group practice and, as a condition of her employment, reassigns the payments for the services she furnishes on behalf of the group practice to the latter.) If the reassignor is not enrolled in Medicare, he or she must complete a Form CMS–855I (OMB Control No. 0938–0685) application as well as a Form CMS–855R.

Under the applicable PIM guidance, CMS applied the basic principles of §§ 424.520(d) and 424.521(a) to Form CMS–855R reassignments when establishing the effective date of the latter. As with §§ 424.520(d) and 424.521(a), this subregulatory policy was intended to account for instances where the supplier may have been unable to submit a Form CMS–855R application earlier than what occurred. To codify this into regulation, we propose to add a new § 424.522, the title of which would state: ''Additional effective dates.'' Paragraph (a) of § 424.522 would specify that a reassignment of benefits under § 424.80 is effective beginning 30 days before the Form CMS–855R is submitted if all applicable requirements during that period were otherwise met.

(2) Practitioner Enrolling Solely To Order or Certify Via Form CMS–855O

Under § 424.507, a physician or other eligible professional (as that term is

defined in § 424.506(a)) who orders or certifies covered—(1) Imaging services; (2) clinical laboratory services; (3) durable medical equipment, prosthetics, orthotics, and supplies; and/or (4) home health services must be enrolled in or validly opted-out of Medicare for the resulting claim to be eligible for payment. There are situations where the physician or other eligible professional indeed wishes to enroll to order and/or certify these services and/or items but is not seeking Medicare billing privileges. He or she will accordingly complete the Form CMS–855O (''Medicare Enrollment Application: Enrollment for Eligible Ordering, Certifying and Prescribing Physicians and Eligible Professionals; OMB Control #: 0935–1135). CMS or MAC approval of this application does not grant billing privileges but only permits the individual to order/certify the aforementioned services and/or items.

Although the effective date provisions in §§ 424.520(d) and 424.521(a) do not (and indeed could not) apply to Form CMS–855O enrollments because no billing privileges or payments are involved, the PIM states that a Form CMS–855O enrollment effective date is the date on which the Medicare contractor received the application (as opposed to, for instance, the date the contractor approves the application). This permitted the individual to order/certify these services and items for a limited period prior to enrollment. To codify this in regulation, we propose to state the following in new § 424.522(b): ''The effective date of a Form CMS–855O enrollment is the date on which the Medicare contractor received the Form CMS–855O application if all other requirements are met.''

We are also proposing several effective date provisions relating to the provider enrollment concept of deactivation. These are addressed within the larger deactivation discussion in section VI.B.3. of this proposed rule.

2. Rejections and Returns

a. Background and Distinction

Per § 424.525(a), CMS may reject a provider's or supplier's enrollment application for any of the following reasons:

- The prospective provider or supplier fails to furnish complete information on the provider/supplier enrollment application within 30 calendar days from the date of the Medicare contractor's request for the missing information.
- The prospective provider or supplier fails to furnish all required supporting documentation within 30 calendar days of submitting the enrollment application.
- The prospective institutional provider (as defined in § 424.502) does not submit the application fee (in accordance with § 424.514) in the designated amount or a hardship waiver request with the Medicare enrollment application at the time of filing.

The PIM outlines additional factual situations in which an application could have been rejected.

The purpose of the rejection policy is to encourage the provider or supplier to: (1) Fully and completely submit all required information (and any required documentation) with their enrollment application; and (2) promptly respond to any contractor requests for clarification regarding the application. If a provider's or supplier's application is rejected (for example, because the provider or supplier did not correct an error on its application per the contractor's request), the contractor notifies the provider or supplier via letter accordingly. The letter outlines, among other things, the reason for the rejection under § 424.525(a) and informs the provider or supplier that the latter must submit a new application.

The PIM also discusses the return of provider enrollment applications. In general, an application has been returned when one of the return grounds outlined in the PIM applied. These grounds typically involve situations where the provider's or supplier's submission constitutes, in essence, a non-application. This is different from a rejected application in that the latter: (1) Does not automatically involve an invalid submission yet the application, for instance, failed to include certain information or documentation or contains erroneous data; and (2) can be remedied prior to any rejection via the provider's or supplier's submission of a corrected, revised, supplemented, or complete application.

We recognize that there has been uncertainty within the provider community regarding the difference between application rejections and returns as well as the grounds for both actions. To clarify these issues, we propose to revise § 424.525 and to add a new § 424.526.

b. Proposed Rejection and Return Policies

(1) Rejections

The three previously mentioned reasons in § 424.525(a) for rejecting an application are currently designated as, respectively, paragraphs (a)(1), (a)(2), and (a)(3). We propose to include the following ten rejection scenarios (almost all of which had been identified as reasons for rejection in the PIM) within the larger § 424.525(a)(1) category. This means that rejection in these ten situations would only occur if the provider or supplier failed to comply with the requirements of (a)(1) (for instance, furnishing correct and complete data) within the 30-day period stated therein. We believe that incorporating these situations within the scope of § 424.525(a)(1) would ease the burden on providers and suppliers because they would be given time to correct the application's deficiencies. (We note that, under the current and proposed versions of § 424.525, CMS may reject an application but is not required to.)

The scenarios in question would be designated as § 424.525(a)(1)(i) through (x) and are as follows:

- The application is missing data required by CMS or the Medicare contractor to process the application (such as, but not limited to, names, social security number, contact information, and practice location information).
- The application is unsigned or undated.
- The application contains a copied or stamped signature.
- The application is signed more than 120 days prior to the date on which the Medicare contractor received the application.
- The application is signed by a person unauthorized to do so under 42 CFR part 424, subpart P.
- For paper applications, the required certification statement is missing.
- The paper application is completed in pencil.
- The application is submitted via fax or email when the provider or supplier was not otherwise permitted to do so.
- The provider or supplier failed to submit all of the forms needed to process a Form CMS–855 reassignment package within 30 days of receipt. (For example, a newly enrolling physician who will be reassigning her benefits to a group practice submits a Form CMS–855R application but fails to submit an accompanying Form CMS–855I application.)
- The provider or supplier submitted the incorrect Form CMS–855 application. (For example, the provider submitted a Form CMS–855B when a Form CMS–855A application (Medicare Enrollment Application; Institutional Providers; OMB # 0938–0685) was required.)

We reiterate our belief, and it has been our experience, that these rejection

scenarios in proposed new § 424.525(a)(1)(i) through (x) involve situations where the provider or supplier can remedy (and, in many cases, has remedied) their application submission fairly expeditiously. (For instance, an unsigned or improperly signed application can be corrected with the proper signature.) Grounds for application returns, on the other hand, involve situations that cannot be remedied without an entirely new application submission because the initial submission was invalid or otherwise could not be accepted and processed. With both rejections and returns, however, there are no appeal rights.

Existing § 424.525(b), (c), and (d) address various operational aspects of our rejection policy. We are not proposing to revise them. However, and to clarify the scope of § 424.525, we propose in new § 424.525(e) that § 424.525 applies to all CMS provider enrollment application submissions, including: (1) Form CMS–855 initial applications, change of information requests, changes of ownership (CHOWs), revalidations, and reactivations; (2) Form CMS–588 (Electronic Funds Transfer (EFT) Authorization Agreement; OMB # 0938–0626) submissions; (3) Form CMS–20134 submissions; and (4) any electronic or successor versions of the forms identified in § 424.525(e)(1) through (3). This is to help ensure that the provider or supplier furnishes a correct and complete submission regardless of the type of CMS enrollment form involved. Concomitant with this change, we propose to remove the word ''prospective'' from §§ 424.525(a)(1), (a)(2), (a)(3), and (b). This will clarify that these three rejection grounds apply to enrolled providers and suppliers and not simply prospective enrollees.

(1) Returns

For reasons already explained, we propose in new § 424.526(a) that the following situations constitute grounds for CMS' or the contractor's return of the provider's or supplier's application to the provider or supplier. These grounds, which were discussed in the PIM, would be designated as § 424.526(a)(1) through (13). The opening language of paragraph (a) would state, however, that CMS or the Medicare contractor ''may'' return the application in the following instances but is not required to:

- The provider or supplier sent its paper Form CMS–855, Form CMS–588, or Form CMS–20134 application to the incorrect Medicare contractor for processing. (For example, the application was sent to Contractor X instead of Contractor Y.)
- The Medicare contractor received the application more than 60 days prior to the effective date listed on the application. (This does not apply to (1) providers and suppliers submitting a Form CMS–855A application, (2) ambulatory surgical centers, or (3) portable x-ray suppliers.
- The seller or buyer in a change of ownership submitted its Form CMS–855A or Form CMS–855B application more than 90 days prior to the anticipated date of the sale.
- The Medicare contractor received an initial application more than 180 days prior to the effective date listed on the application from (1) a provider or supplier submitting a Form CMS–855A application, (2) an ambulatory surgical center, or (3) a portable x-ray supplier.
- The Medicare contractor confirms that the provider or supplier submitted an initial enrollment application prior to the expiration of the time period in which it is entitled to appeal the denial of its previously submitted application.
- The provider or supplier submitted an initial enrollment application prior to the expiration of their existing reenrollment bar under § 424.535 or reapplication bar under § 424.530(f).
- The application is not needed for (or is inapplicable to) the transaction in question.
- The provider or supplier submitted a revalidation application more than 7 months prior to the provider's or supplier's revalidation due date.
- A Medicare Diabetes Prevention Program (MDPP) supplier submitted an application with a coach start date more than 30 days in the future. (That is, the application lists an MDPP coach who will commence his or her services beginning at least 31 days after the date the Medicare contractor receives the application.)
- The provider or supplier requests that their application be withdrawn prior to or during the Medicare contractor's processing thereof.
- The provider or supplier submits an application that is an exact duplicate of an application that (1) has already been processed or (2) is currently being processed or is pending processing.
- The provider or supplier submits a paper Form CMS–855 or Form CMS–20134 application that is outdated and/or has been superseded by a revised version.
- The provider or supplier submits a Form CMS–855A or Form CMS–855B initial enrollment application followed by a Form CMS–855A or Form CMS–855B CHOW application. If the Medicare contractor:

++ Has not yet made a recommendation for approval concerning the initial application, both applications may be returned in this scenario.

++ Has made a recommendation for approval concerning the initial application, the Medicare contractor may return the CHOW application. If, per the Medicare contractor's written request, the provider or supplier fails to submit a new initial Form CMS–855A or Form CMS–855B application containing the new owner's information within 30 days of the date of the letter, the Medicare contractor may return the originally submitted initial Form CMS–855A or Form CMS–855B application.

We note that several of these return grounds involve situations where the application is submitted prematurely. CMS and its contractors had previously encountered numerous instances where, for instance, a Part B supplier would submit an enrollment application well over 9 months before: (1) The practice location effective date that the supplier listed on their application; and/or (2) the date on which the supplier planned to begin furnishing services or otherwise commence operations. Just as frequently, providers and suppliers would submit initial enrollment applications well in advance of the expiration of their: (1) Appeal rights following the denial of their previous application submission; and/or (2) Medicare reenrollment bar following a revocation. This essentially required contractors to hold and track the submitted application for many months until the application could be processed at a time closer to the supplier's commencement date. To alleviate contractors of this burden, the PIM identified various dates before which the provider or supplier could not submit an application.

We also propose in § 424.526 to explain certain operational components of our return policy. First, we propose in § 424.526(b) that a provider or supplier may not appeal a return of their enrollment application. (Section 424.525(d) contains a similar provision for rejections.) Since, as previously stated, we believe the situations outlined in proposed § 424.526(a) essentially involve the submission of a non-application, we do not believe appeal rights would be appropriate. Second, we propose to effectively duplicate proposed § 424.525(e) in new proposed § 424.526(c). This would clarify the types of enrollment applications and transactions to which § 424.526 would apply.

3. Deactivation

(a) Background

Regulatory policies regarding the provider enrollment concept of deactivation are addressed in § 424.540. Deactivation means that the provider's or supplier's billing privileges are stopped but can be restored (or ''reactivated'') upon the submission of information required under § 424.540. As stated in § 424.540(c), deactivation is intended to protect the provider or supplier from the misuse of its billing number and to protect the Medicare Trust Funds from unnecessary overpayments.

A deactivated provider or supplier is not revoked from Medicare and remains enrolled in the program; also, per § 424.540(c), deactivation does not impact the provider's or supplier's existing provider or supplier agreement. However, the provider's or supplier's ability to bill Medicare is halted pending its compliance with § 424.540's requirements for reactivation. Deactivation, in short, is a less severe action than a revocation but one significant enough to encourage providers and suppliers to maintain compliance with enrollment requirements.

There are currently three grounds for deactivation under § 424.540(a), listed as, respectively, paragraphs (a)(1), (a)(2), and (a)(3):

- The provider or supplier does not submit any Medicare claims for 12 consecutive calendar months.
- The provider or supplier does not report a change in its enrollment information within 90 calendar days of the change. (Changes in ownership or control must be reported within 30 calendar days.)
- The provider or supplier does not furnish complete and accurate information and all supporting documentation within 90 calendar days of receipt of notification from CMS to submit a revalidation application in accordance with § 424.515. (In addition, § 424.550(b) permits deactivation if the prospective new owner in a CHOW fails to submit a new enrollment application containing information concerning the new owner within 30 days of the CHOW. CMS may also deactivate in a CHOW situation if: (1) An incomplete CHOW application is submitted containing material omissions; or (2) CMS has information that makes it question whether the provider agreement will be transferred to the new owner.)

To reactivate one's billing privileges, § 424.540(b) states that the provider or supplier must: (1) Recertify that their enrollment information currently on file with Medicare is correct and furnish any missing information as appropriate; or (2) submit a complete Form CMS–855 application if required by CMS.

We constantly examine the effectiveness of our deactivation processes from both a program integrity and a provider impact perspective. Based on this monitoring, we believe that several revisions to § 424.540 are needed. In general, these changes are meant to, as applicable: (1) Clarify existing policies; (2) incorporate certain subregulatory discussions into § 424.540 to afford stakeholders an opportunity for public comment; (3) give CMS greater flexibility in its payment safeguard activities; and (4) reduce provider and supplier burden.

(b) Grounds for Deactivation

As already mentioned, deactivation is a CMS action that is more moderate than a revocation. Unlike the latter, a deactivation neither involves the imposition of a reenrollment bar nor is considered a final adverse action under § 424.502. It constitutes, in a sense, a middle ground between CMS imposing a revocation that (under the circumstances) could be an overly harsh measure and CMS taking no action at all, thus potentially leaving a program integrity risk intact. In this manner, it enables us to avoid an ''all-or-nothing'' situation.

We believe that expanding this flexibility to include additional grounds for deactivation would help CMS achieve a proper medium that protects the Medicare program without burdening providers and suppliers with an unwarranted revocation and the consequences thereof. It would, at CMS' discretion, allow for a third option (besides revocation and non-action) that might be the fairest and most appropriate given the facts involved. Accordingly, we propose a number of changes to § 424.540(a) and (b).

First, existing paragraph (a) contains an opening clause followed by the three existing deactivation reasons, codified as paragraphs (a)(1), (a)(2), and (a)(3). We propose to add several new deactivation grounds as paragraphs (a)(4) through (a)(8); respectively, they would be as follows:

- The provider or supplier is not in compliance with all enrollment requirements in Title 42.
- The provider's or supplier's practice location is non-operational or otherwise invalid.
- The provider or supplier is deceased.
- The provider or supplier is voluntarily withdrawing from Medicare.
- The provider is the seller in an HHA change of ownership under § 424.550(b)(1).

Proposed reasons (a)(4) and (a)(5) reflect existing bases for revocation. We propose including them within § 424.540 because, depending on the specific circumstances in question, they sometimes involve relatively modest instances of non-compliance that the provider or supplier can correct. Reasons (a)(6), (a)(7), and (a)(8) are merely technical, non-substantive deactivation grounds referenced in subregulatory guidance; a deactivation in these situations had simply ''closed'' the provider's or supplier's enrollment without the need for a revocation.

Second, we propose to revise § 424.540(b)(1) to state: ''In order for a deactivated provider or supplier to reactivate its Medicare billing privileges, the provider or supplier must recertify that its enrollment information currently on file with Medicare is correct, furnish any missing information as appropriate, and be in compliance with all applicable enrollment requirements in this title.'' The addition of the language concerning compliance is primarily meant to account for our addition of § 424.540(a)(4) and (5). The recertification of enrollment data alone would not be enough for providers and suppliers deactivated under either of these grounds; they (or, as applicable, their practice location(s)) must also have resumed compliance. However, this change would also clarify that compliance with all enrollment requirements would be required for providers and suppliers deactivated under § 424.540(a)(1), (a)(2), or (a)(3) to be reactivated. (We recognize that § 424.540(b)(1) would be largely inapplicable to proposed deactivation grounds § 424.540(a)(6), (7), and (8) because the provider or supplier has effectively departed the Medicare program.)

In new paragraph (d)(1)(i), and consistent with existing policy, we propose to specify that except as provided in paragraph (d)(1)(ii) of this section, the effective date of a deactivation is the date on which the deactivation is imposed under this section. In paragraph (d)(1)(ii), we propose that CMS may apply a retroactive deactivation effective date—based on the date that the provider's or supplier's action or non-compliance occurred or commenced (as applicable)—in the following instances (which would include our proposed new deactivation grounds, discussed previously):

++ For deactivation reasons (a)(2), (3), and (4), the effective date would be

the date on which the provider or supplier became non-compliant (for example, the expiration of the period in which the provider was required to report a change in its enrollment information).

++ For deactivation reason (a)(5), the date on which the provider's or supplier's practice location became non-operational or otherwise invalid.

++ For deactivation reason (a)(6), the date of death of the provider or supplier.

++ For deactivation reason (a)(7), the date on which the provider or supplier voluntarily withdrew from Medicare.

++ For deactivation reason (a)(8), the date of the sale.

(c) Payment Prohibition

We propose in new § 424.540(e) that a provider or supplier may not receive payment for services or items furnished while deactivated under § 424.540(a). We recognize that the PIM has permitted retroactive payment (once the provider or supplier is reactivated) for services furnished during the period of deactivation; current subregulatory guidance permits the provider or supplier to bill for services or items furnished up to 30 days prior to the effective date of the reactivation. After careful reflection, however, we believe that the most sensible approach from a program integrity perspective is to prohibit such payments altogether. In our view, a provider or supplier should not be effectively rewarded for its non-adherence to enrollment requirements (for example, failing to respond to a revalidation request or failing to timely report enrollment information changes) by receiving payment for services or items furnished while out of compliance; indeed, the prospect of a payment prohibition could well spur providers and suppliers to avoid such non-compliance. We believe proposed § 424.540(e) would not only be an important payment safeguard in this regard but also would: (1) Clarify this important issue (which has created some confusion within the provider community); and (2) allow the public to furnish feedback on the topic.

(d) Additional Revisions

We also propose three additional clarifications to the deactivation provisions in § 424.540. First, the opening sentence of § 424.540(c) states that deactivation ''is considered an action to protect the provider or supplier from misuse of its billing number and to protect the Medicare Trust Funds from unnecessary overpayments.'' While this sentence is true, we previously mentioned other purposes of deactivation, such as encouraging providers and suppliers to remain compliant with Medicare requirements. Given the multiple rationales for the deactivation process, we believe the first sentence of § 424.540(c) is too restrictive and propose to remove it. (The existing second sentence of § 424.540(c) would remain intact and comprise the whole of revised paragraph (c).)

Second, and as alluded to previously, the concluding sentence of existing § 424.540(a)(2) states that changes in ownership or control ''must be reported within 30 calendar days as specified in §§ 424.520(b) and 424.550(b).'' We propose to clarify that our existing deactivation authority under § 424.540(a)(2) applies to both the changes that must be reported within 90 days and those within 30 days. Consequently, we would delete the existing version of this paragraph and state that deactivation is permitted if the provider or supplier does not report a change to the information supplied on the enrollment application within the applicable time period required under this title. Our use of the word ''title'' would account for provisions in Title 42 (such as those in § 424.516) that require certain provider and supplier types to report such changes within the timeframes specified therein.

Third, under the applicable PIM guidance, the effective date of a reactivation is generally the date on which the Medicare contractor received the application that was processed to completion. To clarify this policy in regulation, we propose to add it as new § 424.540(d)(2) with one modification, in that the word ''completion'' would be replaced with ''approval.'' This would make clear that the contractor would have to actually approve the application (rather than merely complete the processing thereof) in order for the reactivation to become effective.

6. HHA Capitalization

Under §§ 489.28(a) and 424.510(d)(9), an HHA entering the Medicare program—including a new HHA resulting from a change of ownership if the latter results in a new provider number being issued—must have sufficient funds (known as initial reserve operating funds) available: (1) At the time of application submission; and (2) at all times during the enrollment process, to operate the HHA for the 3-month period after the Medicare contractor conveys billing privileges (exclusive of actual or projected accounts receivable from Medicare). This means that the HHA must also have available sufficient initial reserve operating funds during the 3-month period following the conveyance of Medicare billing privileges.

To enable CMS or the Medicare contractor to verify compliance with the requirements of §§ 489.28(a) and 424.510(d)(9), the HHA must submit adequate proof of the availability of initial reserve operating funds. Section 489.28(d) states that such proof must include, at a minimum, a copy of the statement(s) of the HHA's savings, checking, or other account(s) that contains the funds, ''accompanied by an attestation from an officer of the bank or other financial institution that the funds are in the account(s) and that the funds are immediately available to the HHA.'' With respect to borrowed funds, § 489.28(e) states that if such funds are not in the same account(s) as the HHA's own non-borrowed funds, the HHA must provide proof that the borrowed funds are available for use in operating the HHA, by providing, at a minimum, a statement similar to the bank/financial institution officer attestation referenced in § 489.28(d). CMS has recently learned that several national bank chains are no longer providing these attestation statements, thus hindering the ability of HHAs to comply with § 489.28(d) or (e). To remedy this, we propose to insert the phrase ''(if the financial institution offers such attestations)'' after the term ''financial institution'' as used § 489.28(d) and (e).

7. HHA Changes of Ownership

Section 424.550(b) states that if there is a change in majority ownership of an HHA by sale within 36 months after the effective date of the HHA's initial enrollment in Medicare or within 36 months after the HHA's most recent change in majority ownership, the HHA's provider agreement and Medicare billing privileges do not convey to the new owner (hereafter occasionally referenced as the ''36-month rule''). Instead, the prospective provider/owner of the HHA must: (1) Enroll in Medicare as a new (initial) HHA; and (2) obtain a state survey or accreditation. We had seen situations where an HHA submitted an initial enrollment application, underwent a Sate survey, became Medicare-enrolled, and then promptly sold (or ''flipped'') the HHA (via our change of ownership regulations in § 489.18) to an unqualified party. This was problematic because the latter would not have to undergo a new State survey. By effectively imposing a 36-month ''waiting period'' for HHA changes in majority ownership under § 424.550(b), we have been able to stem such instances of ''flipping'' or, if an HHA sale does occur within this timeframe,

fully scrutinize the new owner via a State survey and the initial provider enrollment process. This is particularly important given, as previously mentioned, the heightened program integrity risks that HHAs have historically presented.

However, we recognize in § 424.550(b) that there are instances where qualified HHAs change their ownership without any intent to circumvent a State survey or initial enrollment. Therefore, we created several exceptions in which the 36-month rule does not apply. One exception (identified in § 424.550(b)(2)(i)) is that the HHA has submitted 2 consecutive years of full cost reports; we believe this circumstance indicates that the HHA has been legitimately and fully functioning for an extended period, thus negating to some extent our concern that the HHA may be engaged in ''flipping.'' There has been uncertainty within the provider community as to whether this particular exception applies only to the 2-year cost report period after initial enrollment or also to 2-year cost report periods after the HHA's previous change in majority ownership. In assessing whether an HHA has been operational and providing services for 2 consecutive years for purposes of the 36-month rule, we see no appreciable difference between a period following initial enrollment and one succeeding a change in majority ownership. We accordingly propose to revise the first sentence of § 424.550(b)(2)(i) to specify that the HHA submitted 2 consecutive years of full cost reports since initial enrollment or the last change in majority ownership, whichever is later. (The second sentence of § 424.550(b)(2)(i), which clarifies that low utilization or no utilization cost reports do not qualify as full cost reports for purposes of § 424.550(b)(2)(i), would remain intact.)

VII. Survey and Enforcement Requirements for Hospice Programs

A. Background

Hospice care, as referenced in our regulations at § 418.3, means a comprehensive set of services described in section 1861(dd)(1) of the Act. These services are identified and coordinated by an interdisciplinary group to provide for the physical, psychosocial, spiritual, and emotional needs of a terminally ill patient and/or family members, as delineated in a specific patient plan of care that is individualized and person-centered. Hospice care is a comprehensive, holistic approach to treatment that recognizes the impending death of a terminally ill individual and warrants a change in the focus from curative care to palliative care for the relief of pain and symptom management. Medicare regulations at § 418.3 define ''palliative care'' as patient and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering. Palliative care throughout the continuum of illness involves addressing physical, emotional, social, and spiritual needs and facilitating patient autonomy, access to information, and choice. Palliative care that is patient-centered and individualized is at the core of hospice philosophy and care practices, and is a critical component of the Medicare hospice benefit.

The goal of hospice care is to help terminally ill individuals continue life with minimal disruption to normal activities while remaining primarily in the home environment. A hospice program uses an interdisciplinary approach to deliver medical, nursing, social, psychological, emotional, and spiritual services through a collaboration of professionals and other caregivers, to make the beneficiary as physically and emotionally comfortable as possible.

As referenced in hospice program regulations at § 418.22(b)(1), to be eligible for Medicare hospice program services, the patient's attending physician (if any) and the hospice program medical director must certify that the individual is ''terminally ill,'' as defined in section 1861(dd)(3)(A) of the Act and our regulations at § 418.3. The individual has a medical prognosis that his or her life expectancy is 6 months or less if the illness runs its normal course. Under the Medicare hospice program benefit, the election of hospice program care is a patient choice and once a terminally ill patient elects to receive hospice care, a hospice interdisciplinary group (IDG) is essential in the seamless provision of primarily home-based services.

Hospice programs must comply with applicable civil rights laws,[90] including section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, under which covered entities must take appropriate steps to ensure effective communication with patients and patient care representatives with disabilities, including the provisions of auxiliary aids and services. Additionally, they must take reasonable steps to ensure meaningful access for individuals with limited English proficiency, consistent with Title VI of the Civil Rights Act of 1964. Further information about these requirements may be found at: *http://www.hhs.gov/ocr/civilrights.*

[90] Hospices are also subject to additional Federal civil rights laws, including the Age Discrimination Act, section 1557 of the Affordable Care Act, and conscience and religious freedom laws.

1. Medicare Participation and Survey Activity

Sections 1812(d), 1813(a)(4), 1814(a)(7), 1814(i), and 1861(dd) of the Act, and the implementing regulations in 42 CFR part 418, establish eligibility requirements, payment standards, and procedures; define covered services; and delineate the conditions a hospice program must meet to be approved for participation as a provider in the Medicare program. Part 418, subpart G, provides for a per diem payment based on one of four prospectively-determined rate categories of hospice care (routine home care, continuous home care, inpatient respite care, and general inpatient care), based on each day a qualified Medicare beneficiary is under hospice care (once the individual has elected). This per diem payment is meant to cover all of the hospice services and items needed to manage the beneficiary's care, as required by section 1861(dd)(1) of the Act.

Section 1864(a) of the Act authorizes the State survey agencies (SAs) or other appropriate local agencies, under an agreement with CMS, to perform surveys of health care providers and suppliers to assess their compliance with the applicable Medicare conditions. There are several types of surveys conducted, including initial surveys (to receive initial certification), recertification surveys (to maintain certification), complaint surveys (to investigate complaints), and surveys for validation of the results of Accrediting Organization (AO) surveys. Only the SA or CMS may survey certain provider types because a CMS-approved AO option does not exist for their type, while others cannot be surveyed by SAs in accordance with the statute but can only be accredited by a CMS-approved AO (such as providers of the technical component of advanced diagnostic imaging). Based on the SA recommendations from survey findings, CMS determines whether the provider or supplier qualifies, or continues to qualify, for participation in the Medicare program.

2. CMS Requirements for AOs Approved To Deem Hospice Programs

Section 1865(a) of the Act allows most health care facilities to demonstrate their compliance with the Medicare conditions through accreditation by a CMS-approved program of an AO,

instead of being surveyed by SAs for certification. Currently CMS-approved accreditation programs for facilities under section 1865(a) of the Act include Ambulatory Surgical Centers (ASCs); Hospitals; Critical Access Hospitals (CAHs); Home Health Agencies (HHAs); Hospices; Outpatient Physical Therapy (OPT) facilities; End-Stage Renal Disease (ESRD) facilities; and Rural Health Clinics (RHCs). This is referred to as ''deeming'' accreditation. This is because CMS-approved AOs are recognized by the Secretary as having programs with accreditation standards that meet or exceed those of Medicare. Therefore, any provider or supplier that is accredited by an AO under a CMS-approved accreditation program is deemed by CMS to have also complied with the applicable Medicare conditions or requirements. Accreditation by an AO is generally voluntary on the part of the providers and suppliers, as they have the choice to seek accreditation from an approved AO or seek Medicare certification through the SA.

CMS is responsible for—(1) providing continuous oversight of the AOs' accreditation programs to ensure that providers or suppliers accredited by the AOs meet the required Medicare conditions or requirements; (2) ensuring that the AOs have formalized procedures to determine whether the health care facilities deemed under their accreditation programs meet the AO's accreditation standards (which must meet or exceed the applicable Medicare program requirements); and (3) ensuring that the AO's accreditation standards and practices for surveying providers and suppliers meet or exceed the Medicare conditions and practices for approving.

The current regulations at § 488.4 set forth the general provisions for CMS-approved accreditation programs for providers and suppliers. The requirements at § 488.5 set out application and re-application procedures for national AOs that seek to obtain CMS approval of their accreditation programs, often called ''deeming authority.'' These regulations task CMS with the responsibilities of approval and oversight of the AOs' accreditation programs.

As of March 2021, there are three AOs with CMS-approved hospice accreditation programs: Accreditation Commission for Health Care, Inc. (ACHC), Community Health Accreditation Partner (CHAP), and The Joint Commission (TJC). These three AOs survey approximately half of the over 5,000 Medicare-certified hospice programs, while the SAs survey the remaining half.

B. Provisions of the Proposed Rule

1. Overview

Division CC, section 407 of the CAA 2021, amended Part A of Title XVIII of Act to add a new section 1822 to the Act, and amended sections 1864(a) and 1865(b) of the Act, establishing new hospice program survey and enforcement requirements. There are nine new survey and enforcement provisions. The law requires public reporting of hospice program surveys conducted by SAs and AOs, as well as enforcement actions taken as a result of these surveys, on CMS's website in a manner that is prominent, easily accessible, searchable and readily understandable format. It also removes the prohibition at section 1865(b) of the Act of public disclosure of hospice surveys performed by AOs, requiring that AOs use the same survey deficiency reports as SAs (Form CMS–2567, ''Statement of Deficiencies'' or a successor form) to report survey findings. The law requires programs to measure and reduce inconsistency in the application of survey results among all surveyors. The law requires the Secretary to provide comprehensive training and testing of SA and AO hospice program surveyors, including training with respect to review of written plans of care. The statute prohibits SA surveyors from surveying hospice programs for which they have worked in the last 2 years or in which they have a financial interest, requires hospice program SAs and AO to use a multidisciplinary team of individuals for surveys conducted with more than one surveyor (to include at least one registered nurse (RN)), and provides that each SA must establish a dedicated toll-free hotline to collect, maintain, and update information on hospice programs and to receive complaints. Finally, the law directs the Secretary to create a Special Focus Program (SFP) for poor-performing hospice programs, sets out authority for imposing enforcement remedies for noncompliant hospice programs, and requires the development and implementation of a range of remedies as well as procedures for appealing determinations regarding these remedies. These enforcement remedies can be imposed instead of, or in addition to, termination of the hospice program's participation in the Medicare program. These remedies include civil money penalties (CMPs), suspension of all or part of payments, and appointment of temporary management to oversee operations.

The provision requiring a new hospice program hotline is effective 1 year after the CAA 2021 enactment (that is, December 27, 2021). Most other provisions are effective on October 1, 2021, including the following—the requirement to use multidisciplinary survey teams, the prohibition of conflicts of interest, expanding CMS-based surveyor training to AOs, and the requirement for AOs with CMS-approved hospice accreditation programs to begin use of the Form CMS–2567 (or a successor form). The public disclosure of survey information and the requirement to develop and implement a range of enforcement remedies is effective no later than October 1, 2022. The other provisions in the legislation were effective upon enactment of the CAA 2021.

In this proposed rule, we are proposing a comprehensive strategy to enhance the hospice program survey process, increase accountability for hospice programs, and provide increased transparency to the public. Our goals include: (1) Maintaining the public trust through addressing conflicts of interest and improving survey transparency; (2) addressing inconsistency within the survey process through training and survey team composition and use of common hospice program deficiency reporting mechanisms; and (3) ensuring hospice programs are held accountable for addressing identified health and safety issues. The statutory requirements outlined in the CAA 2021 will address CMS' goals and are in the best interest of patients who receive care in Medicare-participating hospice programs.

We propose to add new subparts M and N to 42 CFR part 488 to implement the CAA 2021 requirements. Subpart M would provide survey and certification processes while subpart N would provide the enforcement remedies for hospice programs with deficiencies that are not in compliance with Medicare participation requirements. The proposed enforcement remedies for hospice programs with deficiencies are similar to the alternative enforcement sanctions available for HHAs with deficiencies. We propose to amend § 488.2 and § 488.28, where appropriate, to include the reference to hospice program. In addition, we propose to amend terminations and appeals requirements in 42 CFR parts 489 and 498 based on the proposed enforcement remedies.

2. Subpart A—General Provisions

a. Statutory Basis (§§ 488.2 and 498.1)

The CAA 2021 amended Part A of title XVIII of the Act to add section 1822 of the Act on hospice program survey

and enforcement procedures. We propose to amend the requirement at § 488.2 and at § 498.1 to include this statutory reference to hospice program services.

b. Application and Re-Application Procedures for National Accrediting Organizations (§ 488.5)

We propose at § 488.5(a)(4)(x) to require the AOs, as part of a hospice program AO's application and reapplication process, to submit a statement acknowledging that the AO will include a statement of deficiencies (that is, the Form CMS–2567 or a successor form) to document findings of the hospice program Medicare CoPs under section 1822(a)(2)(A)(ii) of the Act and will submit such in a manner specified by CMS.

Currently, the regulations under § 488.5 do not require AOs to utilize the same forms as SA surveyors when documenting survey findings of noncompliance. Specifically, § 488.5(a)(4)(ii) in part states that AOs with CMS-approved programs must submit documentation demonstrating the comparability of the organization's survey process and surveyor guidance to those required for State survey agencies conducting Federal Medicare surveys for the same provider or supplier type. . . . Therefore, AOs are not required to and do not utilize the Form CMS–2567 to report their survey findings, nor do they use the same software system used by SAs to capture the information. Each of the three AOs with CMS-approved hospice program deeming authority, has a unique software system that is proprietary to the organization and develops a unique survey report for their deemed hospice organizations. These systems are platforms for AO/client communication as well as document storage and are unique to the AOs standards and process, which may meet or exceed those of CMS. The AO's survey reports, provided to hospice program clients, set out the deficiencies related to CMS requirements, as well as any additional AO standards combined into one report.

The Form *CMS–2567 Statement of Deficiencies and Plan of Correction* [91] is the legal, documentary basis for how SAs and CMS Federal surveyors note findings of compliance or noncompliance (deficiencies) resulting from an inspection of Medicare-participating providers and suppliers. Our regulations at § 488.18 require that SAs document all deficiency findings on a statement of deficiencies, which is the Form CMS–2567.

Additionally, §§ 488.26 and 488.28 further delineate how findings must be recorded and that CMS prescribed forms must be used. The Form CMS–2567 is used to state concisely and in a standard format, whether or not any deficiencies were identified during a survey, including the evidence to support each finding. Following the survey, the provider/supplier will use the form to document their plan for correcting the identified deficiencies.

The completed Form CMS–2567 exists in PDF format and is also compiled by the CMS Automated Survey Processing Environment (ASPEN) survey software, which is the current national database, designed to help SAs collect and manage healthcare provider data. CMS is in the process of transitioning the ASPEN software system to a new, web-based internet Quality Improvement and Evaluation System (iQIES).[92] In mid-2021, CMS will begin transitioning to the new software system on a program-specific implementation schedule, starting with HHAs. It may take several years to fully transition all programs to the new technology platform, and CMS will continue to evaluate documentation needs, make necessary system adjustments with each program that transitions, and train surveyors on system use.

Currently, AOs are able to access the online PDF version of the Form CMS–2567 but do not have access to the CMS ASPEN system, as this software was only designed and distributed for use by SAs and CMS employees. CMS and the AOs must therefore determine the systems process for the inclusion and subsequent collection of the Form CMS–2567 as part of all deemed hospice program surveys completed by AOs. CMS already requires all AO survey reports to identify the comparable Medicare CoPs for each finding of noncompliance with accreditation standards (§ 488.5(a)(4)(iv)). Therefore, in order to meet the new statutory requirement for hospice program AOs to also use the Form CMS–2567 (or a successor form), each of the three CMS-approved hospice program AOs must now develop a way to incorporate this form into their data systems.

As required by § 488.5(a)(11)(ii), AOs submit their survey findings to CMS. The database, *Accrediting Organization System for Storing User Recorded Experiences* (ASSURE), is currently used by AOs to provide CMS with survey data from its deemed facilities. The ASSURE system requires the AO to match its specific survey findings and comparable AO standards to the Medicare conditions or requirements by uploading a spreadsheet text file, designed based on the data fields in the system, or by manually inputting the information. At this time, the ASSURE system does not and cannot develop a statement of deficiencies Form CMS–2567, as ASPEN does for SA surveyors, because ASSURE was designed to capture survey details and findings based on the requirements for AOs at § 488.5.

CMS is currently assessing the systems revisions needed for each of the three database options (ASPEN, ASSURE, and iQIES) to determine if one of the systems could be a future vehicle for hospice program AOs to document their survey findings in the same manner as SAs and subsequently have those forms easily captured by CMS for reporting purposes. Since ASPEN and ASSURE are nearing the end of their lifecycle, as CMS transitions to iQIES, it may not be prudent for CMS to invest resources and redistribute funding intended to update the future system to update legacy systems. At this time, it is most important for AOs to develop a way of incorporating the Form CMS–2567 into their documentation systems. As their systems are proprietary, CMS is unable to tell the AOs exactly how to incorporate the Form CMS–2567, but we will work with the AOs to determine how their version can be submitted to CMS via electronic data exchange.

Separately from the systems issues, the existing format of the Form CMS–2567 must be modified, as it does not currently have a place for the name of the AO that is performing the survey as this form was historically only used by SAs. Consequently, the form directions do not refer to AOs. Since this is a public document that is frequently used by consumers, advocacy groups, and the public as a source of information about quality of care and facility compliance, CMS must make updates to the form to include AO information so it is clear who performed the survey. CMS is in the process of seeking the Office of Management and Budget (OMB) approval of this revised form for information collection, in accordance with provisions of the Paperwork Reduction Act (PRA). For further discussion on PRA implications and timeline, see the collection of information requirements in section X. of this proposed rule.

We seek public comment on how AOs can customize their proprietary systems to incorporate a version of the Form

[91] CMS–2567 available at: *https://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/Downloads/CMS2567.pdf.*

[92] iQIES is available at: *https://iqies.cms.gov/.*

CMS–2567 and then submit it to CMS via electronic data exchange.

c. Release and Use of Accreditation Surveys (§ 488.7)

We propose to add a new § 488.7(c), which would require the posting of the Form CMS–2567 in a manner that is prominent, easily accessible, readily understandable, and searchable for the general public and allows for timely updates. Prior to the CAA 2021, CMS did not have the authority to publish AO surveys for deemed hospice programs except to the extent that the AO survey and survey information are related to an enforcement action taken by CMS against the provider. However, CMS may post State agency complaint or validation survey results of deemed hospice providers; CMS utilizes the Quality, Oversight, and Certification Reports (QCOR) [93] public website for this purpose.

As mentioned in section VII.B.1.b. of this proposed rule, CMS recognizes there are challenges related to the system implications for use of the Form CMS–2567 by the AOs. However, as directed by Congress, we are removing the prohibition that previously allowed AO hospice program survey reports to be considered confidential and proprietary. We are proposing to require that AOs release deficiency reports for hospice program surveys conducted under their respective deeming authority to increase transparency among the hospice beneficiary community.

CMS will need to address various system integrations and updates to integrate AO survey results on the Form CMS–2567 as mentioned in section VII.B.2.b. of this proposed rule. Furthermore, CMS recognizes there are limitations and additional data system changes to consider for survey results from the Form CMS–2567 to be displayed in a meaningful and useful format.

We seek public comments as to how data elements from the Form CMS–2567 may be utilized and displayed, and other recommendations of relevant provider information, to assist the public in obtaining a more comprehensive understanding of a hospice program's overall performance. CAA 2021 requires that CMS publish survey information from the Form CMS–2567 in a way that is readily understandable and useable by the public in a meaningful way. We anticipate the need for us to develop some type of a standard framework that would identify salient survey findings in addition to other relevant data about the hospices' performance. We recognize that the implications of releasing national survey data will require collaboration with industry stakeholders to assure the development is fair and equitable across all hospice programs.

d. Providers or Suppliers, Other Than SNFs, NFs, HHAs, and Hospice Programs With Deficiencies (§ 488.28)

Currently, the regulation at § 488.28 states that if a provider or supplier is deficient in one or more of the standards set out in such provider's or supplier's CoPs, it must submit an acceptable plan of correction (POC) for achieving compliance. An acceptable POC must be received within a reasonable time acceptable to CMS to continue Medicare participation. If it is determined during a survey that a provider or supplier is not in compliance with one or more of the standards in the CoPs, it is granted a ''reasonable time'' to achieve compliance. The amount of time depends upon the nature of the deficiency and the SA's discretionary determination as to whether the facility can provide adequate and safe care. Ordinarily, a provider or supplier is expected to take the steps needed to achieve compliance within 60 days of being notified of the deficiencies. However, the SA may recommend additional time be granted based on individual situations if it is not reasonable to expect compliance within 60 days. The regulation exempts SNFs, NFs, and HHAs from this requirement; instead, similar provisions are set out in the regulations relating to those specific provider-types.

Section 1822(c) of the Act authorizes the Secretary to take actions to ensure the removal and correction of condition-level deficiencies in a hospice program through an enforcement remedy or termination or both. The enforcement remedy requirements for hospice programs are outlined in the proposed new subpart N. Regardless of which remedy is applied, a non-compliant hospice program must still submit a POC for approval by the SA or CMS. The POC is a plan developed by the hospice program and approved by CMS that is the hospice program's written response to survey findings detailing corrective actions to cited deficiencies and the hospice program specifies the date by which those deficiencies will be corrected. We propose revising the heading for § 488.28 to indicate that hospice programs with deficiencies would also be exempt from the enforcement requirements set out in that section of our rules.

3. Proposed New Subpart M—Survey and Certification of Hospice Programs

a. Basis and Scope (§ 488.1100)

The proposed regulation at § 488.1100 would specify the statutory authority and general scope of the hospice program. In general, this proposed rule is based on the rulemaking authority in section 1822 of the Act as well as specific statutory provisions identified in the preamble where appropriate.

b. Definitions (§ 488.1105)

We propose to add definitions at § 488.1105 for survey and enforcement terms for hospice programs. The definitions proposed for hospice programs include the following:

- *Abbreviated standard survey* would mean a focused survey other than a standard survey that gathers information on hospice program's compliance with specific standards or CoPs. An abbreviated standard survey may be based on complaints received or other indicators of specific concern. Examples of other indicators include media reports or findings of government oversight activities, such as OIG investigations.
- *Complaint survey* would mean a survey that is conducted to investigate substantial allegations of noncompliance as defined in § 488.1.
- *Condition-level deficiency* would mean noncompliance as described in § 488.24 of this part.
- *Deficiency* would mean a violation of the Act and regulations contained in 42 CFR part 418, subparts C and D, is determined as part of a survey, and can be either standard or condition-level.
- *Noncompliance* would mean any deficiency found at the condition-level or standard-level.
- *Standard-level deficiency* would mean noncompliance with one or more of the standards that make up each condition of participation for hospice programs.
- *Standard survey* would mean a survey conducted in which the surveyor reviews the hospice program's compliance with a select number of standards and/or CoPs to determine the quality of care and services furnished by a hospice program.
- *Substantial compliance* would mean compliance with all condition-level requirements, as determined by CMS or the State.

c. Hospice Program Surveys and Hospice Program Hotline (§ 488.1110)

At proposed § 488.1110(a), a standard survey would have to be conducted not

[93] Quality, Certification and Oversight Reports (QCOR).

later than 36 months after the date of the previous standard survey, as specified in section 1822(a)(1) of the Act. A survey could be conducted more frequently than 36 months to assure that the delivery of quality hospice services complies with the CoPs and confirm that the hospice program corrected deficiencies that were previously cited. At proposed § 488.1110(b)(1), a standard or abbreviated standard survey would have to be conducted when complaint allegations against the hospice program were reported to CMS, the State, or local agency. Additionally, we recognize that for AOs with hospice deeming programs, the proposed 36-month surveys would mirror the requirements for AOs to describe the frequency of surveys as part of the AO application process at existing § 488.5(a)(4)(i). That provision requires AOs to agree to survey and re-survey every accredited provider or supplier, through unannounced surveys, no later than 36 months after the prior accreditation effective date, or shorter if there is a statutorily mandated survey interval of fewer than 36 months.

Prior to the amendments made by CAA 2021, section 1864(a) of the Act required that agreements between the Secretary and the State, under which SAs carry out the Medicare certification process, shall provide for the appropriate State or local agency to establish and maintain a toll-free hotline for HHAs. The CAA 2021 amended this requirement to include hospice programs. The provision now requires that a hotline must be maintained: (1) To collect, maintain, and continually update information on HHAs and hospice programs located in the State or locality that are certified to participate in the program established under this title; and (2) to receive complaints (and answer questions) with respect to HHAs and hospice programs in the State or locality. Section 1864(a) of the Act also provides that such agreements shall provide for the State or local agency to maintain a unit for investigating such complaints that possesses enforcement authority and has access to survey and certification reports, information gathered by any private accreditation agency utilized by the Secretary under section 1865 of the Act, and consumer medical records (but only with the consent of the consumer or his or her legal representative). We propose to build on these same requirements for hospice programs consistent with the amendments made to section 1864(a) of the Act by CAA 2021.

Therefore, at § 488.1110(b)(2) we propose that the State or local agency is responsible for establishing and maintaining a toll-free hotline to receive complaints (and answer questions) with respect to hospice programs in the State or locality and for maintaining a unit to investigate such complaints. The requirement for the hotline will be described in the annual CMS Quality, Safety and Oversight Group's Mission and Priority Document (MPD) that serves as the scope of work which State Agencies are bound contractually via section 1864 of the Act (42 U.S.C. 1395aa).

As we plan for the implementation of the hospice toll-free hotline to streamline and enhance the complaint process for hospice program beneficiaries, we seek public comment on current experiences with the HHA toll-free hotline as required by section 1864(a) of the Act. This information will inform CMS of future enhancements to the toll-free hotline. Specifically, what data elements and processes should be included to assure confidentiality and immediate communication with relevant SAs in order to permit them to respond promptly.

d. Surveyor Qualifications and Prohibition of Conflicts of Interest (§ 488.1115)

Section 1822(a)(4)(C) of the Act requires the Secretary to provide training for State and Federal surveyors, and any surveyor employed by an AO, including a training and testing program approved by the Secretary, no later than October 1, 2021. Further, no surveyor can conduct hospice program surveys until they complete training and testing. Currently, AOs are required by § 488.5(a)(8) to provide training to their surveyors. As the AO requirements outlined in § 488.5 also allow for standards and processes that exceed those of CMS, the AO's training may differ from what CMS provides to SA surveyors, thereby creating a potential disparity in overall survey performance. At § 488.1115, we propose that all SA and AO hospice program surveyors would be required to take CMS-provided surveyor basic training currently available, and additional training as specified by CMS. As part of the AO application and reapplication process under § 488.5(a)(8), the AO is required to submit a description of the content and frequency of the organization's in-service training it provides to survey personnel. Under proposed § 488.1115, AO surveyors would be required to complete the online CMS hospice program basic training. CMS proposes that until the rule is finalized, that it accept the current AO training, that was previously reviewed and approved by CMS during the AO application process. State agency surveyors should already be in compliance with this requirement.

AOs already have voluntary access to our Quality, Safety & Education Portal (QSEP), which contains the CMS training. Currently, the trainings are available free of charge through the QSEP website at *https://qsep.cms.gov,* to providers and all entities conducting surveys, including AOs, and the public at large. QSEP training is accessible on an individual, self-paced basis.

The basic training online courses provide surveyors with the key knowledge and skills needed to survey the respective provider or supplier type for compliance with the Medicare conditions and assure an adequately trained, effective surveyor workforce. The online courses also help develop and refine surveying skills, promote critical thinking skills, and enhance surveyors' overall ability to conduct and document surveys. Users may access the online courses at any time. This allows surveyors to refresh knowledge regarding Medicare conditions and processes whenever necessary. The number of learners trained in online courses has steadily increased since the courses' inception.

We are updating the hospice program basic training and including enhanced guidance for surveyors. The updated training will emphasize assessment of quality of care. Specifically, we would emphasize four ''core'' hospice program CoPs in revisions to the CMS State Operations Manual (SOM) (Pub. 100–07). The four core CoPs (identified in the preamble of the final rule, Medicare and Medicaid Programs; Hospice Conditions of Participation (73 FR 32088, June 5, 2008)) are § 418.52 Condition of Participation: Patient's rights; § 418.54 Condition of Participation: Initial and comprehensive assessment of the patient; § 418.56 Condition of Participation: Interdisciplinary group, care planning and coordination of care; and, § 418.58 Condition of Participation: Quality assessment and performance improvement. The revised training, which we expect to be implemented soon, emphasizes the requirements for establishing individualized written plans of care, which are integral to the delivery of high quality care, and regularly updating these plans with the full involvement of the interdisciplinary team, patients, and their families. Despite the emphasis placed on these core CoPs, hospice programs must comply with all CoPs to achieve successful certification.

We invite commenters to review the trainings by signing up for a free

account on the homepage of the CMS website, or by choosing the ''Public Access'' button on the upper right-hand corner of the website homepage. We seek comments on the requirement for continued SA and AO surveyor training as CMS releases additional basic course updates.

In addition to training requirements for surveyors, we propose to set out the circumstances that will disqualify a surveyor from surveying a particular hospice in accordance with section 1822(a)(4)(B) of the Act. While the statute specifically addresses SA surveyors, CMS takes prohibiting violations of public trust for those representing the Medicare program very seriously and therefore we are proposing to include hospice AO surveyors under this proposed requirement as well.

In 2012, as part of an effort to mitigate conflicts of interest in the HHA survey process, CMS established requirements at § 488.735(b) to outline circumstances that disqualify a surveyor from performing HHA surveys. For example, if the surveyor currently serves, or within the previous 2 years has served, on the staff of or as a consultant to the HHA undergoing the survey, they would be disqualified for a conflict of interest.

Chapter 4, Section 4008 of the SOM states, ''conflicts of interest may arise within the Medicare/Medicaid certification program when public employees utilize their position for private gain or to secure unfair advantages for outside associates. The gain involved may or may not be monetary. Abuses of privileged information, abuses of influence, and other abuses of trust are included, regardless of whether a monetary advantage is gained or sought.'' [94]

Individual health care professionals, such as physicians or nurses, commonly have concurrent employment relationships with more than one health care setting. Many health care professionals, such as physicians, physician assistants, and nurse practitioners have multi-setting practices or are employed at more than one health care facility. For example, a registered nurse (RN) may work on staff at a hospital but also work at other hospitals through a medical staffing agency. In addition, as employees of a health care facility, these health care professionals could gain a financial interest in the health care facility through means such as being a contributor to the construction costs of a new wing of the facility or buying stock in the facility or its parent corporation. Management employees could be awarded stock or stock options for the facility or its parent corporation as part of their compensation and benefits package.

SAs and AOs often hire surveyors that are also employed at one or more outside health care settings because the professional associations, expertise, knowledge, and skills held by these health care practitioners make them an asset as a surveyor. Longstanding CMS policy noted in section 4008 of the SOM describes examples of scenarios that would be conflicts of interest for SA surveyors of any provider or supplier type, including surveyors who have an outside relationship with a facility that is surveyed by the SA. However, the SOM generally applies only to SA surveyors, not AO surveyors. Therefore, we propose to codify these long-standing policies for both SA and AO surveyors to ensure there is no conflict of interest between the organization and the surveyor.

We propose that a surveyor would be prohibited from surveying a hospice program if the surveyor currently serves, or within the previous 2 years has served, on the staff of or as a consultant to the hospice program undergoing the survey. Specifically, the surveyor could not have been a direct employee, employment agency staff at the hospice program, or an officer, consultant, or agent for the surveyed hospice program regarding compliance with the CoPs. A surveyor would be prohibited from surveying a hospice program if he or she has a financial interest or an ownership interest in that hospice. The surveyor would also be disqualified if he or she has an immediate family member who has a financial interest or ownership interest with the hospice program to be surveyed or has an immediate family member who is a patient of the hospice program to be surveyed.

In regards to the definition of ''immediate family member'' in the previous statement, we will utilize the definition of ''immediate family member'' located at § 411.351, which was also used for the development of similar HHA regulations (see 77 FR 67140). This definition includes husband or wife; birth or adoptive parent, child, or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and spouse of a grandparent or grandchild.

e. Survey Teams (§ 488.1120)

The CAA 2021, adding section 1822(a)(4)(A) of the Act, calls for the use of multidisciplinary survey teams when the survey team comprises more than one surveyor, with at least one person being a RN. Currently, the SOM, Appendix M—Guidance to Surveyors requires that each hospice program survey team include at least one RN, and, if the team is more than one surveyor, the additional surveyors should include other disciplines with the expertise to assess hospice program compliance with the conditions of participation. We propose at § 488.1120 under a new subpart M to require that all survey entities—SA or AOs—include diverse professional backgrounds among their surveyors to reflect the professional disciplines responsible for providing care to persons who have elected hospice care. Such multidisciplinary teams should include professions included in hospice core services at 42 CFR 418.64, and may include physicians, nurses, medical social workers, pastoral or other counselors—bereavement, nutritional, and spiritual. To fulfill CAA 2021 requirements, SAs and AOs might need time to reconstruct their workforce to accommodate the new requirements for hospice program surveys to utilize multidisciplinary teams.—We recognize that SAs and AOs may incur additional costs, given the varying, and potentially higher rates of average pay for some disciplines. Surveying entities may need up to a year to hire and train surveyors from the needed disciplines, depending on the timing of the attrition of current staff and workforce availability of the appropriately experienced professionals. In addition, as we proceed with implementation of this provision, CMS seeks to better understand the current professional makeup of survey entities' workforces. In order to track compliance with this provision, we propose to establish a baseline knowledge by asking survey entities to tell us: (1) The extent to which their surveys are conducted by one professional, who by regulation must be a registered nurse; (2) the professional makeup of their current workforce; and (3) estimate a timeframe in which they could effectuate multidisciplinary teams if not already in place. We would provide additional guidance with instruction for the survey entities regarding the submission of this information to CMS.

Our rules at § 418.56 require that hospice programs use interdisciplinary teams or groups to determine a holistic plan of care for the hospice program

[94] CMS State Operations Manual, Chapter 4 Medicare State Operations Manual (*cms.gov*) (*internet Only Manual, Pub. 100–07*)

patient and family. The interdisciplinary group or IDG, must include, but not be limited to a physician, a registered nurse, a medical social worker, and pastoral or other counselor. Therefore, we propose that when the survey team comprises more than one surveyor, the additional slots would be filled by professionals from among these disciplines, and we are seeking comments on this approach. Similarly, section 1819(g)(2)(E) of the Act and 42 CFR 488.314 require that long-term care facility surveys be conducted by a multidisciplinary team of professionals, at least one of whom must be a RN.

Our certification guidance in Chapter 2 of the SOM provides details as to how the survey agency might select the appropriate disciplines for a survey team. SOM, Chapter 2 states that various professional disciplines should represent the expertise needed to determine compliance with the CoPs, standards, or requirements for that provider/supplier group. In establishing multidisciplinary teams under new section 1822(a)(4)(A) of the Act, we would consider, as a model, our current CMS guidance for long-term care facilities, which uses specialty surveyors with expertise not typically included in a survey team (for example, a pharmacist, physician, or registered dietitian), who may not be needed for the entire survey, but must be onsite at some time during the survey.

f. Consistency of Survey Results (§ 488.1125)

New section 1822(a)(3) of the Act requires that each State and the Secretary implement programs to measure and reduce inconsistency in the application of hospice program survey results among surveyors. In addition to ensuring consistency of hospice survey results across SAs, we believe that this also applies to reducing discrepancies between SA and AO surveys of hospice providers. Survey consistency has been a longstanding concern for CMS at multiple levels—interstate and intrastate, as well as Federal to state. While there are multiple strategies currently in place, as described in this section, to directly address the matters presented in the CAA 2021, we propose at § 488.1125 to enhance the requirements of the State Performance Standards System (SPSS) to direct States to implement processes to measure the degree or extent to which surveyors' findings and determinations are aligned with federal regulatory compliance and with an SA supervisor's determinations. Given the variation among State agencies with respect to the number of surveyors deployed for a particular survey, or the distribution of surveyor professional backgrounds, CMS expects to promulgate objective measures of survey accuracy, and seeks public opinion on what measures would be feasible for States. We desire measures that are both specific and utilize currently collected data, if possible. Accuracy could include whether a survey finding aligns with the selected regulatory deficiency, as well as failing to cite such findings. When applied to survey findings, the measures should allow CMS to determine the need for corrective action or education for individual surveyors or for a group of surveyors. If systemic issues are found, CMS is prepared to enhance its training to address systemic issues found as a result of interstate analysis.

CMS monitors the consistency of SA surveys through a review of an SA's Form CMS–2567s (the Statement of Deficiencies and Plan of Correction), which is conducted by its assigned CMS Survey Operations Group (SOG) Location, and consistency among AOs through validations surveys conducted by SAs. The SAs perform validation surveys on a sample of providers and suppliers (such as hospitals, CAHs, ASCs, Hospice Programs, and HHAs) accredited by the AOs. Validation surveys report disparate findings as the percentage of validation surveys that have conditions identified by the SA but missed by the AO survey team. This percentage is referred to as the ''disparity rate'' and is tracked by CMS as an indication of the quality of the surveys performed by the AO. This is reported annually in a report to Congress (*QSO–19–17–AO/CLIA*). The most recent report can be found at *https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Administrative-Information-Memos-to-the-States-and-Regions-Items/AdminInfo-20-02-ALL.*

Using the disparity rate approach used with AOs, where surveys are reviewed for condition-level deficiencies the AO fails to identify, we propose to analyze trends in the disparity rate among States, as well as among AOs. State surveys results would be reviewed to identify findings that were potentially worthy of condition-level citation but were not cited.

We believe that the disparate deficiency citations between AO surveyors and SA surveyors may, in part, be attributed to differences in surveyor training and education. This variation may be due to inconsistencies in AO training with the CMS-provided SA basic surveyor training. We believe that uniform surveyor training would increase the consistency between the results of the surveys performed by SAs and AOs, and have a positive impact on the high disparity rates. We also want to align our processes more closely to those CMS has found effective for other provider types. For instance, what we propose now, for hospice, is similar to what is done with nursing homes, where validation surveys are described at section 1819(g)(3)(A) of the Act as ''. . . a representative sample of skilled nursing facilities in each State, within 2 months of the date of surveys conducted under paragraph (2) by the State, in a sufficient number to allow inferences about the adequacies of each State's surveys . . . (B) . . . each year concerning at least 5 percent of the number of skilled nursing facilities surveyed by the State in the year, but in no case less than 5 skilled nursing facilities. . . .'' Even though AOs are not currently included in the CMS SPSS, we expect that a similar methodology would be applied to all hospice surveying entities, including AOs with an approved hospice program. Just as CMS monitors disparate results across States in their adherence to Federal processes for determining deficiencies, investigating, and reporting complaints, it requires States to monitor the quality of its surveyors' survey activity and actions. Performance measures are applied to all surveying entities to assess consistency. If CMS finds that surveying entities—SAs and AOs—do not meet the performance standards, they must develop and implement a corrective action plan.

The SPSS, established annually, provides for oversight of SA performance when conducting surveys to ensure that Medicare and Medicaid certified providers and suppliers are compliant with Federal CoPs, to improve and protect the health and safety of Americans. This oversight allows CMS to determine that surveyors are thorough, accurate, and consistent when they determine if a hospice program provider is complying with the Medicare CoPs. Survey findings with respect to a hospice program can include: (1) Standard level deficiency—where the hospice program is not complying fully with CoPs, which need corrective action; (2) condition-level deficiencies—which require remediation and could lead to termination of the hospice program; or, (3) immediate jeopardy (IJ) level—where beneficiaries are present in situations where significant harm could occur and which need to be addressed without delay. SA supervisors are responsible to

ensure that surveyors 'findings (from observations, interviews, and document reviews) are consistent with their determination of IJ, and standard- or condition-level deficiency where a hospice program is not compliant with a condition of participation.

To reduce inconsistencies in survey results among surveyors, CMS proposes to require agencies that review other entities' survey findings for missed condition-level deficiency citations (disparities) (SAs for AOs, and CMS SOG locations for SAs), to notify each survey entity of its disparity rate annually, and to require a formal corrective plan as part of the survey entity's (SA or AO) Quality Assurance program. A disparity rate above 10 percent in 2 consecutive cycles would trigger remedial activity such as implementing corrective action through education, mentoring, or other processes to align surveyors' actions, and determinations of deficiencies with regulatory requirements.

g. Special Focus Program (SFP) (§ 488.1130)

Section 1822(b) of the Act requires the Secretary to conduct a Special Focus Program for hospice programs that the Secretary has identified as having substantially failed to meet applicable requirements of the Act. We propose at § 488.1130 to develop a hospice Special Focus Program (SFP) to address issues that place hospice beneficiaries at risk for poor quality of care through increased oversight, and/or technical assistance. We propose that specific criteria would be used to determine whether a hospice program participates in the SFP. The proposed criteria are as follows: a history of condition-level deficiencies on two consecutive standard surveys, two consecutive substantiated complaint surveys, or two or more condition-level deficiencies on a single validation survey (the validation survey with condition-level deficiencies would be in addition to a previous recertification or complaint survey with condition-level deficiencies). A subset of hospice programs that meet the proposed criteria would be selected to be in the SFP, and those hospice programs would be surveyed every 6 months, which may result in additional enforcement remedies and/or termination. CMS uses a similar program with long-term care facilities and has outlined the following protocol for a hospice SFP:

- The SA and CMS SOG location would receive a list from CMS of all hospice programs that meet the established criteria at § 488.1130(b) for placement in the SFP (Candidate List). The SA would work with the CMS SOG location to select hospice programs from the list provided by CMS that would be selected for the SFP based on State priorities. In the event that no hospice programs in a State meet the established criteria, then the State SA would not have a hospice program in the SFP at that time.
- While a hospice program is in the SFP, the SA would survey the facility at least once every 6 months, as required by the CAA 2021, and may include progressively stronger enforcement actions in the event of a hospice program's continued failure to meet the requirements for participation with the Medicare and Medicaid programs.
- Once an SFP hospice program has completed 2 consecutive 6-month SFP surveys with no condition-level deficiencies cited, the facility would graduate from the SFP. If the hospice program did not meet the requirements to graduate, it would be placed on a termination track.

We seek public comment regarding the SFP, specifically the following issues:

- Should CMS utilize a similar criteria/process/frame work for the SFP as outlined in the current Long-Term Care Program. What if any differences should CMS considered to enhance the overall impact of the hospice SFP.
- Additional selection criteria that CMS should consider for the identification and participation in the SFP. This may include use of current or future data elements that could be incorporated into a more comprehensive algorithm.
- Utilization of a Technical Expert Panel (TEP) to enhance the SFP in terms of selection, enforcement and technical assistance criteria while in the program. Furthermore, a TEP may assist CMS by assisting in identifying contextual data and relevant information to assist the public in obtaining a more comprehensive understanding of the Form CMS–2567 survey data and the overall performance of a hospice provider, in addition to what data to include, how to make this information useful and meaningful on a CMS website.

4. Proposed New Subpart N—Enforcement Remedies for Hospice Programs With Deficiencies

a. Statutory Basis (§ 488.1200)

We propose to set out the statutory basis for the proposed new subpart at § 488.1200, which is new sections 1822(c)(1) through 1822(c)(5) of the Act. The requirements under this new subpart would expand the Secretary's options to impose additional enforcement remedies for hospice programs failing to meet Federal requirements. These additional enforcement remedies may be used to encourage poor-performing hospice programs to come into substantial compliance with CMS requirements before CMS is forced to terminate the hospice program's provider agreement. This process is currently afforded to HHAs at § 488.745.

Prior to the enactment of section 1822(c)(5)(A) of the Act, the only enforcement action available to CMS to address hospice programs that are determined to be out of compliance with Federal requirements was the termination of their Medicare provider agreement. In accordance with section 1866(b)(2) of the Act and § 489.53(a)(3), CMS may terminate a hospice program provider agreement if that hospice program is not in substantial compliance with the Medicare requirements (that is, the failure to meet one or more CoPs is considered to be a lack of substantial compliance).

b. Definitions (§ 488.1205)

We propose to add § 488.1205 to define the terms ''directed plan of correction,'' ''immediate jeopardy,'' ''new admission,'' ''per instance,'' ''plan of correction,'' ''repeat deficiency,'' and ''temporary management.'' Although section 1891 of the Act uses the term ''intermediate sanctions,'' with respect to HHA enforcement, and other rules use ''alternative sanctions,'' we propose to use ''remedies'' or ''enforcement remedies,'' which we consider to have the same meaning and are closer to the language in section 1822 of the Act.

c. General Provisions (§ 488.1210)

We propose at § 488.1210 general rules pertaining to enforcement actions against a hospice program that is not in substantial compliance with the CoPs. Under section 1822(c)(1) of the Act, if CMS determines that a hospice program is not in compliance with the Medicare hospice programs CoPs and the deficiencies involved may immediately jeopardize the health and safety of the individual(s) to whom the hospice program furnishes items and services, then we may terminate the hospice program's provider agreement, impose the one or more enforcement remedies described in section 1822(c)(5)(B) of the Act, or both. Our decision to impose one or more remedies, including termination, will be based on the degree of noncompliance with the hospice program Federal requirements. With the proposed provisions, CMS would be able to impose one or more remedies for

each discrete condition-level deficiency constituting noncompliance.

It is also important to note that hospice programs can acquire initial certification for participation in Medicare via an SA survey or via accreditation by a CMS-approved AO. Accreditation by a CMS-approved AO is voluntary and not necessary to participate in the Medicare program. If an AO finds deficiencies during an accreditation survey, it communicates any condition-level findings to the applicable CMS SOG location. Based on the survey findings, CMS makes any determinations regarding the imposition of Federal enforcement remedies. An AO cannot recommend or implement enforcement remedies. In accordance with SOM Chapter 2, section 2005B, CMS may temporarily remove deemed status of an accredited hospice program due to condition-level findings found by the SA or Federal survey team during a complaint or validation survey. If the deficiencies remain uncorrected, oversight of that hospice program is transferred to CMS, through the SA, until the hospice program either demonstrates substantial compliance or CMS terminates its Medicare participation. In such a case where ''deemed status'' is removed, CMS will follow the usual procedures for oversight, as indicated in sections 3254 and 5100 of the *SOM.* Once an enforcement remedy is imposed on a formerly accredited hospice program and deemed status is removed, oversight and enforcement of that hospice program will be performed by the SA until the hospice program achieves compliance and the condition(s) causing the noncompliance are removed or until the hospice program is terminated from the Medicare program.

At proposed § 488.1210(e), a hospice program would be required to submit an acceptable POC to the SA or CMS within 10 calendar days from receipt of the statement of deficiencies. This plan is the hospice program's written response to survey findings detailing corrective actions to cited deficiencies and the date by which those deficiencies will be corrected. CMS would determine if the POC was acceptable based on the information presented.

At proposed § 488.1210(e), we propose the notification requirements for enforcement remedies for hospice programs that will be issued by CMS. CMS will provide a notice of intent to the hospice program that would include the intent to impose a remedy, the statutory basis for the remedy, the nature of the noncompliance, the intent to impose a payment suspension and which payments would be suspended (if applicable), the intent to propose a CMP and the amount being imposed (if applicable), the proposed effective date of the sanction, and appeal rights.

We propose that for all remedies imposed, except for CMPs, when there is IJ the notice period is at least 2 calendar days before the effective date of the enforcement action and when there is no IJ, that the notice period is at least 15 calendar days before the effective date of the enforcement action. As discussed later in this section, we propose to codify these proposals at §§ 488.1225(b) and 488.1230(b), respectively.

With respect to CMPs, we propose that once the administrative determination to impose the CMP is final, CMS would send a final notice to the hospice program with the amount of the penalty assessed, the total number of days of noncompliance (for CMPs imposed per day), the total amount due, the due date of the penalty, and the rate of interest to be charged on unpaid balances. We propose to codify these proposals at § 488.1245(e).

We propose that the hospice program could appeal the determination of noncompliance leading to the imposition of a remedy under the provisions of 42 CFR part 498. A pending hearing would not delay the effective date of the remedy against the hospice program and remedies will be in effect regardless of any pending appeals proceedings. Civil money penalties would accrue during the pendency of an appeal, but would not be collected until the administrative determination is final, as we note in proposed § 488.1245(f).

d. Factors To Be Considered in Selecting Remedies (§ 488.1215)

Section 1822(c) of the Act provides that if a hospice program is found to be out of compliance with the requirements specified in section 1861(dd) of the Act, CMS may impose one or more specified enforcement remedies. In this proposed rule, we have proposed to establish requirements for enforcement remedies that may be imposed when hospice programs are out of compliance with Federal requirements. At CMS' discretion, these enforcement remedies can be imposed instead of, or in addition to, termination of the hospice program's participation in the Medicare program, for a period not to exceed 6 months. The choice of any enforcement remedy or termination would reflect the impact on patient care and the seriousness of the hospice program's patterns of noncompliance and would be based on the factors proposed in § 488.1215. CMS may impose termination of the provider agreement (that is, begin termination proceedings that would become effective at a future date, but no later than 6 months from the determination of noncompliance), and impose one or more remedies for hospice programs with the most egregious deficiencies, on a hospice program that was unwilling or unable to achieve compliance within the maximum timeframe of 6 months, whether or not the violations constituted an IJ situation. We propose at § 488.1215, consistent with section 1822(5)(B)(i) of the Act, to establish procedures for selecting the appropriate enforcement remedy, including the amount of any CMP and the severity of each remedy, which have been designed to minimize the time between the identification of deficiencies and the final imposition of remedies, as required under section 1822(c)(5)(A)(ii) of the Act. To determine which remedy or remedies to apply, CMS proposes to consider the following factors that are consistent with the factors for HHA alternative sanctions:

- The extent to which the deficiencies pose IJ to patient health and safety.
- The nature, incidence, manner, degree, and duration of the deficiencies or noncompliance.
- The presence of repeat deficiencies (defined as condition-level), the hospice program's compliance history in general, and specifically concerning the cited deficiencies, and any history of repeat deficiencies at any of the hospice program's additional locations.
- The extent to which the deficiencies are directly related to a failure to provide quality patient care.
- The extent to which the hospice program is part of a larger organization with documented performance problems.
- Whether the deficiencies indicate a system-wide failure of providing quality care.

e. Available Remedies (§ 488.1220)

Section 1822(c)(5)(A)(ii) of the Act provides that CMS ''shall develop and implement specific procedures for the conditions under which each of the remedies developed under clause (i) is to be applied, including the amount of any fines and the severity of each of these remedies.'' Section 1822(c)(5)(B) of the Act explicitly provides for the following enforcement remedies to be included in the range of remedies: (1) CMPs in an amount not to exceed $10,000 for each day of noncompliance by a hospice program with the requirements specified in section

1861(dd) of the Act; (2) suspension of all or part of the payments to which a hospice program would otherwise be entitled under this title for items and services furnished by a hospice program, on or after the date on which the Secretary determines that remedies should be imposed; and (3) appointment of temporary management to oversee the operation of the hospice program and to protect and assure the health and safety of the individuals under the care of the program while improvements are made to bring the program into compliance with all such requirements. In addition to those specified in the statute, we propose to add a directed POC and directed in-service training as additional enforcement remedies at § 488.1220.

f. Action When Deficiencies Pose Immediate Jeopardy (§ 488.1225) and Termination (§ 489.53)

For situations involving IJ, if CMS determines based on a standard survey or otherwise that a hospice program's deficiencies involve IJ to the health and safety of the individuals to whom the program furnishes items and services, it shall take immediate action to ensure the removal of the IJ and to correct the deficiencies or terminate the certification of the program. We are proposing at § 488.1225(a) to implement the statutory requirement of 1822(c)(1) of the Act by specifying that if the IJ situation is not addressed and resolved within 23 days from the last day of the survey because the hospice program is unable or unwilling to correct the deficiencies, CMS will terminate the hospice program's provider agreement. In addition, CMS could impose one or more enforcement remedies including a CMP, temporary management, and/or suspension of all or part of Medicare payments before the effective date of termination.

We propose § 488.1225(b), that for a deficiency or deficiencies that pose IJ, CMS would provide the hospice program with at least 2 days advance notice of any proposed remedies, except CMPs (discussed at proposed § 488.1245). The requirements for a notice of intent are set forth at proposed § 488.1210(e). Under our existing survey process, providers are informed of any IJ findings upon discovery of the IJ situation during the survey or as part of the exit conference at the end of the survey. This would give a hospice program time to remove the IJ and correct the deficiencies that gave rise to the IJ finding. To assure a hospice program achieves prompt compliance, we expect that CMS will give hospice programs written notice of an impending enforcement actions against them as quickly as possible following the completion of a survey of any kind.

For terminations, CMS will give notice of the termination within 2 days before the effective date of the termination, to hospice programs consistent with the requirement for HHAs. We also propose to amend § 489.53(a)(17) to indicate that we will terminate a hospice program's (as well as an HHA's) provider agreement if the hospice program failed to correct a deficiency or deficiencies within the required time frame.

Finally, at proposed § 488.1225(c), we propose to require a hospice program whose provider agreement is terminated to appropriately and safely transfer its patients to another local hospice program within 30 days of termination, unless a patient or caregiver chooses to remain with the hospice program as a self-pay or with another form of insurance (for example, private insurance). In addition, the hospice program would be responsible for providing information, assistance, and any arrangements necessary for the safe and orderly transfer of its patients.

g. Action When Deficiencies Are at the Condition-Level But Do Not Pose Immediate Jeopardy (§ 488.1230)

In section 1822(c)(2) of the Act, if the Secretary determines based on a survey or otherwise that a hospice program is no longer in compliance with the requirements specified in section 1861(dd) of the Act and determines that the deficiencies involved do not immediately jeopardize the health and safety of the individuals to whom the program furnishes items and services, the Secretary may (for a period not to exceed 6 months) impose remedies developed under section 1822(c)(5)(A) of the Act, in lieu of terminating hospice program's participation in the Medicare program. If, after such a period of remedies, the program is still not in compliance with all requirements, the Secretary shall terminate the hospice program's participation in the Medicare program.

In this proposed rule, enforcement remedies, such as those proposed in § 488.1220, would be imposed before the termination becomes effective, but cannot continue for a period that exceeded 6 months. In addition, to protect the health and safety of individuals receiving services from the hospice program, enforcement remedies would continue in effect until the hospice program achieves compliance or has its Medicare participation terminated, whichever occurs earlier. For example, the suspension of payment remedy will end when the hospice program corrects all condition-level deficiencies or is terminated from the Medicare program.

We propose at § 488.1230, that for a deficiency or deficiencies that do not pose IJ, CMS will provide the hospice program at least 15 days advance notice of any proposed remedies, except for CMPs (discussed at proposed § 488.1245). Such remedies would remain in effect until the effective date of an impending termination (at 6 months) or until the hospice program achieves compliance with CoPs, whichever is earlier. This 15-day period is consistent with the general rule for providers and suppliers in § 489.53(d)(1).

h. Temporary Management (§ 488.1235)

Section 1822(c)(5)(B)(iii) of the Act specifies the use of appointment of temporary management, as an enforcement remedy, to oversee the operation of the hospice program and to protect and assure the health and safety of the individuals under the care of the program while improvements are made in order to bring the program into compliance with all such requirements. As we propose at § 488.1205, ''temporary management'' means the temporary appointment by CMS or a CMS authorized agent, of a substitute manager or administrator, who would be under the direction of the hospice program's governing body and who would have authority to hire, terminate or reassign staff, obligate hospice program funds, alter hospice program procedures, and manage the hospice program to correct deficiencies identified in the hospice program's operation. The substitute manager or administrator would be appointed based on qualifications described in § 418.100 and § 418.114 and would be under the direction of the hospice program's governing body.

We propose at § 488.1235 to set out the circumstances under which we would utilize our authority under section 1822(c)(5)(C)(iii) of the Act to place a hospice program under temporary management. We propose to specify the duration and effect of this enforcement remedy, and the payment procedures for temporary managers' salaries and other additional costs. CMS would provide the hospice program with written notice of our intent to impose a temporary management remedy in accordance with proposed § 488.1210(e).

At § 488.1235(a), we propose that temporary management would be imposed when a hospice program is determined to have condition-level deficiencies and that the deficiencies or

the management limitations of the hospice program are likely to impair the hospice program's ability to correct the deficiencies and return the hospice program to compliance with all of the CoPs within the required timeframe. We propose at § 488.1235(c) to impose temporary management to bring a hospice program into compliance with program requirements within 6 months of the date of the survey identifying noncompliance.

We propose at § 488.1235(b) if the hospice program refuses to relinquish authority and control to the temporary manager, CMS will terminate the hospice program's provider agreement. If a temporary manager was appointed, but the hospice program failed to correct the condition-level deficiencies within 6 months from the last day of the survey, the hospice program's Medicare participation would be terminated. Additionally, if the hospice program resumes management control without CMS's approval, we would impose termination and could impose additional enforcement remedies. The appointment of a temporary manager would not relieve the hospice program of its responsibility to achieve and maintain compliance with the participation requirements. We propose at § 488.1235 that temporary management would end when—

- We determine that the hospice program has achieved substantial compliance and has the management capability to remain in compliance;
- The hospice program provider agreement is terminated; or
- The hospice program resumes management control without CMS approval.
- Temporary management will not exceed a period of 6 months from the date of the survey identifying noncompliance.

At § 488.1235, we propose that temporary management would be required to be provided at the hospice program's expense. Before the temporary manager was installed, the hospice program would have to agree to pay his/her salary directly for the duration of the appointment. We believe that the responsibility for the hospice program to pay the expenses of the temporary manager is an inherent management responsibility of the hospice agency for which Medicare regularly reimburses the hospice program and through such temporary outside management might be necessary in some cases to bring the hospice program back into compliance with the CoPs. We are proposing that the salary for the temporary manager would not be less than the amount equivalent to the prevailing salary paid by providers in the geographic area for positions of this type, based on the Bureau of Labor Statistics, National Occupational Employment and Wage Estimates. In addition, the hospice program would have to pay for any additional costs that the hospice program may have incurred if such person had been in an employment relationship, and any other costs incurred by such a person in furnishing services under such an arrangement or as otherwise set by the State. CMS would consider a hospice program's failure to pay the salary of the temporary manager to be a failure to relinquish authority and control to temporary management.

i. Suspension of Payment for All or Part of the Payments (§ 488.1240)

We propose in § 488.1240 provisions describing when and how we would apply a suspension of payment of all or part of the payments for items and services furnished by a hospice program on or after the date on which the Secretary determines that remedies should be imposed under § 488.1225 or § 488.1230. If a hospice program has a condition-level deficiency or deficiencies (regardless of whether or not an IJ exists), we may suspend payments for all or part of the payments to which a hospice program would otherwise be entitled for items and services furnished by a hospice program on or after the effective date of the enforcement remedy. CMS will determine whether to impose a suspension of all or part of the payments based on the factors outlined in proposed § 488.1215 that are considered when selecting remedies. The suspension of payment is proposed at § 488.1240 to be for a period not exceed 6 months and would end when the hospice program either achieved substantial compliance or was terminated. CMS would provide the hospice program with written notice of our intent to impose a payment suspension remedy at least 2 calendar days before the effective date of the remedy in IJ situations, per proposed § 488.1225(b), or 15 calendar days before the effective date of the remedy in non-IJ situations, per proposed § 488.1230(b). The proposed notice of intent for all remedies, described at § 488.1210(e), would be used to notify a hospice program of a suspension of payment of all or part of the payments to which the hospice program would otherwise be entitled.

Additionally, section 1822(c)(5)(C)(ii) of the Act provides that a suspension of payment remedy shall terminate when CMS finds that the hospice program is in substantial compliance with the requirements specified in, or developed in accordance with, section 1861(dd) of the Act. That is, the suspension of payment remedy will end when the hospice program is determined to have corrected all condition-level deficiencies, or upon termination, whichever is earlier. We propose to codify that duration of the remedy at 488.1240(c).

j. CMPs (§ 488.1245)

We propose at § 488.1245 requirements for the imposition of CMPs. Section 1822(c)(5)(C) of the Act outlines the requirements for CMP procedures. Additionally, section 1822(c)(5)(C)(i)(I) of the Act requires that the CMP provisions under section 1128A (other than subsections (a) and (b) of the Act shall be applied to the hospice CMPs, which also must be considered when establishing the amount. CMS proposes to impose a CMP against a hospice program that is determined to be out of compliance with one or more CoPs, regardless of whether the hospice program's deficiencies pose IJ to patient health and safety. CMS could also impose a CMP for the number of days of IJ. Under section 1822(c)(5)(B)(i) of the Act, the CMP amount cannot exceed $10,000 for each day of noncompliance. Our proposals align with the imposition of CMPs authorized by section 1891(f) of the Act as set out for HHAs at § 488.845, which CMS may impose against an HHA that is determined to be out of compliance with one or more CoPs, regardless of whether the HHA's deficiencies pose IJ to patient health and safety.

In this section, we are proposing both ''per day'' and ''per instance'' CMPs at § 488.1245(a). The per day CMPs would be imposed for each day of noncompliance with the CoPs. Additionally, should a survey identify a particular instance or instances of noncompliance during a survey, we propose to impose a CMP for that instance or those individual instances of noncompliance. We propose to define ''per instance'' in § 488.1205 as a single event of noncompliance identified and corrected during a survey, for which the statute authorizes CMS to impose a remedy.

While there may be a single event that leads to noncompliance, there can also be more than one instance of noncompliance identified and more than one CMP imposed during a survey. For penalties imposed per instance of noncompliance, we are proposing penalties from $1,000 to $10,000 per instance. Such penalties would be

assessed for one or more singular events of condition-level noncompliance that were identified at the survey and where the noncompliance was corrected during the onsite survey.

Since the range of possible deficiencies is great and depends upon the specific circumstances at a particular time, it would be impossible to assign a specific monetary amount for each type of noncompliance that could be found. Thus, we believe that each deficiency would fit into a range of CMP amounts.

We are proposing that, in addition to those factors that we would consider when choosing a type of remedy proposed in § 488.1215, we would consider the following factors when determining a CMP amount:

- The size of the hospice program and its resources.
- Evidence that the hospice program has a built-in, self-regulating quality assessment and performance improvement system to provide proper care, prevent poor outcomes, control patient injury, enhance quality, promote safety, and avoid risks to patients on a sustainable basis that indicates the ability to meet the CoPs and to ensure patient health and safety. When several instances of noncompliance would be identified at a survey, more than one per-day or per instance CMP could be imposed as long as the total CMP did not exceed $10,000 per day. In addition, a per-day and a per-instance CMP would not be imposed simultaneously for the same deficiency in conjunction with a survey.

At proposed § 488.1245, CMS would have the discretion to increase or reduce the amount of the CMP during the period of noncompliance, depending on whether the level of noncompliance had changed at the time of a revisit survey. However, section 1822(c)(5)(B)(i) of the Act specifies that the remedies shall include a CMP in an amount not to exceed $10,000 for each day of noncompliance. Therefore, we are proposing at § 488.1245(b)(2)(iii) that no CMP assessment could exceed $10,000 per day of noncompliance. To comply with sections 1822(c)(5)(B)(i) and 1822(c)(5)(C)(i) of the Act, we propose to establish a three-tier system with subcategories that would establish the amount of a CMP.

In proposed § 488.1245(b)(3), (b)(4), and (b)(5), we propose ranges of CMP amounts based on three levels of seriousness—upper, middle, and lower:

- Upper range—For a deficiency that poses IJ to patient health and safety, we would assess a penalty within the range of $8,500 to $10,000 per day of condition-level noncompliance.
- Middle range—For repeat and/or a condition-level deficiency that did not pose IJ, but is directly related to poor quality patient care outcomes, we would assess a penalty within the range of $1,500 up to $8,500 per day of noncompliance with the CoPs.
- Lower range—For repeated and/or condition-level deficiencies that did not constitute IJ and were deficiencies in structures or processes that did not directly relate to poor quality patient care, we would assess a penalty within the range of $500 to $4,000 per day of noncompliance.

The proposed CMP amounts would be subject to annual adjustments for inflation in accordance with the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (Pub. L. 101–140), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (section 701 of Pub. L. 114–74). Annually adjusted amounts are published at 45 CFR part 102.

Under the proposed provisions, if CMS imposed a CMP, CMS would send the hospice program written notification of the intent to impose it, including the amount of the CMP being imposed and the proposed effective date of the sanction, under proposed §§ 488.1210(e) and 488.1245(c). Once the administrative determination is final, we propose to send a final notice to the hospice program with the amount of the penalty that was assessed; the total number of days of noncompliance (for per day CMPs); the total amount due; the due date of the penalty; and the rate of interest to be charged on unpaid balances.

Whether per instance or per day CMPs are imposed, once the hospice program has received the notice of intent to impose the CMP, it would have 60 calendar days from the receipt of the written notice of intent to either request an administrative hearing in accordance with § 498.40 or to provide notice to CMS of its intent to waive its right to an administrative hearing, in accordance to the procedures specified in proposed § 488.1245(c)(2), to receive a 35 percent reduction in the CMP amount. The CMP would be due within 15 calendar days of hospice programs' written request for waiver. If the hospice program did not respond to the notice of intent to impose a CMP within 60 calendar days of receipt, it would waive its right to a hearing. In such cases, the CMP would not be reduced by 35 percent because a hospice program must follow the procedures specified at proposed § 488.1245(c)(2) to receive the reduction.

A per-day CMP would begin to accrue as early as the beginning of the last day of the survey that determines that the hospice program was out of compliance and would end on the date of correction of all deficiencies, or the date of termination. We propose at § 488.1245(d) that in IJ cases, if the IJ is not removed, the CMP would continue to accrue until CMS terminated the provider agreement (within 23 calendar days after the last day of the survey which first identified the IJ). Under proposed § 488.1245(d)(4), if IJ did not exist, the CMP would continue to accrue until the hospice program achieved substantial compliance or until CMS terminated the provider agreement.

As noted elsewhere, in no instance would a period of noncompliance be allowed to extend beyond 6 months from the last day of the survey that initially determined noncompliance. If the hospice program has not achieved compliance with the CoPs within those 6 months, we would terminate the hospice program. The accrual of per-day CMPs would stop on the day the hospice program provider agreement was terminated or the hospice program achieved substantial compliance, whichever was earlier. The total CMP amounts would be computed and collected after an administrative determination is final and a final notice sent to the hospice program as described in § 488.1245(e).

We also propose that for a hospice program being involuntarily terminated and for which a civil money penalty had been imposed and was still due, we would include the final notice, also known as a due and payable notice, as part of the termination notice. In other words, the information in a final notice, as described in § 488.1245(e), would be included in the termination notice.

At proposed § 488.1245(f), a CMP would become due and payable 15 calendar days from—

- The time to appeal had expired without the hospice program appealing its initial determination;
- CMS received a request from the hospice program waiving its right to appeal the initial determination;
- A final decision of an Administrative Law Judge or Appellate Board of the Departmental Appeals Board upheld CMS's determinations; or
- The hospice program was terminated from the program and no appeal request was received.

A request for a hearing would not delay the imposition of the CMP, but would only affect the collection of any final amounts due to CMS.

k. Directed Plan of Correction (§ 488.1250)

We propose at § 488.1250 to include a directed plan of correction as an available remedy. This remedy is a part of the current HHA and nursing home alternative sanction procedures and has been an effective tool to encourage correction of deficient practices. Specifically, we propose that CMS may impose a directed POC on a hospice program that is out of compliance with the CoPs. A directed POC remedy would require the hospice program to take specific actions to bring the hospice program back into compliance and correct the deficient practice(s). As indicated in § 488.1250(b)(2) a hospice program's directed POC would be developed by CMS or by the temporary manager, with CMS approval. The directed POC would set forth the outcomes to be achieved, the corrective action necessary to achieve these outcomes and the specific date the hospice program would be expected to achieve such outcomes. The hospice program would be responsible for achieving compliance. If the hospice program failed to achieve compliance within the timeframes specified in the directed POC, CMS could impose one or more additional enforcement remedies until the hospice program achieved compliance or was terminated from the Medicare program. Before imposing this remedy, CMS would provide appropriate notice to the hospice program under § 488.1210(e).

l. Directed In-Service Training (§ 488.1255)

We propose at § 488.1255, to outline the requirements for conducting directed in-service training for hospice programs with condition-level deficiencies. At proposed § 488.1255(a), directed in-service training would be required where staff performance resulted in noncompliance and it was determined that a directed in-service training program would correct this deficient practice through retraining the staff in the use of clinically and professionally sound methods to produce quality outcomes.

At § 488.1255(a)(3), we are proposing that hospice programs use in-service programs conducted by instructors with an in-depth knowledge of the area(s) that would require specific training, so that positive changes would be achieved and maintained. Hospice programs would be required to participate in programs developed by well-established education and training services. These programs would include, but not be limited to, schools of medicine or nursing, area health education centers, and centers for aging. CMS will only recommend possible training locations to a hospice program and not require that the hospice program utilize a specific school/center/provider. In circumstances where the hospice is subject to the SFP, additional technical assistance and/or resources could be made available. The hospice program would be responsible for payment for the directed in-service training for its staff. At proposed § 488.1255(b), if the hospice program did not achieve substantial compliance after such training, CMS could impose one or more additional remedies. Before imposing this remedy, CMS would provide appropriate notice to the hospice program under proposed § 488.1210(e).

m. Continuation of Payments to a Hospice Program With Deficiencies (§ 488.1260)

We propose at § 488.1260, the continuation of Medicare payments to hospice programs not in compliance with the requirements specified in section 1861(dd) of the Act over a period of no longer than 6 months in accordance with section 1822(c)(4) of the Act. The continuation of Medicare payments will continue for 6 months if—

- An enforcement remedy or remedies (with the exception of suspension of all payments) have been imposed on the hospice program and termination has not been imposed;
- The hospice program has submitted a POC which has been approved by CMS; and
- The hospice program agrees to repay the Federal government the payments received under this arrangement should the hospice program fail to take the corrective action as outlined in its approved POC in accordance with the approved plan and timetable for corrective action.

We propose these three criteria at § 488.1260(a). If any of these three requirements outlined in the Act were not met, a hospice program would not receive any Federal payments from the time that deficiencies were initially identified. CMS would also terminate the agreement before the end of the 6-month correction period, which begins on the last day of the survey, in accordance with § 488.1265 if the requirements at § 488.1260(a)(1) were not met. If any remedies were also imposed, they would stop accruing or end when the hospice program achieved compliance with all requirements, or when the hospice program's provider agreement was terminated, whichever was earlier.

Finally, if a hospice program provided an acceptable POC but could not achieve compliance with the CoPs upon resurvey within 6 months of the last day of the survey, we propose at § 488.1230(d) that we would terminate the provider agreement.

n. Termination of Provider Agreement (§ 488.1265)

At § 488.1265(a), we propose to address the termination of a hospice program's Medicare provider agreement, as well as the effect of such termination. Termination of the provider agreement would end all payments to the hospice program, including any payments that were continued at the proposed § 488.1260. Termination would also end enforcement remedies imposed against the hospice program, regardless of any proposed timeframes for the remedies originally specified. At proposed § 488.1265(b), CMS would terminate the provider agreement if—(1) the hospice program failed to correct condition-level deficiencies within 6 months unless the deficiencies constitute IJ; (2) the hospice program failed to submit an acceptable POC; (3) the hospice program failed to relinquish control of the temporary manager (if that remedy is imposed); or (4) the hospice program failed to meet the eligibility criteria for continuation of payments. At § 488.1265(d) we propose using the procedures for terminating a hospice program at § 489.53 and providing appeal rights in accordance with 42 CFR part 489. Additionally, we propose using the procedures for payments 30 days post termination for hospice programs at § 489.55. Payment is available for up to 30 days after the effective date of termination for hospice care furnished under a plan established before the effective date of termination (§ 489.55(a)(2)).

VIII. Requests for Information

A. Fast Healthcare Interoperability Resources (FHIR) in Support of Digital Quality Measurement in Post-Acute Care Quality Reporting Programs—Request for Information

1. Background

A goal of the HH QRP is to improve the quality of health care for beneficiaries through measurement, transparency, and public reporting of data. The HH QRP contributes to improvements in health care, enhancing patient outcomes, and informing consumer choice. In October 2017, we launched the Meaningful Measures Framework. This framework captures our vision to address health care quality priorities and gaps, including emphasizing digital quality

measurement (dQM), reducing measurement burden, and promoting patient perspectives, while also focusing on modernization and innovation. The scope of the Meaningful Measures Framework has evolved to Meaningful Measure 2.0 to accommodate the changes in the health care environment, initially focusing on measure and burden reduction to include the promotion of innovation and modernization of all aspects of quality, t is a need to streamline our approach to data collection, calculation, and reporting to fully leverage clinical and patient-centered information for measurement, improvement, and learning.

In alignment with the Meaningful Measures 2.0, we are seeking feedback on our future plans to define digital quality measures for the HH QRP. We also are seeking feedback on the potential use of Fast Healthcare Interoperable Resources (FHIR) for dQMs within the HH QRP aligning where possible with other quality programs. FHIR is an open source standards framework (in both commercial and government settings) created by Health Level Seven International (HL7®) that establishes a common language and process for all health information technology.

2. Definition of Digital Quality Measures

We are considering adopting a standardized definition of dQMs in alignment across the QRPs including the HH QRP. We are considering in the future to propose the adoption within the HH QRP the following definition: ''Digital Quality Measures'' (dQMs) are quality measures that use one or more sources of health information that are captured and can be transmitted electronically via interoperable systems.[95] A dQM includes a calculation that processes digital data to produce a measure score or measure scores. Data sources for dQMs may include administrative systems, electronically submitted clinical assessment data, case management systems, electronic health records (EHRs), instruments (for example, medical devices and wearable devices), patient portals or applications (for example, for collection of patient-generated health data), health information exchanges (HIEs) or registries, and other sources. As an example, the quality measures calculated from patient assessment data submitted electronically to CMS would be considered digital quality measures.

3. Use of FHIR for Future dQMs in the HH QRP

Over the past years in other quality programs, we have focused on opportunities to streamline and modernize quality data collection and reporting processes, such as exploring HL7® FHIR® (*http://hl7.org/fhir*) for other quality programs. One of the first areas CMS has identified relative to improving our digital strategy is through the use of FHIR-based standards to exchange clinical information through application programming interfaces (APIs), allowing clinicians to digitally submit quality information one time that can then be used in many ways. We believe that in the future proposing such a standard within the HH QRP could potentially enable collaboration and information sharing, which is essential for delivering high-quality care and better outcomes at a lower cost.

We are currently evaluating the use of FHIR based APIs to access assessment data collected and maintained through the Quality Improvement and Evaluation System (QIES) and internet QIES (iQIES) health information systems and are working with healthcare standards organizations to assure that their evolving standards fully support our assessment instrument content. Further, as more Post-Acute Care providers, including HHAs, are adopting EHRs, we are evaluating using the FHIR interfaces for accessing patient data (including standard assessments) directly from HHA EHRs. Accessing data in this manner could also enable the exchange of data for purposes beyond data reporting to CMS, such as care coordination further increasing the value of EHR investments across the healthcare continuum. Once providers map their EHR data to a FHIR API in standard FHIR formats it could be possible to send and receive the data needed for measures and other uses from their EHRs through FHIR APIs.

4. Future Alignment of Measures Across Reporting Programs, Federal and State Agencies, and the Private Sector

We are committed to using policy levers and working with stakeholders to achieve interoperable data exchange and to transition to full digital quality measurement in our quality reporting programs. We are considering the future potential development and staged implementation of a cohesive portfolio of dQMs across our regulated programs, including HHQRP, agencies, and private payers. This cohesive portfolio would require, where possible, alignment of: (1) Measure concepts and specifications including narrative statements, measure logic, and value sets, and (2) the individual data elements used to build these measure specifications and calculate the measures. Further, the required data elements would be limited to standardized, interoperable elements to the fullest extent possible; hence, part of the alignment strategy will be the consideration and advancement of data standards and implementation guides for key data elements. We would coordinate closely with quality measure developers, Federal and State agencies, and private payers to develop and maintain a cohesive dQM portfolio that meets our programmatic requirements and that fully aligns across Federal and State agencies and payers to the extent possible.

We intend this coordination to be ongoing and allow for continuous refinement to ensure quality measures remain aligned with evolving healthcare practices and priorities (for example, patient reported outcomes (PROs), disparities, care coordination), and track with the transformation of data collection. This includes conformance with standards and health IT module updates, future adoption of technologies incorporated within the ONC Health IT Certification Program and may also include standards adopted by ONC (for example, standards-based APIs). The coordination would build on the principles outlined in HHS' National Health Quality Roadmap.[96]

It would focus on the quality domains of safety, timeliness, efficiency, effectiveness, equitability, and patient-centeredness. It would leverage several existing Federal and public-private efforts including our Meaningful Measures 2.0 Framework; the Federal Electronic Health Record Modernization (DoD/VA); the Core Quality Measure Collaborative, which convenes stakeholders from America's Health Insurance Plans (AHIP), CMS, the Consensus-Based Entity under section 1890 of the Act, provider organizations, private payers, and consumers and develops consensus on quality measures for provider specialties; and the NQF-convened Measure Applications Partnership (MAP) which reviews measures submitted to the Measures Under Consideration (MUC) list and makes recommendations on whether or not to use them in Medicare programs.'' We would coordinate with HL7's ongoing work to advance FHIR

[95] Definition taken from the CMS Quality Conference 2021.

[96] Department of Health and Human Services. National Health Quality Roadmap. May 15, 2020. Available at: *https://www.hhs.gov/sites/default/files/national-health-quality-roadmap.pdf.*

resources in critical areas to support patient care and measurement such as social determinants of health. Through this coordination, we would identify which existing measures could be used or evolved to be used as dQMs, in recognition of current healthcare practice and priorities.

This multi-stakeholder, joint Federal, State, and industry effort, made possible and enabled by the pending advances towards interoperability, would yield a significantly improved quality measurement enterprise. The success of the dQM portfolio would be enhanced by the degree to which the measures achieve our programmatic requirements as well as the requirements of other agencies and payers.

5. Solicitation of Comments

We seek input on the following steps that would enable transformation of CMS' quality measurement enterprise to be fully digital:

- What EHR/IT systems do you use and do you participate in a health information exchange (HIE)?
- How do you currently share information with other providers and are there specific industry best practices for integrating SDOH screening into EHRs?
- What ways could we incentivize or reward innovative uses of health information technology (IT) that could reduce burden for post-acute care settings, including but not limited to HHAs?
- What additional resources or tools would post-acute care settings, including but not limited to HHAs, and health IT vendors find helpful to support testing, implementation, collection, and reporting of all measures using FHIR standards via secure APIs to reinforce the sharing of patient health information between care settings?
- Would vendors, including those that service post-acute care settings, including but not limited to HHAs, be interested in or willing to participate in pilots or models of alternative approaches to quality measurement that would align standards for quality measure data collection across care settings to improve care coordination, such as sharing patient data via secure FHIR API as the basis for calculating and reporting digital measures?

We plan to continue working with other agencies and stakeholders to coordinate and to inform our transformation to dQMs leveraging health IT standards. While we will not be responding to specific comments submitted in response to this Request for Information in the CY 2022 Home Health PPS final rule, we will actively consider all input as we develop future regulatory proposals or future subregulatory policy guidance. Any updates to specific program requirements related to quality measurement and reporting provisions would be addressed through separate and future notice- and-comment rulemaking, as necessary.

B. Closing the Health Equity Gap in Post-Acute Care Quality Reporting Programs—Request for Information

1. Background

Significant and persistent inequities in health outcomes exist in the United States. In recognition of persistent health disparities and the importance of closing the health equity gap, we request information on expanding several related CMS programs to make reporting of health disparities based on social risk factors and race and ethnicity more comprehensive and actionable for providers and patients. Belonging to a racial or ethnic minority group; living with a disability; being a member of the lesbian, gay, bisexual, transgender, and queer (LGBTQ+) community; or being near or below the poverty level, is often associated with worse health outcomes.[97] [98] [99] [100] [101] [102] [103] [104] Such disparities in health outcomes are the result of number of factors, but importantly for CMS programs, although not the sole determinant, poor access and provision of lower quality health care contribute to health disparities. For instance, numerous studies have shown that among Medicare beneficiaries, racial and ethnic minority individuals often receive lower quality of care, report lower experiences of care, and experience more frequent hospital readmissions and operative complications.[105] [106] [107] [108] [109] [110] Readmission rates for common conditions in the Hospital Readmissions Reduction Program are higher for black Medicare beneficiaries and higher for Hispanic Medicare beneficiaries with Congestive Heart Failure and Acute Myocardial Infarction.[111] [112] [113] [114] [115] Studies have also shown that African Americans are significantly more likely than white Americans to die prematurely from heart disease and stroke.[116] The COVID–19 pandemic has further illustrated many of these longstanding health inequities with higher rates of infection, hospitalization, and mortality among black, Hispanic, and Indigenous and Native American persons relative to white persons.[117] [118]

[97] Joynt KE, Orav E, Jha AK. Thirty-Day Readmission Rates for Medicare Beneficiaries by Race and Site of Care. JAMA. 2011; 305(7):675–681.

[98] Lindenauer PK, Lagu T, Rothberg MB, et al. Income Inequality and 30 Day Outcomes After Acute Myocardial Infarction, Heart Failure, and Pneumonia: Retrospective Cohort Study. British Medical Journal. 2013; 346.

[99] Trivedi AN, Nsa W, Hausmann LRM, et al. Quality and Equity of Care in U.S. Hospitals. New England Journal of Medicine. 2014; 371(24):2298–2308.

[100] Polyakova, M., et al. Racial Disparities In Excess All-Cause Mortality During The Early COVID–19 Pandemic Varied Substantially Across States. Health Affairs. 2021; 40(2): 307–316.

[101] Rural Health Research Gateway. Rural Communities: Age, Income, and Health Status. Rural Health Research Recap. November 2018.

[102] *https://www.minorityhealth.hhs.gov/assets/PDF/Update_HHS_Disparities_Dept-FY2020.pdf.*

[103] *www.cdc.gov/mmwr/volumes/70/wr/mm7005a1.htm.*

[104] Poteat TC, Reisner SL, Miller M, Wirtz AL. COVID–19 Vulnerability of Transgender Women With and Without HIV Infection in the Eastern and Southern U.S. Preprint. *medRxiv.* 2020;2020.07.21.20159327. Published 2020 Jul 24. doi:10.1101/2020.07.21.20159327.

[105] Martino, SC, Elliott, MN, Dembosky, JW, Hambarsoomian, K, Burkhart, Q, Klein, DJ, Gildner, J, and Haviland, AM. Racial, Ethnic, and Gender Disparities in Health Care in Medicare Advantage. Baltimore, MD: CMS Office of Minority Health. 2020.

[106] Guide to Reducing Disparities in Readmissions. CMS Office of Minority Health. Revised August 2018. Available at: *https://www.cms.gov/About-CMS/Agency-Information/OMH/Downloads/OMH_Readmissions_Guide.pdf.*

[107] Singh JA, Lu X, Rosenthal GE, Ibrahim S, Cram P. Racial disparities in knee and hip total joint arthroplasty: An 18-year analysis of national Medicare data. Ann Rheum Dis. 2014 Dec;73(12):2107–15.

[108] Rivera-Hernandez M, Rahman M, Mor V, Trivedi AN. Racial Disparities in Readmission Rates among Patients Discharged to Skilled Nursing Facilities. J Am Geriatr Soc. 2019 Aug;67(8):1672–1679.

[109] Joynt KE, Orav E, Jha AK. Thirty-Day Readmission Rates for Medicare Beneficiaries by Race and Site of Care. JAMA. 2011;305(7):675–681.

[110] Tsai TC, Orav EJ, Joynt KE. Disparities in surgical 30-day readmission rates for Medicare beneficiaries by race and site of care. Ann Surg. Jun 2014;259(6):1086–1090.

[111] Rodriguez F, Joynt KE, Lopez L, Saldana F, Jha AK. Readmission rates for Hispanic Medicare beneficiaries with heart failure and acute myocardial infarction. Am Heart J. Aug 2011;162(2):254–261 e253.

[112] Centers for Medicare and Medicaid Services. Medicare Hospital Quality Chartbook: Performance Report on Outcome Measures; 2014.

[113] Guide to Reducing Disparities in Readmissions. CMS Office of Minority Health. Revised August 2018. Available at: *https://www.cms.gov/About-CMS/Agency-Information/OMH/Downloads/OMH_Readmissions_Guide.pdf.*

[114] Prieto-Centurion V, Gussin HA, Rolle AJ, Krishnan JA. Chronic obstructive pulmonary disease readmissions at minority-serving institutions. Ann Am Thorac Soc. Dec 2013;10(6):680–684.

[115] Joynt KE, Orav E, Jha AK. Thirty-Day Readmission Rates for Medicare Beneficiaries by Race and Site of Care. JAMA. 2011;305(7):675–681.

[116] HHS. Heart disease and African Americans. (March 29, 2021). *https://www.minorityhealth.hhs.gov/omh/browse.aspx?lvl=4&lvlid=19.*

[117] *https://www.cms.gov/files/document/medicare-covid-19-data-snapshot-fact-sheet.pdf.*

Continued

As noted by the Centers for Disease Control ''long-standing systemic health and social inequities have put many people from racial and ethnic minority groups at increased risk of getting sick and dying from COVID–19''.[119] One important strategy for addressing these important inequities is by improving data collection to allow for better measurement and reporting on equity across our programs and policies.

We are committed to achieving equity in health care outcomes for our beneficiaries by supporting providers in quality improvement activities to reduce health inequities, enabling beneficiaries to make more informed decisions, and promoting provider accountability for health care disparities.[120] [121] For the purposes of this rule, we are using a definition of equity established in Executive Order 13985, as ''the consistent and systematic fair, just, and impartial treatment of all individuals, including 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.'' [122] We note that this definition was recently established by the current administration, and provides a useful, common definition for equity across different areas of government, although numerous other definitions of equity exist.

Our ongoing commitment to closing the equity gap in CMS quality programs is demonstrated by a portfolio of programs aimed at making information on the quality of health care providers and services, including disparities, more transparent to consumers and providers. The CMS Equity Plan for Improving Quality in Medicare aims to support Quality Improvement Networks and Quality Improvement Organizations (QIN–QIOs); Federal, State, local, and tribal organizations; providers; researchers; policymakers; beneficiaries and their families; and other stakeholders in activities to achieve health equity. The CMS Equity Plan includes three core elements: (1) Increasing understanding and awareness of disparities; (2) developing and disseminating solutions to achieve health equity; and (3) implementing sustainable actions to achieve health equity.[123] The CMS Quality Strategy and Meaningful Measures Framework [124] include elimination of racial and ethnic disparities as a fundamental principle. Our ongoing commitment to closing the health equity gap in the HH QRP is demonstrated by seeking to adopt through future rulemaking Standardized Patient Assessment Data Elements under the HH QRP which include several social determinants of health (SDOH).

We continue to work with Federal and private partners to better collect and leverage data on social risk to improve our understanding of how these factors can be better measured in order to close the health equity gap. Among other things, we have developed an Inventory of Resources for Standardized Demographic and Language Data Collection [125] and supported collection of specialized International Classification of Disease, 10th Edition, Clinical Modification (ICD–10–CM) codes for describing the socioeconomic, cultural, and environmental determinants of health. We continue to work to improve our understanding of this important issue and to identify policy solutions that achieve the goals of attaining health equity for all patients.

2. Solicitation of Public Comment

Under authority of the IMPACT Act and section 1895(b)(3)(B)(v) of the Act, we are seeking comment on the possibility of expanding measure development, and the collection of other Standardized Patient Assessment Data Elements that address gaps in health equity in the HH QRP. Any potential SPADE or measure reporting related to health equity data under the HH QRP that might result from public comments received in response to this solicitation would be addressed through a separate notice- and-comment rulemaking in the future.

Specifically, we are inviting public comment on the following:

- As finalized in the CY 2020 HH PPS final rule (84 FR 60597 through 60608), HHAs will be required to report Standardized Patient Assessment Data Elements on certain SDOH, including, ethnicity, preferred language, interpreter services, health literacy, transportation and social isolation.[126] CMS is seeking guidance on any additional Standardized Patient Assessment Data Elements that could be used to assess health equity in the care of HHA patients, for use in the HH QRP.
- Recommendations for how CMS can promote health equity in outcomes among HHA patients. We are also interested in feedback regarding whether including HHA-level quality measure results stratified by social risk factors and social determinants of health (for example, dual eligibility for Medicare and Medicaid, race) in confidential feedback reports could allow HHAs to identify gaps in the quality of care they provide (for example, methods similar or analogous to the *CMS Disparity Methods* [127] which provide hospital-level confidential results stratified by dual eligibility for condition-specific readmission measures currently included in the Hospital Readmission Reduction Program (84 FR 42496 through 42500).
- Methods that commenters or their organizations use in employing data to reduce disparities and improve patient outcomes, including the source(s) of data used, as appropriate.
- Given the importance of structured data and health IT standards for the capture, use, and exchange of relevant health data for improving health equity, the existing challenges HHAs encounter for effective capture, use, and exchange of health information include data on ethnicity and other social determinants

[118] Ochieng N, Cubanski J, Neuman T, Artiga S, and Damico A. Racial and Ethnic Health Inequities and Medicare. Kaiser Family Foundation. February 2021. Available at: *https://www.kff.org/medicare/report/racial-and-ethnic-health-inequities-and-medicare/.*

[119] *https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html.*

[120] *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/Downloads/CMS-Quality-Strategy.pdf.*

[121] Report to Congress: Improving Medicare Post-Acute Care Transformation (IMPACT) Act of 2014 Strategic Plan for Accessing Race and Ethnicity Data. January 5, 2017. Available at *https://www.cms.gov/About-CMS/Agency-Information/OMH/Downloads/Research-Reports-2017-Report-to-Congress-IMPACT-ACT-of-2014.pdf.*

[122] *https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government.*

[123] Centers for Medicare & Medicaid Services Office of Minority Health. The CMS Equity Plan for Improving Quality in Medicare. *https://www.cms.gov/About-CMS/Agency-Information/OMH/OMH_Dwnld-CMS_EquityPlanforMedicare_090615.pdf.*

[124] *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/MMF/General-info-Sub-Page.*

[125] Centers for Medicare and Medicaid Services. Building an Organizational Response to Health Disparities Inventory of Resources for Standardized Demographic and Language Data Collection. 2020. *https://www.cms.gov/About-CMS/Agency-Information/OMH/Downloads/Data-Collection-Resources.pdf.*

[126] In response to the COVID–19 PHE, CMS released an May 8, 2020 interim final rule with comment period (85 FR 27595 through 27597) which delayed the compliance date for the collection and reporting of the SDOH for at least 2 full fiscal years after the end of the PHE.

[127] *https://qualitynet.cms.gov/inpatient/measures/disparity-methods/methodology.*

of health to support care delivery and decision-making.

While we will not be responding to specific comments submitted in response to this Request for Information in the CY 2022 HH PPS final rule, we intend to use this input to inform future policy development. We look forward to receiving feedback on these topics, and note for readers that responses to the RFI should focus on how they could be applied to the HH QRP requirements. Please note that any responses provided will not impact payment decisions.

IX. Revised Compliance Date for Certain Reporting Requirements Adopted for Inpatient Rehabilitation Facility (IRF) QRP and Long-Term Care Hospital (LTCH) QRP

A. Proposed Revised Compliance Date for Certain Inpatient Rehabilitation Facility (IRF) QRP Reporting Requirements

1. Background

In IFC–2 (85 FR 27550), we delayed the compliance date for certain reporting requirements under the IRF QRP (85 FR 27595 through 27596). Specifically, we delayed the requirement for IRFs to begin reporting the Transfer of Health (TOH) Information to Provider-PAC and the TOH Information to Patient-PAC measures and the requirement for IRFs to begin reporting certain Standardized Patient Assessment Data Elements from October 1, 2020 to October 1st of the year that is at least one full fiscal year after the end of the COVID–19 PHE. CMS also delayed the adoption of the updated version of the IRF Patient Assessment Instrument (PAI) V4.0 with which IRFs would have used to report the TOH measures and certain Standardized Patient Assessment Data Elements.

Under IFC–2, IRFs must use the IRF–PAI V4.0 to begin collecting data on the two TOH Information measures beginning with discharges on October 1st of the year that is at least one full fiscal year after the end of the COVID–19 PHE. IRFs must also begin collecting data on certain Standardized Patient Assessment Data Elements on the IRF–PAI V4.0, beginning with admissions and discharges (except for the hearing, vision, race, and ethnicity Standardized Patient Assessment Data Elements, which would be collected at admission only) on October 1st of the year that is at least one full fiscal year after the end of the COVID–19 PHE. The delay to begin collecting data for these measures was intended to provide relief to IRFs from the added burden of implementing an updated instrument during the COVID–19 PHE. We wanted to provide maximum flexibilities for IRFs to respond to the public health threats posed by the COVID–19 PHE, and to reduce the burden in administrative efforts associated with attending trainings, training their staff, and working with their vendors to incorporate the updated assessment instruments into their operations.

At the time we finalized the policy in the IFC–2, we believed that the delay in collection of the TOH Information measures and Standardized Patient Assessment Data Elements would not have a significant impact on the IRF QRP. However, the COVID–19 PHE showed the important need for theses TOH Information measures and Standardized Patient Assessment Data Elements under the HH QRP. The PHE's disproportionate impact demonstrates the importance of analyzing this impact and the needs for these populations in order to improve quality of care within IRFs especially during a public health emergency.

2. Current Assessment of IRFs

To accommodate the COVID–19 PHE, CMS has provided additional guidance and flexibilities, and as a result IRFs have had the opportunity to adopt new processes and modify existing processes to accommodate the significant health crisis presented by the COVID–19 PHE. For example, CMS held regular ''Office Hours'' conference calls to provide IRFs regular updates on the availability of supplies, as well as answer questions about delivery of care, reporting and billing. CMS also supported PAC providers, including IRFs, by providing flexibilities in the delivery of care in response to the PHE, such as modifying the required face-to-face visits in IRF to be completed by telehealth (42 CFR 412.622(a)(3)(iv) and 412.29(e)) during the PHE for COVID–19, and waiving the post-admission physician evaluation requirement at § 412.622(a)(4)(ii). In the FY 2021 IRF PPS final rule (86 FR 48445 through 48447), CMS removed the post-admission physician evaluation requirement permanently beginning October 1, 2021. In addition, as of June 9, 2021, 63.8 percent of the adult population has received at least one vaccination, and COVID–19 cases and deaths have steadily declined over the last 30 days.[128] We also believe that much more is known about COVID–19 than at the time CMS finalized IFC–2.[129] [130] [131] [132]

Based upon other flexibilities such as the previous examples, the increase in knowledge IRF providers have about treating patients with COVID–19 [133] since finalizing IFC–2, and the trending data on COVID–19, IRFs are in a better position to accommodate reporting of the TOH measures and certain (Social Determination of Health) Standardized Patient Assessment Data Elements. Also, recent reports (not available at the time CMS IFC–2 was finalized) suggest that IRFs have the capacity to begin reporting the TOH measures and certain Social Determinant of Health (SDOH) Standardized Patient Assessment Data Elements.[134]

After evaluating the impact of the revised compliance date under IFC–2, feasibility around data collection by IRFs, and support needs of providers during the COVID–19 PHE, we have determined that IRFs now have the administrative capacity to attend training, train their staff, and work with their vendors to incorporate the updated assessment instruments, the IRF–PAI V4.0 into their operations.

We now believe that based upon the advancement of information available about COVID–19 vaccination and treatments described previously, and the importance of the data in the IRF QRP, it would be appropriate to modify the compliance date finalized in IFC–2. This may support future activities under Executive Order 13985, entitled ''Advancing Racial Equity and Support for Underserved Communities Throughout the Federal Government,'' issued January 20, 2021(*https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government*).

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[128] CDC COVID Data Tracker. Retrieved from: *https://covid.cdc.gov/covid-data-tracker/#datatracker-home.*

[129] Here's Exactly Where We are with Vaccine and Treatments for COVID–19. Healthline. May 11, 2021. Retrieved from: *https://www.healthline.com/health-news/heres-exactly-where-were-at-with-vaccines-and-treatments-for-covid-19.*

[130] COVID research: A year of scientific milestones. Nature. May 5, 2021. Retrieved from: *https://www.nature.com/articles/d41586-020-00502-w.*

[131] Clinical trial of therapeutics for severely ill hospitalized COVID–19 patients begins. National Institutes of Health News Releases. April 22, 2021. Retrieved from: *https://www.nih.gov/news-events/news-releases/clinical-trial-therapeutics-severely-ill-hospitalized-covid-19-patients-begins.*

[132] COVID–19 Treatment Guidelines. National Institutes of Health. Updated April 21, 2021. Retrieved from: *https://www.covid19treatmentguidelines.nih.gov/whats-new/.*

[133] Ehsanian R, Workman J, Jones D, et al. Free-standing acute inpatient rehabilitation hospital enhanced practices and policies in response to the COVID–19 outbreak. Future Sci OA. 2021 Fe; 7(2): FSO667. Retrieved from: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7745654/.*

[134] *https://www.healthaffairs.org/do/10.1377/hblog20201214.543463/full/.*

3. Proposal To Collect the Transfer of Health Information to Provider-PAC Measure, the Transfer of Health Information to Patient-PAC Measure, and Certain Standardized Patient Assessment Data Elements Beginning October 1, 2022

We are proposing to revise the compliance date from IFC–2 to October 1, 2022. This revised date would begin the collection of data on the Transfer of Health Information to Provider-PAC measure and Transfer of Health Information to Patient-PAC measure, and certain Standardized Patient Assessment Data Elements on the updated version of the IRF–PAI assessment instrument referred to as IRF–PAI V4.0. This revised date of October 1, 2022, which is a 2-year delay from the original compliance date finalized in the FY 2020 IRF PPS final rule (84 FR 39054 through 39173), balances the support that IRFs needed during much of the COVID–19 PHE as CMS provided flexibilities to support IRFs along with the need to collect this important data.

The need for the Standardized Patient Assessment Data Elements and TOH Information measures have been shown to be even more pressing with issues of inequities the COVID–19 PHE laid bare. This data that includes addressing SDOH provides information expected to improve quality of care for all. Consequently, we are proposing to revise the compliance date to reflect this balance and assure that data collection begins on October 1, 2022.

As stated in the FY 2020 IRF PPS final rule, CMS will provide the training and education for IRFs to be prepared for this implementation (84 FR 39119 through 39147). In addition, if CMS adopts an October 1, 2022 compliance date, CMS would release a draft of the updated version of the IRF–PAI, IRF–PAI V4.0, in early 2022.

Based upon our evaluation, we propose that IRFs would collect the Transfer of Health Information to Provider-PAC measure, the TOH Information to the Patient-PAC measure, and certain Standardized Patient Assessment Data Elements beginning October 1, 2022. Accordingly, we propose that IRFs would begin collecting data on the two TOH measures beginning with discharges on October 1, 2022. We also propose that IRFs would begin collecting data on the six categories of Standardized Patient Assessment Data Elements on the IRF–PAI V4.0, beginning with admissions and discharges (except for the hearing, vision, race, and ethnicity Standardized Patient Assessment Data Elements, which would be collected at admission only) on October 1, 2022.

We invite public comment on these proposals.

B. Proposed Revised Compliance Date for Certain Long-Term Care Hospital (LTCH) QRP Reporting Requirements

1. Background

In IFC–2 (85 FR 27550), we delayed the compliance date for certain reporting requirements under the LTCH QRP (85 FR 27595 through 27596). Specifically, we delayed the requirement for LTCHs to begin reporting the TOH Information to Provider-PAC measure and the TOH Information to Patient-PAC measure and the requirement for LTCHs to begin reporting certain Standardized Patient Assessment Data Elements from October 1, 2020 to October 1st of the year that is at least one full fiscal year after the end of the COVID–19 PHE. CMS also delayed the adoption of the updated version of the LTCH Continuity Assessment and Record of Evaluation (CARE) Data Set (LCDS) V5.0 with which LTCHs would have used to report the TOH measures and certain Standardized Patient Assessment Data Elements.

Under IFC–2, LTCHs must use the LCDS V5.0 to begin collecting data on the two TOH Information measures beginning with discharges on October 1st of the year that is at least one full fiscal year after the end of the COVID–19 PHE. LTCHs must also begin collecting data on certain Standardized Patient Assessment Data Elements on the LCDS V5.0, beginning with admissions and discharges (except for the hearing, vision, race, and ethnicity Standardized Patient Assessment Data Elements, which would be collected at admission only) on October 1st of the year that is at least one full fiscal year after the end of the COVID–19 PHE. The delay to begin collecting data for these measures was intended to provide relief to LTCHs from the associated burden of implementing an updated instrument during the COVID–19 PHE. We wanted to provide maximum flexibilities for LTCHs to respond to the public health threats posed by the COVID–19 PHE, and to reduce the burden in administrative efforts associated with attending trainings, training their staff, and working with their vendors to incorporate the updated assessment instruments into their operations.

At the time we finalized the policy in the IFC–2, we believed that the delay in collection of the TOH Information measures, and Standardized Patient Assessment Data Elements would not have a significant impact on the LTCH QRP. However, the COVID–19 PHE showed the important need for theses TOH Information measures and Standardized Patient Assessment Data Elements under the LTCH QRP. The PHE's disproportionate impact on minority populations demonstrates the importance of analyzing this impact and the needs for these populations in order to improve quality of care within LTCHs especially during a public health emergency.

2. Current Assessment of LTCHs

To accommodate the COVID–19 PHE, CMS has provided additional guidance and flexibilities, and as a result LTCHs have had the opportunity to adopt new processes and modify existing processes to accommodate the significant health crisis presented by the COVID–19 PHE. For example, CMS held regular ''Office Hours'' conference calls to provide LTCHs regular updates on the availability of supplies, as well as answer questions about delivery of care, reporting and billing. CMS also supported PAC providers, including LTCHs, by providing flexibilities in the delivery of care in response to the PHE, such as waiving requirement at 42 CFR 482.43(a)(8), 482.61(e), and 485.642(a)(8) to provide detailed information regarding discharge planning. To address workforce concerns related to COVID–19, CMS waived requirements under 42 CFR 482.22(a)(1) through (4) to allow for physicians whose privileges would expire to continue practicing at the hospital and for new physicians to be able to practice before full medical staff/governing body review and approval. In addition, as of June 9, 2021, 63.8 percent of all the adult population has received at least one vaccination, and COVID–19 cases and deaths have steadily declined over the last 60 days.[135] We also believe that much more is known about COVID–19 than at the time CMS finalized IFC–2.[136] [137] [138] [139]

[135] CDC COVID Data Tracker. Retrieved from: *https://covid.cdc.gov/covid-data-tracker/#datatracker-home.*

[136] Here's Exactly Where We are with Vaccine and Treatments for COVID–19. Healthline. May 11, 2021. Retrieved from: *https://www.healthline.com/health-news/heres-exactly-where-were-at-with-vaccines-and-treatments-for-covid-19.*

[137] COVID research: A year of scientific milestones. Nature. May 5, 2021. Retrieved from: *https://www.nature.com/articles/d41586-020-00502-w.*

[138] Clinical trial of therapeutics for severely ill hospitalized COVID–19 patients begins. National Institutes of Health News Releases. April 22, 2021. Retrieved from: *https://www.nih.gov/news-events/news-releases/clinical-trial-therapeutics-severely-ill-hospitalized-covid-19-patients-begins.*

Based upon other flexibilities such as the previous examples, the increase in knowledge LTCH providers have about treating patients with COVID–19 [140] since finalizing IFC–2, and the trending data on COVID–19, LTCHs are now in a better position to accommodate reporting of the TOH measures and certain Standardized Patient Assessment Data Elements.[141]

After evaluating the impact of the revised compliance date under IFC–2, feasibility around data collection in LTCHs, and support needs of providers during the COVID–19 PHE, we have determined that LTCHs now have the administrative capacity to attend trainings, train their staff, and work with their vendors to incorporate the updated assessment instrument, the LCDS V5.0 into their operations.

We now believe that based upon the advancement of information available about COVID–19 vaccination and treatments described previously, and the importance of the data to the LTCH QRP it would be appropriate to modify the compliance date finalized in IFC–2. This may support future activities under Executive Order 13985, entitled ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,'' issued January 20, 2021 (*https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government).*

3. Proposal To Collect the Transfer of Health Information to Provider-PAC Measure, the Transfer of Health Information to Patient-PAC Measure, and Certain Standardized Patient Assessment Data Elements Beginning October 1, 2022

We are proposing to revise the compliance date from IFC–2 to October 1, 2022. This revised date would begin the collection of data on the Transfer of Health Information to Provider-PAC measure and Transfer of Health Information to Patient-PAC measure, and certain Standardized Patient Assessment Data Elements on the updated version of the LCDS V5.0. This revised date of October 1, 2022, which is a two-year delay from this original compliance date finalized in the FY 2020 IPPS/LTCH PPS final rule (84 FR 42044 through 42701), balances the support that LTCHs needed during much of the COVID–19 PHE as CMS provided flexibilities to support LTCHs along with the need to collect this important data.

The need for the Standardized Patient Assessment Data Elements and TOH Information measures have been shown to be even more pressing with issues of inequities the COVID–19 PHE laid bare. This data that includes addressing SDOH provides information expected to improve quality of care for all. Consequently, we are proposing to revise the compliance date to reflect this balance and assure that data reporting begins on October 1, 2022.

As stated in the FY 2020 IPPS/LTCH PPS final rule, CMS will provide the training and education for LTCHs to be prepared for this implementation (84 FR 42540 through 42560). In addition, if CMS adopts an October 1, 2022 compliance date, CMS would release a draft of the updated version of the LCDS, LCDS V5.0, in early 2022.

Based upon our evaluation, we propose that LTCHs would collect the Transfer of Health Information to Provider-PAC measure, the Transfer of Health Information to the Patient-PAC measure, and certain Standardized Patient Assessment Data Elements, beginning on October 1, 2022. We propose that accordingly, LTCHs would begin collecting data on the two TOH measures beginning with discharges on October 1, 2022. We also propose that LTCHs would begin collecting data on the six categories of Standardized Patient Assessment Data Elements on the LCDS V5.0, beginning with admissions and discharges (except for the hearing, vision, race, and ethnicity Standardized Patient Assessment Data Elements, which would be collected at admission only) on October 1, 2022.

We invite public comment on these proposals.

X. Collection of Information Requirements

A. Statutory Requirement for Solicitation of Comments

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 the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

In this proposed rule, we are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs).

B. Collection of Information Requirements

1. HH QRP

In section IV.C. of this propose rule, we propose changes and updates to the HH QRP. We believe that the burden associated with the HH QRP proposals is the time and effort associated with data quality and reporting. As of March 1, 2021, there are approximately 11,400 HHAs reporting quality data to CMS under the HH QRP. For the purposes of calculating the costs associated with the information collection requirements, we obtained mean hourly wages for these from the U.S. Bureau of Labor Statistics' May 2020 National Occupational Employment and Wage Estimates (*https://www.bls.gov/oes/current/oes_nat.htm*). To account for overhead and fringe benefits (100 percent), we have doubled the hourly wage. These amounts are detailed in Table 35.

[139] COVID–19 Treatment Guidelines. National Institutes of Health. Updated April 21, 2021. Retrieved from: *https://www.covid19treatmentguidelines.nih.gov/whats-new/.*

[140] Ehsanian R, Workman J, Jones D, et al. Free-standing acute inpatient rehabilitation hospital enhanced practices and policies in response to the COVID–19 outbreak. Future Sci OA. 2021 Fe; 7(2): FSO667. Retrieved from: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7745654/.*

[141] *https://www.healthaffairs.org/do/10.1377/hblog20201214.543463/full/.*

TABLE 35: U.S. BUREAU OF LABOR STATISTICS' MAY 2020 NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

Occupation title	Occupation Code	Mean Hourly Wage ($/hr)	Fringe Benefit (100%) ($/hr)	Adjusted Hourly Wage ($/hr)
Registered Nurse (RN)	29-1141	$38.47	$38.47	$76.94
Physical therapists HHAs	29-1123	$44.08	$44.08	$88.16
Speech-Language Pathologists (SLP)	29-1127	$40.02	$40.02	$80.04
Occupational Therapists (OT)	29-1122	$42.06	$42.06	$84.12
Medical Dosimetrists, Medical Records Specialists, and Health Technologists and Technicians	29-2098	$23.21	$23.21	$46.42

In section IV.C.4.a. of the proposed rule, we are proposing to remove the Drug Education on All Medications Provided to Patient/Caregiver during All Episodes of Care measure under removal factor 1, measure performance among HHAs is so high and unvarying that meaningful distinctions in improvements in performance can no longer be made. Additionally, we are proposing to remove the OASIS item M2016 used to calculate this measure. This item removal will result in a decrease in overall burden.

In sections IV.C.4.b. and c. of the proposed rule, we are proposing to adopt the Home Health Within Stay Potentially Preventable Hospitalization claims-based measure. We are proposing to replace the Acute Care Hospitalization During the First 60 Days of HH (NQF #0171) measure and the Emergency Department Use without Hospitalization During the First 60 Days of HH (NQF #0173) measure with the Within Stay Potentially Hospitalization measure beginning with the CY 2023 HH QRP under our measure removal factor 6: A measure that is more strongly associated with desired patient outcomes for the particular topic is available. Because the measures are claims-based, the replacement/removal will not impact collection of information.

Therefore, we are proposing a net reduction of 1 data element at the Discharge from Agency time point and 1 data element at the Transfer of Care time point associated with OASIS item (M2016) collection as a result of the measure removal. We assume that each data element requires 0.3 minutes of clinician time to complete. Therefore, we estimate that there would be a reduction in clinician burden per OASIS assessment of 0.3 minutes at Discharge from Agency and 0.3 minutes at Transfer of Care.

The OASIS is completed by RNs or PTs, or very occasionally by occupational therapists (OTs) or speech language pathologists (SLT/SP). Data from 2020 show that the OASIS is completed by RNs (approximately 76.5 percent of the time), PTs (approximately 20.78 percent of the time) and other therapists including OTs and SLP/STs (approximately 2.72 percent of the time). Based on this analysis, we estimated a weighted estimated clinician average hourly wage of $79.41, inclusive of fringe benefits using the wage data from Table 35. Individual providers determine the staffing necessary.

Table 36 shows the total number of assessments submitted in CY 2020 and estimated costs at each time point.

TABLE 36: CY 2020 OASIS SUBMISSIONS AND ESTIMATED COSTS, BY TIME POINT

Time Point	CY 2020 Assessments Completed	Estimated Cost ($)
Transfer of Care	1,788,100	$4,259,791
Discharge from agency	5,168,903	$228,832,891
TOTAL	**6,957,003**	**$233,092,681**

* Estimated Burden ($) at each Time-Point = (# CY 2020 Assessments Completed) x (clinician burden [min]/60) x ($79.41 [weighted clinician average hourly wage]). Excluding M2016, there are 1.8 minutes to complete transfer of care 6 transfer of care data elements and 33.45 minutes to complete 123 data elements at discharge.

Based on the data in Table 35 and Table 36 for the 11,400 active Medicare-certified HHAs, we estimate the total decrease in costs associated with the changes in the HH QRP at approximately $242 per HHA annually or $2,762,277 for all HHAs. This corresponds to an estimated decrease in clinician burden associated proposed changes to the HH QRP of approximately 3.1 hours per HHA or approximately 34,785 hours for all HHAs. This decrease in burden would be accounted for in the information collection under OMB control number 0938–1279 (Expiration date: 12/31/2021).

In section IV.C. of this proposed rule, we propose a revised compliance date for certain reporting requirements adopted for the HH QRP. The burden for the proposed revision to the HH QRP requirements as adopted in the CY 2020 HH PPS final rule (84 FR 60632 through 60642) has been accounted for in OMB control number 0938–1279. Therefore, this proposal would not affect the information collection burden already established.

2. ICRs Regarding Revised Compliance Dates for Certain Reporting Requirements

a. IRF QRP Requirements

In section VIII.A. of this proposed rule, we propose to revise the compliance date for certain reporting requirements adopted for the IRF QRP. We believe that the burden associated with the IRF QRP proposal is the time and effort associated with reporting quality data. As of April 4, 2021, there are approximately 1,109 IRFs reporting quality data to CMS. The burden for the proposed revision to the IRF QRP requirements as adopted in the FY 2020 IRF PPS final rule (84 FR 39165 through 39172) has been accounted for in OMB control number 0938–0842 (Expiration date: 12/31/2022). Therefore, this proposal would not affect the information collection burden for the IRF QRP.

b. LTCH QRP Requirements

In section VIII.B. of this proposed rule, we propose a revised compliance date for certain reporting requirements adopted for the LTCH QRP. We believe that the burden associated with the LTCH QRP proposal is the time and effort associated with reporting quality data. As of April 21, 2021, there are approximately 363 LTCHs reporting quality data to CMS. The burden for the proposed revision to the LTCH QRP requirements as adopted in the FY 2020 IPPS/LTCH PPS final rule (84 FR 42602 through 42656) has been accounted for in OMB control number 0938–1163 (expiration12/31/2022). Therefore, this proposal would not affect the information collection burden for the LTCH QRP.

3. ICRs Related to the Changes in the Home Health CoPs

a. ICRs Related to the Virtual Supervision of HHA Aides

In section IV.D. of this propose rule, we would revise § 484.80(h)(1) to specify that if a patient is receiving skilled care (patient who is receiving skilled nursing, physical or occupational therapy, or speech language pathology services), the home health aide supervisor (RN or therapist) must complete a supervisory assessment of the aide services being provided, either onsite (that is, an in person visit) or using interactive telecommunications systems no less frequently than every 14 days. The home health aide would not have to be present during the supervisory assessment. The use of interactive telecommunications systems for the aide supervisory assessment must not exceed 2 times per HHA in a 60-day period. We propose to revise § 484.80(h)(2) to specify that, if a patient is not receiving skilled care, the RN must make an in-person supervisory visit to the location where the patient is receiving care, once every 60 days to assess the quality of care and services provided by the home health aide and to ensure that services meet the patient's needs. The home health aide does not need to be present during this visit. We are also proposing that the RN would make a semi-annual on-site (in-person) visit to the location where a patient is receiving care in order to observe and assess the home health aide while he or she was performing care. This semi-annual supervisory visit of the aide performing care would replace the current every 60-day requirement of direct supervision of the aide performing care. Section 484.80(h) also requires HHAs to document the supervision of home health aides in accordance with specified timeframes. In addition, we believe the modification proposed at § 484.80(h)(3) includes retraining and competency evaluations related to both the skills verified as deficient and to any related skills will not add any information collection burden and will enhance the provisions of safe, quality home health services. In accordance with the implementing regulation of the PRA at 5 CFR 1320.3(b)(2), we believe that both the existing requirements and the proposed revisions to the requirements at 484.80(h) are exempt from the PRA. We believe competency evaluations are a usual and customary business practice and we state as such in the information collection request associated with the Home Health CoPs (OMB control number: 0938–1299/Expiration: 06/30/2021). Therefore, we are not proposing to seek PRA approval for any information collection or recordkeeping activities that may be conducted in connection with the proposed revisions to § 484.80(h), but we request public comment on our determination that the time and effort necessary to comply with these evaluation requirements is usual and customary, and would be incurred by home health staff even absent this regulatory requirement.

b. ICRs Related to Permitting Occupational Therapist To Complete the Initial and Comprehensive Assessments for Home Health Agencies

In section IV.D. of this proposed rule, we would implement Division CC, section 115 of CAA 2021 by proposing conforming regulations text changes at § 484.55(a)(2) and (b)(3) permitting the occupational therapist to complete the initial and comprehensive assessments for Medicare patients when ordered with another rehabilitation therapy service (speech language pathology or physical therapy) that establishes program eligibility, in the case where skilled nursing services are also not initially on the home health plan of care. These changes permit occupational therapists to complete these assessments even though the need for occupational therapy would not establish the patient's eligibility for the Medicare home health benefit. In accordance with the implementing regulations of the PRA at 5 CFR 1320.3(b)(2), we believe that both the existing requirements and the proposed revisions to the requirements at § 484.55(a)(2) and (b)(3) are exempt from the PRA. We believe patient assessment are a usual and customary business practice and we state such in the information collection request associated with the OASIS data set, which comprises the core of the patient assessment and is currently approved under OMB control number: 0938–1279 (Expiration date: 06/30/2024). Therefore, we are not proposing to seek PRA approval for any information collection or recordkeeping activities that may be conducted in connection with the proposed revisions to § 484.55(a)(2) and (b)(3), but we request public comment on our determination that the time and effort necessary to comply with these evaluation requirements is usual and customary and would be incurred by home health staff even absent this regulatory requirement.

4. ICRs Regarding Medicare Provider and Supplier Enrollment Provisions

We do not anticipate any information collection burden associated with our provider and supplier enrollment proposals. Since most of these proposals have been in subregulatory guidance for a number of years and we are simply incorporating them into regulation, there would not be any change in burden on the provider community. Those provisions that are not in subregulatory guidance do not implicate information collection requirements.

5. ICRs Regarding Survey and Enforcement Requirements for Hospices

a. Wage Data

To derive average costs, we used data from the U.S. Bureau of Labor Statistics' May 2020 National Occupational Employment and Wage Estimates for all salary estimates (*http://www.bls.gov/oes/current/oes_nat.htm*). In this regard, Table 37 presents the mean hourly wage, the cost of fringe benefits and

overhead (calculated at 100 percent of salary), and the adjusted hourly wage.

TABLE 37: U.S. BUREAU OF LABOR STATISTICS' MAY 2020 NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

BLS Occupation Title	Occupation Code	Mean Hourly Wage	Fringe Benefits and Overhead	Adjusted Hourly Wages
Computer and Information Analysts	15-1210	$48.40	$48.40	$96.80
Home Health and Personal Care Aides; and Nursing Assistants, Orderlies, and Psychiatric Aides	31-1100	$14.10	$14.10	$28.20
Medical or Health Services Manager	11-9111	$55.37	$55.37	$110.74
Registered Nurse (RN)	29-1141	$38.47	$38.47	$76.94

b. Application and Re-Application Procedures for National Accrediting Organizations (§ 488.5)

We proposed at § 488.5(a)(4)(x) to require AOs with CMS-approved hospice programs to include a statement of deficiencies, (that is, the Form CMS–2567 or a successor form) to document findings of the hospice Medicare CoPs and to submit such in a manner specified by CMS. The current information collection request for the form CMS–2567, titled ''Statement Of Deficiencies And Plan Of Correction'' (OMB control number 0938–0391/ Expiration date: 6/30/2021) does not account for any information collection related burden associated with AO use. As discussed in the preamble of this proposed rule, in section VII.B.2.b. of this proposed rule, we note that the currently approved Form CMS–2567 does not include a place for the name of the AO completing the survey and AOs are not addressed in the instructions. These are minor revisions to the form but we will submit the revised information collection request to OMB for approval.

We discussed in the preamble section VII.B.2.b. of this proposed rule, how AOs conduct hospice program surveys and gather deficiency findings into a report that is provided to the surveyed hospice. CMS believes the statutory requirement and subsequent proposed rule for the inclusion of Form CMS–2567 would not add significant burden to AOs as they already develop deficiency finding reports as part of their existing process just in a different format. We note that AOs would need to make a one-time update to their existing proprietary electronic documentation systems to include the Form CMS–2567. We estimate that this task would be performed by a computer and information analyst. According to the U.S Bureau of Labor statistics, the mean hourly wages for a computer and information analyst is $48.40. This wage adjusted for the employer's fringe benefits and overhead would be $96.80.

We estimate that it would take at least two persons working on a full-time basis for 3 days for the AO staff to revise their system to add the required Form CMS–2567. Therefore, we estimate that the total time required for the two team members to perform this task would be 48 hours. As of March 2021, there are three AOs that accredit Medicare certified hospice programs. The total time burden across these three AOs would be 144 hours.

We estimate that the cost burden related to the work performed by two computer and information analysts would be $4,646.50 (24 hours × $193.60 ($96.80 × 2)). The total cost across the three AOs would be $13,939.50 (3 AOs × $4,646.50). The burden associated with this requirement will be submitted to OMB under OMB control number 0938–NEW (Expiration date: pending). We seek comments that would help us to develop an accurate estimate of the cost and time burden that would result from this collection of information.

These are minor revisions to the form; however, as required under the PRA we will be seeking OMB approval for a revised version of the form. Please note, we will be seeking OMB approval via the required notice and comment periods but they will be separate from this proposed rulemaking. The revised information collection request will be announced in the **Federal Register** and the public will have the opportunity to review and comment as necessary.

c. Surveyor Qualifications and Prohibition of Conflicts of Interest (§ 488.1115)

We proposed at § 488.1115, to require AO surveyors to complete the online hospice basic training. As discussed in the preamble section VII.B.2.d. of this proposed rule, we note there are multiple online training programs available to SA surveyors on the CMS QSEP website. These courses are self-paced, slide based presentations and the person taking the course can take the courses over a period of time. The amount of time required to complete each of these training courses varies depending on the pace at which the surveyor is able to read through or listen to the presentation and complete the training. Duration time is based on the estimate that it takes learners approximately 2 minutes per slide. This information is publicly available on *https://qsep.cms.gov/welcome.aspx.* We proposed that each AO hospice program surveyor take the hospice basic training course that has an average completion time of 24 hours. Completion time could be more or less depending upon the learner's familiarity with the content and overall learning style. Therefore, a hospice program AO surveyor would incur a time burden of approximately 24 hours for the completion of this CMS surveyor training course.

The AOs that accredit Medicare certified hospice programs would incur a cost burden for the wages of their surveyors for the time they spend taking these online surveyor training courses. Most surveyors are clinicians such as RNs.

As noted, we estimated that it would take approximately 24 hours for each AO surveyor to complete the hospice basic training online surveyor course. Therefore, the AO would incur wages in the amount of $1,846.56 per each surveyor that completes the CMS online surveyor training (24 hours × $76.94).

We are not able to precisely estimate total time and cost burden to each AO for the wages incurred for the time spent by all surveyors from each of the three hospice program AOs to take the CMS online surveyor training course, because each AO varies greatly in organization

size, number of accreditation programs approved by CMS, and total surveyor cadre numbers. There are no regulatory requirements for AOs to report to CMS on the number of surveyors within their organization nor information on how many of those surveyors survey each type of program approved by CMS. CMS notes there is a wide variety of total surveyor cadre numbers across all three AOs, based on information CMS has gathered from confidential numbers, voluntarily provided by some of the AOs to CMS, as part of their deeming authority application documents as well as information found online via a search of each AOs public website. Variation is generally based on the associated number of CMS-approved accreditation programs the AO possesses. For example, AOs who accredit only one provider or supplier type generally have about 25 surveyors while AOs with multiple programs have surveyor numbers well over 300 thereby skewing the ability to estimate an accurate time burden that represents the overall group. Because of this wide range CMS is estimating near the middle, using 100 total surveyors per AO. If we estimate that each AO has approximately 100 total surveyors, the estimated time burden to each AO associated with this requirement would be 2,400 hours (24 hours × 100 surveyors).

The estimated cost burden to each AO (that accredits Medicare-certified hospice programs) associated with this requirement would be $184,656 (2,400 hours × $76.94 per hour). The burden associated with this requirement will be submitted to OMB under OMB control number 0938–NEW (Expiration date: pending).

As of March 2021, there are three AOs that accredit Medicare-certified hospice programs. We estimate that the time burden across all of these AOs associated with the requirement that their surveyors take the CMS online surveyor training would be 7,200 hours (2,400 hours × 3 AOs).

The estimated cost across all AOs (that accredit Medicare-certified hospice programs) would be $553,968 ($184,656 × 3 AOs). We request feedback on the total number of AO hospice program surveyors we should consider, especially if our estimate of 100 is grossly under or over estimated.

6. HHVBP Expanded Model

In section III. of this proposed rule, we propose policies necessary to implement the expanded Home Health Value-Based Purchasing Model (see proposed §§ 484.340 through 484.375), which is aimed at increasing quality and reducing spending through payment adjustments based on quality performance for HHAs nationwide. Section 1115A(d)(3) of the Act exempts Innovation Center model tests and expansions, which include the HHVBP expanded model, from the provisions of the PRA. Specifically, this section provides that the provisions of the PRA does not apply to the testing and evaluation of Innovation Center models or to the expansion of such models.

C. 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. The requirements are not effective until they have been approved by OMB.

We invite public comments on these information collection requirements. If you wish to comment, please identify the rule (CMS–1747–P) and, where applicable, the preamble section, and the ICR section. See this rule's **DATES** and **ADDRESSES** sections for the comment due date and for additional instructions.

XI. Regulatory Impact Analysis

A. Statement of Need

1. HH PPS

Section 1895(b)(1) of the Act requires the Secretary to establish a HH PPS for all costs of home health services paid under Medicare. In addition, section 1895(b) of the Act requires: (1) The computation of a standard prospective payment amount include all costs for home health services covered and paid for on a reasonable cost basis and that such amounts be initially based on the most recent audited cost report data available to the Secretary; (2) the prospective payment amount under the HH PPS to be an appropriate unit of service based on the number, type, and duration of visits provided within that unit; and (3) the standardized prospective payment amount be adjusted to account for the effects of case-mix and wage levels among HHAs. Section 1895(b)(3)(B) of the Act addresses the annual update to the standard prospective payment amounts by the home health applicable percentage increase. Section 1895(b)(4) of the Act governs the payment computation. Sections 1895(b)(4)(A)(i) and (b)(4)(A)(ii) of the Act requires the standard prospective payment amount to be adjusted for case-mix and geographic differences in wage levels. Section 1895(b)(4)(B) of the Act requires the establishment of appropriate case-mix adjustment factors for significant variation in costs among different units of services. Lastly, section 1895(b)(4)(C) of the Act requires the establishment of wage adjustment factors that reflect the relative level of wages, and wage-related costs applicable to home health services furnished in a geographic area compared to the applicable national average level. Section 1895(b)(3)(B)(iv) of the Act provides the Secretary with the authority to implement adjustments to the standard prospective payment amount (or amounts) for subsequent years to eliminate the effect of changes in aggregate payments during a previous year or years that were the result of changes in the coding or classification of different units of services that do not reflect real changes in case-mix. Section 1895(b)(5) of the Act provides the Secretary with the option to make changes to the payment amount otherwise paid in the case of outliers because of unusual variations in the type or amount of medically necessary care. Section 1895(b)(3)(B)(v) of the Act requires HHAs to submit data for purposes of measuring health care quality, and links the quality data submission to the annual applicable percentage increase. Section 50208 of the BBA of 2018 (Pub. L. 115–123) requires the Secretary to implement a new methodology used to determine rural add-on payments for CYs 2019 through 2022.

Sections 1895(b)(2) and 1895(b)(3)(A) of the Act, as amended by section 51001(a)(1) and 51001(a)(2) of the BBA of 2018 respectively, required the Secretary to implement a 30-day unit of service, for 30-day periods beginning on and after January 1, 2020. The HH PPS wage index utilizes the wage adjustment factors used by the Secretary for purposes of Sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act for hospital wage adjustments.

2. HHVBP Model

Section 1115A(c) of the Act provides the Secretary with the authority to expand (including implementation on a nationwide basis), through notice and comment rulemaking, the duration and scope of a model that is being tested under section 1115A(b) of the Act if the following findings are made, taking into account the evaluation of the model under section 1115A(b)(4) of the Act: (1) The Secretary determines that the expansion is expected to either reduce spending without reducing quality of care or improve the quality of patient care without increasing spending; (2) the CMS Chief Actuary certifies that the expansion would reduce (or would not result in any increase in) net program spending; and (3) the Secretary determines that the expansion would

not deny or limit the coverage or provision of benefits. On January 8, 2021, we announced that the HHVBP Model (the original Model) had been certified for expansion nationwide,[142] as well as our intent to expand the Model through notice and comment rulemaking beginning no sooner than CY 2022. The original Model has resulted in an average 4.6 percent improvement in home health agencies' quality scores as well as average annual savings of $141 million to Medicare. The CMS Chief Actuary has determined that HHVBP Model would reduce Medicare expenditures if expanded to all States.

If finalized, all Medicare-certified HHAs in the 50 States, District of Columbia and the territories would be required to participate in the expanded HHVBP Model beginning January 1, 2022. These HHAs would compete on value based on an array of quality measures that capture the services provided by HHAs. The savings impacts related to the HHVBP Model expansion are estimated at a total projected 5-year gross FFS savings, CYs 2022 through 2026, of $3,154,000,000. The savings under the original Model are already assumed in the baseline and therefore are not included in the 5-year gross estimated savings under HHVBP Model expansion. As previously mentioned in section III.A.3.b. of this proposed rule, under the expanded duration and scope of this Model, we would continue to examine whether the proposed adjustments to the Medicare payment amounts that would otherwise be made to competing HHAs would result in statistically significant improvements in the quality of care being delivered to Medicare beneficiaries, as well as reductions in Medicare spending.

3. HH QRP

Section 1895(b)(3)(B)(v) of the Act requires HHAs to submit data in accordance with the requirements of the HH QRP and requires HHAs to submit data for purposes of measuring health care quality, and links the quality data submission to the annual applicable percentage increase.

4. Effects of the Changes to the Home Health CoPs

a. Virtual Supervision of HHA Aides

In section IV.D. of this rule, we propose to revise the CoPs for home health agencies. Specifically, in section IV.D. of this rule, we propose to revise the home health aide supervision requirements to allow for virtual supervision. The burden may be reduced for providers by improving the efficiency of the training and supervision of home health aides. We are also adding the requirement that the skills related to any deficient skills be addressed. We believe the burden associated with addressing skills related to those identified as deficient skills is minimal. Moreover, supervising employees to ensure the safe and effective provision of patient care is standard business practice throughout the health care community. Likewise, documenting that this supervision has occurred for internal personnel, accreditation, and State and Federal compliance purposes constitutes a usual and customary business practice. Therefore, the regulatory impact is negligible.

b. Permitting Occupational Therapists To Conduct the Initial Assessment Visit and Complete the Comprehensive Assessment for Home Health Agencies Under the Medicare Program

In accordance with Division CC, section 115 of CAA 2021, we are proposing conforming regulations text changes to permit the occupational therapist to complete the initial and comprehensive assessments for Medicare patients when ordered with another rehabilitation therapy service (speech language pathology or physical therapy) that establishes program eligibility, in the case where skilled nursing services are also not ordered. We do not expect any increase in burden for any of these modifications. In fact, for home health agencies, burden may be reduced by expanding the type of therapy discipline able to complete the initial and comprehensive assessments, in some circumstances, for Medicare patients. We do not expect the changes for these provisions will cause any appreciable amount of expense or anticipated saving and we do not believe this standard would impose any additional regulatory burden.

5. Medicare Coverage of Home Infusion Therapy

Section 1834(u)(1) of the Act, as added by section 5012 of the 21st Century Cures Act, requires the Secretary to establish a home infusion therapy services payment system under Medicare. This payment system requires a single payment to be made to a qualified home infusion therapy supplier for items and services furnished by a qualified home infusion therapy supplier in coordination with the furnishing of home infusion drugs. Section 1834(u)(1)(A)(ii) of the Act states that a unit of single payment is for each infusion drug administration calendar day in the individual's home. The Secretary shall, as appropriate, establish single payment amounts for types of infusion therapy, including to take into account variation in utilization of nursing services by therapy type. Section 1834(u)(1)(A)(iii) of the Act provides a limitation to the single payment amount, requiring that it shall not exceed the amount determined under the Physician Fee Schedule (under section 1848 of the Act) for infusion therapy services furnished in a calendar day if furnished in a physician office setting, except such single payment shall not reflect more than 5 hours of infusion for a particular therapy in a calendar day. Section 1834(u)(1)(B)(i) of the Act requires that the single payment amount be adjusted by a geographic wage index. Finally, section 1834(u)(1)(C) of the Act allows for discretionary adjustments which may include outlier payments and other factors as deemed appropriate by the Secretary, and are required to be made in a budget neutral manner. Section 1834(u)(3) of the Act specifies that annual updates to the single payment are required to be made beginning January 1, 2022, by increasing the single payment amount by the percentage increase in the CPI–U for all urban consumers for the 12-month period ending with June of the preceding year, reduced by the productivity adjustment. The unit of single payment for each infusion drug administration calendar day, including the required adjustments and the annual update, cannot exceed the amount determined under the fee schedule under section 1848 of the Act for infusion therapy services if furnished in a physician's office, and the single payment amount cannot reflect more than 5 hours of infusion for a particular therapy per calendar day. Finally, Division N, section 101 of CAA 2021 amended section 1848(t)(1) of the Act and modified the CY 2021 PFS rates by providing a 3.75 percent increase in PFS payments only for CY 2021.

6. Medicare Provider and Supplier Enrollment Provisions

Our proposals concerning Medicare provider and supplier enrollment are needed to (1) incorporate various subregulatory policies into 42 CFR part 424, subpart P, and (2) clarify several policy issues. We believe these proposals would increase transparency by allowing the provider community to furnish public comments on them while eliminating uncertainty regarding the scope and applicability of the provisions in question.

[142] *https://www.cms.gov/files/document/certification-home-health-value-based-purchasing-hhvbp-model.pdf.*

7. Survey and Enforcement Requirements for Hospice Providers

In accordance with section 407 of the CAA 2021, we propose conforming regulations which establish new hospice program survey and enforcement requirements. We believe these proposals not only meet the statutory requirements but would increase public transparency by encouraging a consistent survey and enforcement process and providing the public with information necessary to make an informed decision regarding where they seek high quality, safe care hospice program organizations for themselves or loved ones.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 801(a)(1)(B)(i)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Therefore, we estimate that this rule is ''economically significant'' as measured by the $100 million threshold, and hence also a major rule under the Congressional Review Act. Accordingly, we have prepared a Regulatory Impact Analysis that presents our best estimate of the costs and benefits of this rule.

The following summary provides the economic impact estimates associated with the provisions of this proposed rule:

1. Overall Impacts—HH PPS

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). The net transfer impact related to the changes in payments under the HH PPS for CY 2022 is estimated to be $310 million (1.7 percent).

2. Overall Impacts—Home Health Value Based Purchasing Model Expansion

Beginning in CY 2024 and in each succeeding payment year under the expanded HHVBP Model, we would adjust the final claim payment amount for a home health agency for a date of service in the calendar year by an amount up to the maximum applicable percent. For purposes of this proposed rule, we have limited our analysis of the economic impacts to the value-based incentive payment adjustments. Under the expanded Model design, the incentive payment adjustments would be limited to the total payment reductions to home health agencies included in the expanded Model, such that in aggregate, payment reductions to lower-performing HHAs would approximate the aggregate payment increases to higher-performing HHAs. Overall, the impact of this rule is estimated at $3,154,000,000 for CYs 2022 to 2026, though these savings result primarily from reductions in utilization of services, including acute hospital admissions and skilled nursing facility (SNF) visits. The expanded Model would test the effect on quality and costs of care by applying payment adjustments based on HHAs' performance on quality measures.

C. Detailed Economic Analysis

1. HH PPS

This rule proposes updates to Medicare payments under the HH PPS for CY 2022. The impact analysis of this proposed rule presents the estimated expenditure effects of policy changes proposed in this rule. We use the latest data and best analysis available, but we do not make adjustments for future changes in such variables as number of visits or case mix. This analysis incorporates the latest estimates of growth in service use and payments under the Medicare home health benefit, based primarily on Medicare claims data for periods ending on or before December 31, 2020. We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, susceptible to errors resulting from other changes in the impact time period assessed. Some examples of such possible events are newly-legislated general Medicare program funding changes made by the Congress, or changes specifically related to HHAs. In addition, changes to the Medicare program may continue to be made as a result of the Affordable Care Act, or new statutory provisions. Although these changes may not be specific to the HH PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon HHAs.

Table 38 represents how HHA revenues are likely to be affected by the policy changes proposed in this rule for CY 2022. For this analysis, we used an analytic file with linked CY 2020 OASIS assessments and home health claims data for dates of service that ended on or before December 31, 2020. The first column of Table 38 classifies HHAs according to a number of characteristics including provider type, geographic region, and urban and rural locations. The second column shows the number of facilities in the impact analysis. The third column shows the payment effects of the Case-Mix Weights Recalibration Neutrality Factor.

The fourth column shows the payment effects of updating to the CY 2022 wage index. The fifth column shows the payment effects of the CY 2022 rural add-on payment provision in statute. The sixth column shows the payment effects of the proposed CY 2022 home health payment update percentage and the last column shows the combined effects of all the proposals in this rule.

Overall, it is projected that aggregate payments in CY 2022 would increase by 1.7 percent. As illustrated in Table 38, the combined effects of all of the changes vary by specific types of providers and by location. We note that some individual HHAs within the same group may experience different impacts on payments than others due to the distributional impact of the CY 2022 wage index, the percentage of total HH PPS payments that were subject to the

LUPA or paid as outlier payments, and the degree of Medicare utilization.

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TABLE 38: ESTIMATED HHA IMPACTS BY FACILITY TYPE AND AREA OF THE COUNTRY, CY 2022

	Number of Agencies	Case-Mix Weights Recalibration Neutrality Factor	CY 2022 Updated Wage Index	CY 2022 Rural Add-On	CY 2022 Proposed HH Payment Update Percentage	Total
All Agencies	**9,401**	**0.0%**	**0.0%**	**-0.1%**	**1.8%**	**1.7%**
Facility Type and Control						
Free-Standing/Other Vol/NP	939	0.4%	-0.3%	-0.1%	1.8%	1.8%
Free-Standing/Other Proprietary	7,588	-0.2%	0.1%	-0.1%	1.8%	1.6%
Free-Standing/Other Government	183	0.8%	0.1%	-0.4%	1.8%	2.3%
Facility-Based Vol/NP	487	0.6%	-0.1%	-0.2%	1.8%	2.1%
Facility-Based Proprietary	50	0.3%	0.0%	-0.2%	1.8%	1.9%
Facility-Based Government	154	0.5%	0.4%	-0.3%	1.8%	2.4%
Subtotal: Freestanding	8,710	0.0%	0.0%	-0.1%	1.8%	1.7%
Subtotal: Facility-based	691	0.5%	-0.1%	-0.2%	1.8%	2.0%
Subtotal: Vol/NP	1,426	0.5%	-0.3%	-0.1%	1.8%	1.9%
Subtotal: Proprietary	7,638	-0.2%	0.1%	-0.1%	1.8%	1.6%
Subtotal: Government	337	0.6%	0.3%	-0.3%	1.8%	2.4%
Facility Type and Control: Rural						
Free-Standing/Other Vol/NP	224	0.3%	-0.1%	-0.7%	1.8%	1.3%
Free-Standing/Other Proprietary	798	-0.2%	0.0%	-0.3%	1.8%	1.3%
Free-Standing/Other Government	122	0.8%	0.2%	-0.8%	1.8%	2.0%
Facility-Based Vol/NP	216	0.6%	-0.1%	-0.7%	1.8%	1.6%
Facility-Based Proprietary	19	0.3%	-0.3%	-0.6%	1.8%	1.2%
Facility-Based Government	114	0.5%	0.5%	-0.6%	1.8%	2.2%
Facility Type and Control: Urban						
Free-Standing/Other Vol/NP	715	0.4%	-0.3%	0.0%	1.8%	1.9%
Free-Standing/Other Proprietary	6,790	-0.2%	0.1%	0.0%	1.8%	1.7%
Free-Standing/Other Government	61	0.7%	0.1%	-0.1%	1.8%	2.5%
Facility-Based Vol/NP	271	0.6%	-0.1%	-0.1%	1.8%	2.2%
Facility-Based Proprietary	31	0.3%	0.2%	0.0%	1.8%	2.3%
Facility-Based Government	40	0.4%	0.3%	0.0%	1.8%	2.5%
Facility Location: Urban or Rural						
Rural	1,493	0.0%	0.0%	-0.4%	1.8%	1.4%
Urban	7,908	0.0%	0.0%	0.0%	1.8%	1.8%
Facility Location: Region of the Country (Census Region)						
New England	323	0.3%	-0.7%	-0.1%	1.8%	1.3%
Mid Atlantic	428	0.8%	-0.6%	-0.1%	1.8%	1.9%
East North Central	1,588	0.0%	-0.2%	-0.2%	1.8%	1.4%
West North Central	618	0.3%	0.2%	-0.3%	1.8%	2.0%
South Atlantic	1,530	0.3%	0.5%	-0.1%	1.8%	2.5%
East South Central	370	-0.1%	-0.6%	-0.1%	1.8%	1.0%
West South Central	2,219	-0.3%	-0.3%	0.0%	1.8%	1.2%
Mountain	674	-0.1%	0.0%	-0.1%	1.8%	1.6%
Pacific	1,609	-0.6%	0.5%	0.0%	1.8%	1.7%
Outlying	42	0.7%	-1.4%	-0.4%	1.8%	0.7%
Facility Size (Number of 30-day Periods)						
< 100 periods	1,998	0.2%	0.0%	-0.1%	1.8%	1.9%
100 to 249	1,512	-0.2%	0.0%	-0.1%	1.8%	1.5%

	Number of Agencies	Case-Mix Weights Recalibration Neutrality Factor	CY 2022 Updated Wage Index	CY 2022 Rural Add-On	CY 2022 Proposed HH Payment Update Percentage	Total
250 to 499	1,711	-0.3%	0.1%	-0.1%	1.8%	1.5%
500 to 999	1,887	-0.3%	0.1%	-0.1%	1.8%	1.5%
1,000 or More	2,293	0.1%	-0.1%	-0.1%	1.8%	1.7%

Source: CY 2020 Medicare claims data for periods with matched OASIS records (only) starting and ending in CY2020 (as of Mar 15, 2021).

REGION KEY:
New England=Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
Middle Atlantic=Pennsylvania, New Jersey, New York;
South Atlantic=Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia
East North Central=Illinois, Indiana, Michigan, Ohio, Wisconsin
East South Central=Alabama, Kentucky, Mississippi, Tennessee
West North Central=Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota
West South Central=Arkansas, Louisiana, Oklahoma, Texas
Mountain=Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming
Pacific=Alaska, California, Hawaii, Oregon, Washington
Other=Guam, Puerto Rico, Virgin Islands

2. Impacts for the Expanded HHVBP Model

Based on proposals discussed in section III.A. of this proposed rule, Tables G6 and G7 display our analysis of the distribution of possible payment adjustments using 2019 data as the performance year, while Table 39 provides information on the estimated impact of this proposed expansion. We note that this impact analysis is based on the aggregate value of savings associated with all Medicare-certified HHAs in each State, territory, and the District of Columbia.

Value-based incentive payment adjustments for the estimated 7,500-plus HHAs that would qualify to compete in the proposed HHVBP Model expansion based on the CY 2019 data stratified by size, as defined in section III.F. of this proposed rule. For example, Table 40 shows California has 69 HHAs that do not provide services to enough beneficiaries to be required to complete HHCAHPS surveys, and therefore, would be considered to be in the smaller-volume cohort under the proposed Model expansion. Using 2019 performance year data and the proposed payment adjustment of 5-percent, based on 8 outcome measures, the smaller-volume HHAs in California would have a mean payment adjustment of positive 0.042 percent. Only 10-percent of home health agencies would be subject to downward payment adjustments of more than minus 3.139 percent (−3.139 percent). The next columns provide the distribution of scores by percentile. We see that the value-based incentive percentage payments for smaller-volume home health agencies in California range from −3.139 percent at the 10th percentile to +3.899 percent at the 90th percentile, while the value-based incentive payment at the 50th percentile is −0.607 percent. The smaller-volume HHA cohort table identifies that some locations do not have any qualifying HHAs in the smaller-volume cohort, including Connecticut, the District of Columbia, and Delaware.

The next columns provide the distribution of scores by percentile. We see that the value-based incentive percentage payments for smaller-volume home health agencies in California range from −3.139 percent at the 10th percentile to +3.899 percent at the 90th percentile, while the value-based incentive payment at the 50th percentile is −0.607 percent.

The smaller-volume HHA cohort table identifies that some locations do not have any qualifying HHAs in the smaller-volume cohort, including Connecticut, the District of Columbia, and Delaware.

Table 41 provides the payment adjustment distribution based on proportion of dual eligible beneficiaries, average case mix (using HCC scores), proportion that reside in rural areas, as well as HHA organizational status. To define cutoffs for the ''percentage of dual eligible beneficiaries,'' low, medium, or high percentage dual-eligible are based on less than the 25th percentile, between the 25th and 75th percentiles, and greater than the 75th percentile of percent dual eligible beneficiaries, respectively, across HHAs in CY 2019. To define case mix cutoffs, low, medium, or high acuity are also based on less than the 25th percentile, between the 25th and 75th percentiles, and greater than the 75th percentile of average HCC scores, respectively, across HHAs in CY 2019. To define cutoffs for percentage of rural beneficiaries, all non-rural, up to 50 percent rural, and over 50 percent rural are based on the home health beneficiaries' core-based statistical area (CBSA) urban versus rural designation. We would note that, based on 2019 data, a higher proportion of dually-eligible beneficiaries served is associated with better performance.

TABLE 39. ESTIMATED GROSS FFS SAVINGS UNDER EXPANDED HHVBP MODEL CYs 2022-2026

CY 2022	CY 2023		CY 2024	CY 2025	CY 2026
$334,000,000	$674,000,000		$670,000,000	$713,000,000	$761,000,000

TABLE 40: HHA COHORT PAYMENT ADJUSTMENT DISTRIBUTIONS (Based on a maximum 5 percent payment adjustment)

Smaller-volume Cohort											
			Payment Adjustment Percentile Distribution (%)								
State	# of HHAs	Average Payment Adjustment (%)	10%	20%	30%	40%	50%	60%	70%	80%	90%
AK	1	(0.646)	(0.646)	(0.646)	(0.646)	(0.646)	(0.646)	(0.646)	(0.646)	(0.646)	(0.646)
AL	1	1.601	1.601	1.601	1.601	1.601	1.601	1.601	1.601	1.601	1.601
AR	2	0.794	(2.454)	(2.454)	(2.454)	(2.454)	0.794	4.041	4.041	4.041	4.041
AZ	2	0.710	(2.446)	(2.446)	(2.446)	(2.446)	0.710	3.866	3.866	3.866	3.866
CA	69	0.042	(3.139)	(2.503)	(1.748)	(1.495)	(0.607)	0.878	1.586	2.605	3.899
CO	4	0.127	(2.367)	(2.367)	0.445	0.445	0.572	0.698	0.698	1.733	1.733
CT	0										
DC	0										
DE	0										
FL	51	0.756	(3.080)	(1.928)	(1.016)	(0.014)	0.612	1.482	3.336	3.935	5.000
GA	0										
GU	0										
HI	0										
IA	7	(0.840)	(2.816)	(1.831)	(1.641)	(1.641)	(1.422)	(1.096)	(1.096)	(0.082)	3.009
ID	1	(2.206)	(2.206)	(2.206)	(2.206)	(2.206)	(2.206)	(2.206)	(2.206)	(2.206)	(2.206)
IL	61	0.652	(3.275)	(2.451)	(1.614)	(0.772)	1.170	1.856	2.794	3.627	5.000
IN	11	0.596	(2.821)	(1.241)	(0.390)	0.683	0.729	1.028	1.367	2.944	3.059
KS	4	0.321	(3.256)	(3.256)	(1.255)	(1.255)	0.031	1.317	1.317	4.476	4.476
KY	0										
LA	0										
MA	5	(0.709)	(4.469)	(4.107)	(3.744)	(2.321)	(0.898)	0.489	1.876	2.784	3.692
MD	2	0.345	(2.576)	(2.576)	(2.576)	(2.576)	0.345	3.265	3.265	3.265	3.265
ME	1	(2.179)	(2.179)	(2.179)	(2.179)	(2.179)	(2.179)	(2.179)	(2.179)	(2.179)	(2.179)
MI	52	0.896	(2.662)	(2.081)	(0.494)	0.397	1.011	1.790	2.787	3.255	4.814
MN	7	(2.227)	(4.577)	(4.453)	(3.677)	(3.677)	(3.244)	(0.514)	(0.514)	(0.480)	1.359
MO	7	(1.996)	(4.370)	(3.431)	(3.223)	(3.223)	(2.419)	(2.106)	(2.106)	0.176	1.399
MP	0										
MS	0										
MT	2	2.049	(0.847)	(0.847)	(0.847)	(0.847)	2.049	4.944	4.944	4.944	4.944
NC	4	(0.681)	(2.371)	(2.371)	(1.204)	(1.204)	(0.473)	0.259	0.259	0.592	0.592
ND	0										
NE	8	(0.751)	(4.403)	(3.062)	(2.029)	(0.282)	(0.165)	(0.047)	0.750	1.211	1.851
NH	1	(4.501)	(4.501)	(4.501)	(4.501)	(4.501)	(4.501)	(4.501)	(4.501)	(4.501)	(4.501)
NJ	0										
NM	3	0.394	(1.562)	(1.562)	(1.562)	(0.746)	(0.746)	(0.746)	3.490	3.490	3.490
NV	8	(0.691)	(3.671)	(3.033)	(1.997)	(1.029)	(0.905)	(0.780)	(0.181)	0.164	5.000
NY	0										
OH	8	(2.409)	(4.307)	(4.178)	(3.890)	(3.739)	(3.618)	(3.497)	(1.041)	(0.905)	2.286
OK	8	(2.008)	(4.351)	(3.004)	(2.942)	(2.347)	(2.068)	(1.788)	(1.747)	0.042	0.076

Smaller-volume Cohort											
			Payment Adjustment Percentile Distribution (%)								
State	# of HHAs	Average Payment Adjustment (%)	10%	20%	30%	40%	50%	60%	70%	80%	90%
OR	1	(0.938)	(0.938)	(0.938)	(0.938)	(0.938)	(0.938)	(0.938)	(0.938)	(0.938)	(0.938)
PA	9	(1.965)	(4.263)	(4.023)	(3.537)	(3.056)	(2.969)	(1.039)	(0.725)	0.543	1.385
PR	0										
RI	0										
SC	0										
SD	4	(1.081)	(3.754)	(3.754)	(2.073)	(2.073)	(1.170)	(0.267)	(0.267)	1.770	1.770
TN	1	(1.921)	(1.921)	(1.921)	(1.921)	(1.921)	(1.921)	(1.921)	(1.921)	(1.921)	(1.921)
TX	85	(0.727)	(4.121)	(3.224)	(2.548)	(1.714)	(0.565)	0.303	0.875	1.215	2.576
UT	6	0.244	(1.724)	(1.517)	(1.517)	(0.461)	(0.115)	0.231	1.618	1.618	3.319
VA	5	0.794	(4.066)	(1.925)	0.216	0.860	1.504	1.864	2.223	3.158	4.093
VI	0										
VT	0										
WA	0										
WI	0										
WV	0										
WY	2	(1.247)	(2.474)	(2.474)	(2.474)	(2.474)	(1.247)	(0.020)	(0.020)	(0.020)	(0.020)
All	**443**	**(0.079)**	**(3.677)**	**(2.703)**	**(1.967)**	**(1.141)**	**(0.267)**	**0.635**	**1.413**	**2.621**	**3.975**

Larger-volume Cohort											
			Payment Adjustment Percentile Distribution (%)								
State	# of HHAs	Average Payment Adjustment (%)	10%	20%	30%	40%	50%	60%	70%	80%	90%
AK	12	(0.627)	(3.202)	(2.588)	(2.199)	(1.448)	(1.007)	(0.774)	1.275	1.423	1.897
AL	114	1.632	(1.583)	(0.520)	0.510	1.110	1.856	2.392	3.058	3.833	4.653
AR	90	1.114	(1.830)	(1.158)	(0.185)	0.854	1.403	2.060	2.643	3.090	4.097
AZ	106	0.441	(2.830)	(2.073)	(1.522)	(0.188)	0.547	1.077	1.774	2.880	4.504
CA	991	0.799	(2.856)	(1.930)	(1.130)	(0.306)	0.381	1.528	2.710	4.200	5.000
CO	104	0.059	(3.260)	(2.293)	(1.588)	(0.912)	(0.219)	0.392	1.246	1.946	4.482
CT	74	(0.829)	(3.321)	(2.908)	(2.511)	(1.846)	(1.481)	(0.390)	0.059	1.206	2.448
DC	7	(0.428)	(3.672)	(2.455)	(1.306)	(1.306)	(0.938)	0.289	0.289	0.767	4.319
DE	12	0.141	(2.604)	(1.897)	(1.874)	(1.282)	(0.076)	0.965	1.626	2.274	2.798
FL	676	0.933	(2.436)	(1.416)	(0.655)	0.139	0.760	1.471	2.448	3.530	5.000
GA	99	(0.021)	(2.516)	(1.652)	(1.037)	(0.654)	(0.186)	0.435	0.966	1.653	2.274
GU	3	(1.612)	(1.897)	(1.897)	(1.897)	(1.703)	(1.703)	(1.703)	(1.236)	(1.236)	(1.236)
HI	14	0.760	(2.334)	(2.053)	(0.805)	0.284	1.318	1.711	2.149	2.998	4.064
IA	94	0.344	(2.920)	(2.173)	(1.254)	(0.604)	0.638	1.208	1.865	2.880	3.762
ID	42	0.245	(2.673)	(2.309)	(0.645)	(0.236)	0.028	0.865	1.383	2.297	3.059
IL	398	0.407	(2.854)	(2.065)	(1.441)	(0.656)	(0.008)	0.823	1.873	3.137	5.000
IN	138	(0.149)	(3.068)	(2.166)	(1.455)	(0.890)	(0.452)	0.226	0.991	1.629	3.179
KS	84	0.252	(3.170)	(1.706)	(1.103)	(0.348)	0.131	0.675	1.328	2.425	3.665
KY	90	0.990	(2.331)	(0.892)	(0.404)	0.332	0.781	1.381	2.258	3.365	4.290
LA	167	1.333	(1.902)	(0.762)	0.078	0.597	1.367	2.234	2.865	3.746	4.840
MA	127	(0.162)	(2.991)	(2.207)	(1.508)	(0.943)	(0.091)	0.356	0.752	1.582	2.980
MD	49	0.823	(1.649)	(1.207)	(0.831)	(0.260)	0.298	1.769	2.378	2.867	4.019
ME	19	1.081	(1.718)	(0.501)	0.039	0.505	0.704	0.917	2.069	2.862	4.562
MI	322	0.802	(2.660)	(1.818)	(1.197)	(0.270)	0.657	1.634	2.672	3.671	5.000
MN	97	(0.799)	(3.469)	(2.791)	(2.154)	(1.559)	(1.130)	(0.629)	(0.127)	1.111	2.747
MO	122	0.512	(2.814)	(2.014)	(1.458)	(0.482)	0.222	1.345	2.042	3.280	4.334
MP	1	(0.515)	(0.515)	(0.515)	(0.515)	(0.515)	(0.515)	(0.515)	(0.515)	(0.515)	(0.515)
MS	45	1.325	(1.351)	(0.689)	(0.102)	0.776	1.448	2.121	2.718	3.370	4.414
MT	22	(0.839)	(3.220)	(2.745)	(1.807)	(1.760)	(1.373)	(0.874)	(0.009)	0.957	1.328

TABLE 41: PAYMENT ADJUSTMENT DISTRIBUTIONS BY CHARACTERISTICS (Based on a maximum 5 percent payment adjustment)

			Payment Adjustment Percentile Distribution (%)								
Percentage of Dually-eligible Beneficiaries	**# of HHAs**	**Average Payment Adjustment (%)**	**10%**	**20%**	**30%**	**40%**	**50%**	**60%**	**70%**	**80%**	**90%**
Low % dually-eligible	2,061	0.464	(2.592)	(1.656)	(0.970)	(0.313)	0.295	0.991	1.658	2.618	3.889
Medium % dually-eligible	4,118	0.153	(2.962)	(2.134)	(1.447)	(0.774)	(0.051)	0.662	1.446	2.425	3.832
High % dually-eligible	1,316	1.066	(3.145)	(1.943)	(1.043)	0.200	1.059	2.226	3.327	4.710	5.000
Acuity (HCC)	**# of HHAs**	**Average Payment Adjustment (%)**	**10%**	**20%**	**30%**	**40%**	**50%**	**60%**	**70%**	**80%**	**90%**
Low acuity	1,479	1.283	(2.545)	(1.426)	(0.457)	0.435	1.275	2.276	3.265	4.451	5.000
Middle acuity	4,290	0.320	(2.756)	(1.905)	(1.247)	(0.560)	0.187	0.851	1.604	2.601	3.913
High acuity	1,726	(0.162)	(3.283)	(2.446)	(1.753)	(1.143)	(0.460)	0.255	1.081	2.104	3.545
% Rural Beneficiaries	**# of HHAs**	**Average Payment Adjustment (%)**	**10%**	**20%**	**30%**	**40%**	**50%**	**60%**	**70%**	**80%**	**90%**
All non-rural	3,849	0.483	(2.969)	(2.046)	(1.318)	(0.552)	0.266	1.099	2.020	3.249	5.000
Up to 50% rural	2,265	0.024	(2.873)	(2.089)	(1.438)	(0.822)	(0.140)	0.469	1.200	2.108	3.323
Over 50% rural	1,368	0.783	(2.408)	(1.539)	(0.672)	0.066	0.819	1.390	2.214	3.121	4.414
Organizational Type	**# of HHAs**	**Average Payment Adjustment (%)**	**10%**	**20%**	**30%**	**40%**	**50%**	**60%**	**70%**	**80%**	**90%**
Religious affiliation	289	0.085	(2.658)	(1.807)	(1.294)	(0.794)	(0.252)	0.465	1.123	2.062	3.232
Private not-for-profit	579	(0.010)	(2.961)	(2.053)	(1.432)	(0.891)	(0.262)	0.422	1.098	2.055	3.562
Other not-for-profit	478	0.230	(2.618)	(1.812)	(1.144)	(0.470)	0.160	0.752	1.314	2.296	3.280
Private for-profit	5,869	0.459	(2.913)	(1.997)	(1.271)	(0.500)	0.278	1.044	1.918	3.039	4.677
State	186	0.548	(3.244)	(1.790)	(0.699)	(0.225)	0.441	1.317	2.151	3.047	4.263
Gov't & voluntary	10	1.059	(0.356)	(0.171)	0.073	0.322	0.879	1.395	1.565	1.618	3.134
Local	96	0.583	(2.604)	(1.584)	(0.797)	(0.102)	0.507	1.361	1.834	2.749	3.799

Note: The total number of HHAs differ by category due to missing HHAs in some data sources.

TABLE 42: BURDEN SAVINGS CALCULATIONS

Time Point	Costs with 2020 data	Removal of M2016	Estimate Cost
Transfer of Care	$4,969,755.73	$4,259,790.63	$709,965
Discharge from agency	$230,885,202.34	$228,832,890.59	$2,052,312
TOTAL			**2,762,277** **$242 per HHA (2,762,277/11,400)**

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3. Impacts for the HH QRP for CY 2022

Estimated impacts for the HH QRP are based on analysis discussed in section X.B. of this proposed rule. The proposed HH QRP requirements would reduce burden to the active collection under OMB control number #0938–1279 (CMS–10545; expiration 12/31/21).

Failure to submit data required under section 1895(b)(3)(B)(v) of the Act with respect to a calendar year will result in the reduction of the annual home health market basket percentage increase otherwise applicable to an HHA or that calendar year by 2 percentage points. For the CY 2021, 527 of the 11,196 active Medicare-certified HHAs, or approximately 4.7 percent, did not receive the full annual percentage increase (the methodology accommodated the COVID–19 PHE exception). These 527 HHAs represented $253 million in home health claims payment dollars during the reporting period compared out of a total $16.7B for all HHAs.

As discussed in section IV.C. of this proposed rule, we are proposing to remove one OASIS-based measure beginning with the CY 2023 HH QRP. The assessment-based measure we are proposing to remove is: (1) Drug Education on All Medications Provided to Patient/Caregiver during All Episodes of Care. We are also proposing to replace the Acute Care Hospitalization During the First 60 Days of Home Health (NQF #0171) measure and Emergency Department Use Without Hospitalization During the First 60 Days

of Home Health (NQF #0173) measure with the Home Health Within Stay Potentially Preventable Hospitalization measure beginning with the CY 2023 HH QRP under our measure removal Factor 6: A measure that is more strongly associated with desired patient outcomes for the particular topic is available. Because these three measures are claims-based, there will be no impact to our collection of information.

Section X.B. of this proposed rule provides a detailed description of the net decrease in burden associated with these proposed changes. The associated burden is for CY 2023 because HHAs will be able to submit data beginning CY 2023. The cost impact related to OASIS item collection as a result of the changes to the HH QRP is estimated to be a net decrease of $2,762,277 in annualized cost to HHAs, discounted at 7 percent relative to year 2020, over a perpetual time horizon beginning in CY 2023.

We describe the estimated burden and cost reductions for these measures in section X.B of this rule.

In summary, the proposed HH QRP measure removals would result in a burden reduction of $242 per HHA annually, or $2,762,277 for all HHAs annually. We have described the burden costs savings in Table 42:

PROHIBITION OF PAYMENT FOR SERVICES OR ITEMS FURNISHED BY DEACTIVATED PROVIDERS AND SUPPLIERS FROM CY 2021 TO 2022	
Providers/Suppliers to Federal Government	$54.1 million

4. Changes to the Home Health CoPs

a. Virtual Supervision of HHA Aides

In section IV.D. of this rule, we propose to revise the CoPs for home health agencies. Specifically, in section IV.D. of this rule, we propose to revise the home health aide supervision requirements to allow for virtual supervision. The burden may be reduced for providers by improving the efficiency of the training and supervision of home health aides. We are also adding the requirement that the skills related to any deficient skills be addressed. We believe the burden associated with addressing skills related to those identified as deficient skills is minimal. Moreover, supervising employees to ensure the safe and effective provision of patient care is standard business practice throughout the health care community. Likewise, documenting that this supervision has occurred for internal personnel, accreditation, and State and Federal compliance purposes constitutes a usual and customary business practice. Therefore, the regulatory impact is negligible.

b. Permitting Occupational Therapists To Conduct the Initial Assessment Visit and Complete the Comprehensive Assessment for Home Health Agencies Under the Medicare Program

In accordance with Division CC, section 115 of CAA 2021, we are proposing conforming regulations text changes to permit the occupational therapist to complete the initial and comprehensive assessments for Medicare patients when ordered with another rehabilitation therapy service (speech language pathology or physical therapy) that establishes program eligibility, in the case where skilled nursing services are also not ordered. We do not expect any increase in burden for any of these modifications. In fact, for home health agencies, burden may be reduced by expanding the type of therapy discipline able to complete the initial and comprehensive assessments, in some circumstances, for Medicare patients. We do not expect the changes for these provisions will cause any appreciable amount of expense or anticipated saving and we do not believe this standard would impose any additional regulatory burden.

5. Payment for Home Infusion Therapy Services

There are two new proposals in this rule related to payments for home infusion therapy services in CY 2022: The proposal to maintain the CY 2021 percentages for the initial subsequent policy and the proposal to wage adjust HIT service payments using the CY 2022 GAFs Adjustments to the home infusion therapy payment rates will be made when the CY 2022 final GAF values become available and will be budget neutral using the GAF standardization factor. The CY 2021 home infusion therapy service payments will also be updated by the CPI–U reduced by the productivity adjustment. The CY 2022 final GAF values (and the CPI–U as of June 2021) were not available at the time of rulemaking, therefore, we are unable to estimate the impact of these adjustments on the CY 2022 HIT service payment amounts compared to the CY 2021 HIT service payment amounts. We will outline the home infusion therapy payment impacts in the CY 2022 HH PPS final rule.

6. Medicare Provider and Supplier Enrollment Provisions

a. General Impact

Similar to our position regarding information collection requirements, and except as stated in section XI.C.6.b. of this proposed rule, we do not anticipate any costs, savings, or transfers associated with our provider and supplier enrollment proposals. Most of these proposals have been in subregulatory guidance for a number of years, and we are merely incorporating them into regulation; those proposed provisions that are not in subregulatory guidance do not involve any costs, savings, or transfers.

b. Deactivation of Billing Privileges—Payment Prohibition

As explained in section VI.B of this proposed rule, we are proposing in new § 424.540(e) that a provider or supplier may not receive payment for services or items furnished while deactivated under § 424.540(a). Existing subregulatory guidance permits the provider or supplier to bill for services or items furnished up to 30 days prior to the effective date of the reactivation of the provider's or supplier's billing privileges. Our proposal would reverse this policy for the reasons stated in section VI.B. of this proposed rule.

Although the figure varies widely by individual provider or supplier, internal CMS data suggests that the average provider/supplier impacted by this proposal receives roughly $50,000 in Medicare payments each year. (We used a similar $50,000 annual payment estimate for our provider enrollment provisions in a CMS final rule published in the **Federal Register** on November 15, 2019 titled, ''CY 2020 Revisions to Payment Policies under the Physician Fee Schedule and Other Changes to Part B Payment Policies'') (84 FR 62568). As with annual payment amounts, the number of deactivations vary per year. Nonetheless, and based on internal CMS data, we estimate 13,000 deactivations annually. This results in an approximate burden of $54,145,000 per year ($13,000 \times 50,000 \times 0.0833$). (The 0.0833 figure represents

30 days, or 1/12 of a year.) The following table reflects the estimated transfers associated with our proposed addition of new § 424.540(e) concerning payments for services and items furnished by deactivated providers and suppliers:

PROHIBITION OF PAYMENT FOR SERVICES OR ITEMS FURNISHED BY DEACTIVATED PROVIDERS AND SUPPLIERS FROM CY 2021 TO 2022	
Providers/Suppliers to Federal Government	$54.1 million

7. Survey and Enforcement Requirements for Hospice Providers

Estimated impacts for the Survey and Certification Requirements for Hospice Program Providers are based on analysis discussed in section VII. of this proposed rule.

a. Application and Re-Application Procedures for National Accrediting Organizations (§ 488.5)

We proposed at § 488.5(a)(4)(x) to require AOs with CMS-approved hospice programs to include a statement of deficiencies, (that is, the Form CMS–2567 or a successor form) to document survey findings of the hospice Medicare CoPs and to submit such in a manner specified by CMS. This implements new section 1822(a)(2)(A)(ii) of the Act. We anticipate effects on AO administrative expenses but are not able to provide an accurate estimate of how much cost and time will result from including the Form CMS–2567 into their proprietary IT systems and subsequently submitting the information to CMS. Currently, there are three AOs with CMS-approved hospice programs affected by this proposal. We seek comments that would help us to develop an accurate estimate of the cost and time burden that would result from this collection of information.

b. Release and Use of Accreditation Surveys (§ 488.7)

CAA 2021 adds section 1822(a)(2)(B) of the Act which requires that CMS publish hospice survey information from the Form CMS–2567 in a way that is readily understandable and useable by the public in a meaningful way. We anticipate the need for CMS to develop some type of a standard framework that would identify salient survey findings in addition to other relevant data about the hospices' performance. CMS recognizes that the implications of releasing national survey data will require collaboration with industry stakeholders to assure the development is fair and equitable across all hospice programs.

c. Hospice Hotline (§ 488.1110)

Section 1864(a) of the Act was amended by inserting ''hospice programs'' after information on the home health toll-free hotline. The infrastructure for a State or local agency toll-free hotline is already in place for HHAs to collect and maintain complaint information related to HHAs. The requirement allows the existing hotline to collect complaint information on hospices. We do not expect the changes for this provision will cause any appreciable amount of expense or anticipated saving and we do not believe this standard would impose any additional regulatory burden.

d. Surveyor Qualifications and Prohibition of Conflicts of Interest (§ 488.1115)

We propose at § 488.1115, to require AO hospice program surveyors to complete the CMS hospice basic training currently available online. The hospice basic training course has an average completion time of 24 hours. Completion time could be more or less depending upon the learner's familiarity with the content and overall learning style. We are not able to estimate precisely total time and cost burden to each AO for the wages incurred for the time spent by all surveyors from each of the three hospice program AOs to take the CMS online surveyor training course, because each AO varies greatly in organization size, number of accreditation programs approved by CMS, and total surveyor cadre numbers. There are no regulatory requirements for AOs to report to CMS on the number of surveyors within their organization nor information on how many of those surveyors survey each type of program approved by CMS. CMS notes there is a wide variety of total surveyor cadre numbers across all three AOs, based on information CMS has gathered from confidential numbers, voluntarily provided by some of the AOs to CMS, as part of their deeming authority application documents as well as information found online via a search of each AOs public website. Variation is generally based on the associated number of CMS-approved accreditation programs the AO possesses. For example, AOs who accredit only one provider or supplier type generally have about 25 surveyors while AOs with multiple programs have surveyor numbers well over 300 thereby skewing the ability to estimate an accurate time burden that represents the overall group. Because of this wide range CMS is estimating near the middle, using the range of 100 total surveyors per AO. If we estimate that each AO has approximately 100 total surveyors, the estimated time burden to each AO associated with this requirement would be 2,400 hours (24 hours × 100 surveyors).

The estimated cost burden to each AO with CMS-approved hospice programs associated with this requirement would be $184,656 (2,400 hours × $76.94 per hour (based on the salary of a registered nurse. See Table 37)).

As of March 2021, there are three AOs that accredit Medicare-certified hospice programs. We estimate that the time burden across all of these AOs associated with the requirement that their surveyors take the CMS online surveyor training would be 7,200 hours (2,400 hours × 3 AOs). The estimated cost across all AOs (that accredit Medicare-certified hospice programs) would be $553,968 ($184,656 × 3 AOs). We also proposed to set out the circumstances that will disqualify a surveyor from surveying a particular hospice in accordance with new section 1822(a)(4)(B) of the Act). We do not expect these proposed changes will cause any appreciable amount of expense or anticipated saving because the provisions codify longstanding policies and basic principles to ensure there is no conflict of interest between organizations and surveyors.

e. Survey Teams (§ 488.1120)

We propose at § 488.1120 that when the survey team comprises more than one surveyor, the additional slots would be filled by multidisciplinary professionals such as physicians, nurses, medical social workers, pastoral or other counselors—bereavement, nutritional, and spiritual. At this time, we do not have specific information related to current survey team compositions but we do know there are approximately 977 hospice surveys per year, with at least one member of the survey team being a registered nurse.

The proposed inclusion of multidisciplinary survey team members could potentially increase the overall cost of surveys if SA and AOs were not already using a mixed team.

The 2020 Bureau of Labor Statistics estimates RN adjusted hourly wages at $76.94 (including fringe benefits and overhead). Other potential disciplines fall below and above the RN adjusted hourly wage, for example: Social workers—$50.12 per hour, pharmacists—$120.64 per hour, and psychologists—$108.36 per hour. A survey team of all nurses (assuming a two-person team) costs $153.88 ($76.94 × 2) per hour. However, CMS believes the most common multidisciplinary team for hospice program surveys may include a nurse and a social worker. Using this assumption, we calculate it will cost $127.06 ($76.94 + $50.12) per hour for this multidisciplinary 2-person survey team composition. Therefore, a two-person multidisciplinary team at $127.06 per hour, assuming a 5-day survey (8 hours per day × 5 days = 40 hours), would cost $5,082.40 per survey, times 960 surveys per year, or $4,879,104 per year. We seek comments on the current professional makeup of the AO and SA survey teams, and providers' estimates of the time needed to effectuate multidisciplinary teams where they do not currently exist.

f. Consistency of Survey Results (§ 488.1125)

Actions to improve consistency of survey results are discussed elsewhere in terms of implementing the use of the Form CMS–2567 across surveying entities and utilizing a common training platform. We do not anticipate additional costs or burdens to surveying entities. Some cost will be incurred by CMS to develop the system (technical and personnel) to analyze and apply correction where needed.

g. Special Focus Program (§ 488.1130)

There may be an additional SA burden in terms of the need for enhanced survey and enforcement activities which is in part why a more methodical and targeted approach to the implementation of this program should be considered given the allocation of $10 million to support this and the other provisions that would not begin until FY 2022.

h. Enforcement Remedies (§§ 488.1200 Through § 488.1265)

We propose enforcement remedies for hospices consistent with the established alternative sanctions for HHAs. In CY 2019, out of 11,738 deemed and non-deemed HHAs enrolled in the Medicare program, 749 HHA providers had the potential to be sanctioned based on repeat deficiencies during two consecutive standard or complaint surveys. This was approximately 15 percent of the HHAs, which is less than 37.5 percent of the total HHAs surveyed. Of all the alternative sanctions available for implementation, very few HHA enforcement actions were imposed. In CY 2019, less than 10 percent of all HHAs with surveys identifying an immediate jeopardy level deficiency citation received an alternative sanction.

The probability of impact for alternative enforcement remedies imposed against hospices is based on CY 2019 data for 5,065 deemed and non-deemed hospices enrolled in the Medicare program. This data was examined using the survey data for the CY 2019 in the *CMS QCOR system.* Of the total number of CMS-certified hospices, 4,399 received an unannounced standard and/or complaint survey and 236 were cited for noncompliance with one or more condition-level deficiencies. Therefore, approximately 5 percent of the total hospices surveyed had the potential to receive an enforcement remedy based on noncompliance with one or more CoPs.

The enforcement remedy provisions in this proposed rule mirror the alternative sanctions used in HHAs that have already been incorporated into CMS policy. Therefore, in terms of the administrative expenses to design and manage these types of remedies, the infrastructure is already in place. In terms of training for Federal and State surveyors, it is common for surveyors that survey HHAs to be cross-trained to survey hospices. Since the enforcement remedies for hospice are similar to those for HHAs, we expect that there will be a minimal burden on seasoned surveyors to become familiar with these provisions. Additionally, the data analysis described previously for hospices in CY 2019 reflects the probability of a low impact for civil monetary penalties to be imposed on hospice providers.

8. Certain Compliance Date Changes for the IRF QRP and LTCH QRP

a. Impacts for the Inpatient Rehabilitation Facility Quality Reporting Program for FY 2023

This proposed rule would not impose any new information collection requirements. However, this proposed rule does reference associated information collections that are not discussed in the regulation text contained in this document. The following is a discussion of this information collection, which have already received OMB approval.

In accordance with section 1886(j)(7)(A) of the Act, the Secretary must reduce by 2 percentage points the annual market basket increase factor otherwise applicable to an IRF for a fiscal year if the IRF does not comply with the requirements of the IRF QRP for that fiscal year. As stated in section VIII.A. of this proposed rule for purposes of calculating the FY 2023 Annual Increase Factor (AIF), we propose that IRFs would begin using the IRF–PAI V4.0 to collect data on the TOH Information to Provider-PAC and the TOH Information to Patient-PAC measures beginning with admissions and discharges on October 1, 2022. We also proposed that IRFs would begin to use the IRF–PAI V4.0 to collect data on certain Standardized Patient Assessment Data Elements, beginning with admissions and discharges (except for the hearing, vision, race, and ethnicity Standardized Patient Assessment Data Elements, which would be collected at admission only) on October 1, 2022.

The proposed IRF QRP requirements would add no additional burden or cost to the active collection under OMB control number 0938–0842 (expiration 12/31/2022).

b. Impacts for the Long-Term Care Hospital Quality Reporting Program for FY 2023

This proposed rule not impose any new information collection requirements. However, this proposed rule does reference associated information collections that are not discussed in the regulation text contained in this document. The following is a discussion of this information collection discussed later in this section, which have already received OMB approval.

In accordance with section 1886(m)(5) of the Act, the Secretary must reduce by 2 percentage points the annual market basket payment update otherwise applicable to a LTCH for a fiscal year if the LTCH does not comply with the requirements of the LTCH QRP for that fiscal year. As stated in section VIII.B. of this proposed rule for purposes of calculating the FY 2023 Annual Payment Update (APU), we propose that LTCHs would begin using the LTCH Continuity Assessment Record and Evaluation (CARE) Data Set (LCDS) V5.0 to collect data on the TOH Information to Provider-PAC and the TOH Information to Patient-PAC measures beginning with admissions and discharges on October 1, 2022. We also

proposed that LTCHs would begin to use the LTCH LCDS V5.0 to collect data on certain Standardized Patient Assessment Data Elements, beginning with admissions and discharges (except for the hearing, vision, race, and ethnicity Standardized Patient Assessment Data Elements, which would be collected at admission only) on October 1, 2022.

The proposed LTCH QRP requirements would add no additional burden or cost to the active collection under OMB control number 0938–1163 (expiration 12/31/2022).

D. Limitations of Our Analysis

Our estimates of the effects of this proposed rule are subject to significant uncertainty. It is difficult to estimate the burden and savings from the proposed changes because they depend on several factors previously described. We appreciate that our assumptions are simplified and that actual results could be considerably higher or lower. Although there is uncertainty concerning the magnitude of all of our estimates, we do not have the data to provide specific estimates for each proposal, as to the range of possibilities, or to estimate all categories of possible benefits. We seek comments on all aspects of this analysis.

E. Regulatory Review Cost Estimation

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this proposed rule, we must estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that would review the rule, we assume that the total number of unique reviewers of this year's proposed rule would be the similar to the number of commenters on last year's 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 this year's rule in detail, and it is also possible that some reviewers chose not to comment on the proposed rule. For these reasons we believe that the number of past commenters 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 would 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 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 *https://www.bls.gov/oes/current/oes_nat.htm.* This proposed rule consists of approximately 121,000 words. Assuming an average reading speed of 250 words per minute, we estimate that it would take approximately 4.03 hours for the staff to review half of this rule. For each entity that reviews the rule (we estimate that there are 165 reviewers), the estimated cost is $574 (4.03 hours × $114.24). Therefore, we estimate that the total cost of reviewing this proposed rule is $75,964.35 ($460.39 × 165 reviewers).

F. Alternatives Considered

1. Alternatives Considered to the HH PPS Policy Proposals

For the CY 2022 HH PPS proposed rule, we considered alternatives to the proposals articulated in section II. of this proposed rule. We considered using CY 2019 data for ratesetting. However, our analysis showed there were only small differences in the payment rates and impacts in the aggregate when using CY 2019 data compared to CY 2020 data. These differences in payment rates reflect small differences in the wage index budget neutrality factors calculated using CY 2020 data compared to using CY 2019 claims data. We note, we would not have recalibrated the case-mix weights using CY 2019 data because CY 2019 data would use simulated 30-day periods from 60-episodes as CY 2020 is the first year of actual PDGM data. Therefore, no case-mix weight budget neutrality factor using CY 2019 utilization data would be applied. We believe it is best to continue with our established policy of using the most recent, complete data at the time of rulemaking for CY 2022 ratesetting, which would be CY 2020 claims data. Additionally, we considered alternatives to our case-mix recalibration proposal. These alternatives included an option do a full recalibration of the case-mix weights, including the functional impairment levels, comorbidity subgroups as proposed, but also updating the LUPA thresholds, as well as an option to not recalibrate the case-mix weights, functional impairment levels, comorbidity subgroups and LUPA thresholds. However, we believe that recalibrating the PDGM case-mix weights, functional levels, and comorbidity adjustment subgroups while maintaining the LUPA thresholds for CY 2022 would more accurately adjust home health payments because the data would reflect 30-day periods under the new PDGM system based on actual data rather than data that simulated 30-day episodes under the old system. The recalibrated case-mix weights would also more accurately reflect the types of patients currently receiving home health services while mitigating instability by maintaining the LUPA thresholds. As stated previously the LUPA thresholds are based on the number of overall visits in a particular case-mix group (the threshold is the 10th percentile of visits or 2 visits, whichever is greater) instead of a relative value (as is used to generate the case-mix weight) that would control for the impacts of the PHE. We note that visit patterns and some of the decrease in overall visits in CY 2020 may not be representative of visit patterns in CY 2022. Also, our analysis shows that there is more variation in the case-mix weights with the full recalibration (including updates to the LUPA thresholds) than the recalibration with the case-mix weights maintained. Maintaining the LUPA thresholds creates more stability in the weights. The recalibrated case-mix weights using the current LUPA thresholds are more similar to the CY 2020 weights than the recalibrated case-mix weights with the updated LUPA thresholds. For these reasons, we believe it is best to maintain the LUPA thresholds for CY 2022 instead of the alternative full recalibration including updates to the LUPA thresholds.

2. Alternatives Considered to the HHVBP Policy Proposals

We considered alternatives to the proposed policies in sections III.A. and III.B. of this proposed rule. Specifically, we considered not expanding the HHVBP Model at this point in time, and waiting until we have final evaluation results from the original HHVBP Model before pursuing a national expansion. However, we considered that we have evaluation results from multiple years of the original HHVBP Model, showing significant reductions in spending and improvements in quality. We believe this evidence is sufficient for a national expansion of the Model, and note that we will continue to review evaluation results as they come in for the later years of the original HHVBP Model.

For the expanded HHVBP Model, we also considered utilizing the same state- and volume-based cohorts as the original HHVBP Model in lieu of the national volume-based cohorts we are proposing. However, this approach

could require grouping together of certain States, territories, and the District of Columbia that have an insufficient number of HHAs at the end of the performance year, based solely on their lower HHA counts. This would also preclude providing benchmarks and achievement thresholds prospectively. An analysis of the State-level impacts of using the revised cohorts, including our proposed option, nationwide with volume-based cohorts, and our alternative, State-level without volume-based cohorts, demonstrates minimal impacts at the State-level. Using CY 2019 data to simulate the payment adjustments, the mean payment adjustments at the State-level are within +/− 1.0 percent for both cohort options. Relative to the State- and volume-based cohorts, the national volume-based cohorts resulted in the largest increases in overall payment amounts to Alabama (+1.8 percent), Mississippi (+1.8 percent), and TN (+1.4 percent). The largest decreases in overall payment amounts are from Minnesota (−1.7 percent), Connecticut (−1.6 percent), and the Marianas Islands (−1.6 percent). We do not see any obvious correlation of the impacts within States that are currently in the original Model versus those that will be new to the expanded Model.

For the reasons described in section III.B.2. of this proposed rule, we are proposing to not apply any payment adjustments for CY 2022 of the original HHVBP Model based on data reported in CY 2020 and to instead end the original Model early, with the CY 2021 payment adjustment year. As previously noted, we will continue to examine data for CY 2020 as it becomes available in order to determine whether it would be appropriate to utilize such data for CY 2022 payment adjustments, in accordance with current Model policies.

3. Alternatives Considered Concerning Deactivation Payment Prohibition

As discussed in section VI.B. of this proposed rule, we are proposing in new § 424.540(e) that a provider or supplier may not receive payment for services or items furnished while deactivated under § 424.540(a). Current subregulatory guidance permits the provider or supplier to bill for services or items furnished up to 30 days prior to the effective date of the reactivation of the provider's or supplier's billing privileges. We considered the alternative of retaining this 30-day retroactive period. After careful consideration, however, we concluded that prohibiting such retroactive payments would be the best approach from a program integrity perspective. As we stated in section VI.B. of this proposed rule, we do not believe a provider or supplier should be effectively rewarded for its non-adherence to enrollment requirements by receiving retroactive payment for services or items furnished while out of compliance. Moreover, the prospect of a payment prohibition could well spur providers and suppliers to avoid such non-compliance.

G. Accounting Statement and Tables

1. HH PPS

As required by OMB Circular A–4 (available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf*), in Table 43, we have prepared an accounting statement showing the classification of the transfers and benefits associated with the CY 2022 HH PPS provisions of this rule.

TABLE 43: ACCOUNTING STATEMENT: HH PPS CLASSIFICATION OF ESTIMATED TRANSFERS AND BENEFITS, FROM CY 2021 TO 2022

Category	Transfers
Annualized Monetized Transfers	$310 million
From Whom to Whom?	Federal Government to HHAs

2. HHVBP Model Expansion

As required by OMB Circular A–4 (available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf*), in Table 44, we have prepared an accounting statement showing the classification of the expenditures associated with this proposed rule as they relate to hospitals and SNFs. Table 44 provides our best estimate of the decrease in Medicare payments under the proposed expanded HHVBP Model.

TABLE 44: ACCOUNTING STATEMENT: EXPANDED HHVBP MODEL CLASSIFICATION OF ESTIMATED TRANSFERS AND COSTS FOR CYs 2022 – 2026

Category	Transfers	Discount Rate	Period Covered
Annualized Monetized Transfers	-$769.2 Million	7%	CYs 2022-2026
Annualized Monetized Transfers	-$688.7 Million	3%	CYs 2022-2026
From Whom to Whom?	Federal Government to Hospitals and SNFs		

3. HHQRP

As required by OMB Circular A–4 (available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf*), in Table 45, we have prepared an accounting statement showing the classification of the expenditures associated with this proposed rule as they relate to HHAs. Table 45 provides our best estimate of the decrease in Medicare payments.

TABLE 45: ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED COSTS OF OASIS ITEM COLLECTION, FROM CY 2021 TO CY 2022

Category	Costs
Annualized Net Decreased Monetary Burden for HHAs' Submission of the OASIS	$-2,762,277

H. Regulatory Flexibility Act (RFA)

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. In addition, HHAs and home infusion therapy suppliers are small entities, as that is the term used in the RFA. Individuals and States are not included in the definition of a small entity.

The North American Industry Classification System (NAICS) was adopted in 1997 and is the current standard used by the Federal statistical agencies related to the U.S. business economy. We utilized the NAICS U.S. industry title ''Home Health Care Services'' and corresponding NAICS code 621610 in determining impacts for small entities. The NAICS code 621610 has a size standard of $16.5 million [143] and approximately 96 percent of HHAs and home infusion therapy suppliers are considered small entities. Table 46 shows the number of firms, revenue, and estimated impact per home health care service category.

TABLE 46: NUMBER OF FIRMS, REVENUE, AND ESTIMATED IMPACT OF HOME HEALTH CARE SERVICES BY NAICS CODE 621610

NAICS Code	NAICS Description	Enterprise Size	Number of Firms	Receipts ($1,000)	Estimated Impact ($1,000) per Enterprise Size
621610	Home Health Care Services	<100	5,861	210,697	$35.95
621610	Home Health Care Services	100-499	5,687	1,504,668	$264.58
621610	Home Health Care Services	500-999	3,342	2,430,807	$727.35
621610	Home Health Care Services	1,000-2,499	4,434	7,040,174	$1,587.77
621610	Home Health Care Services	2,500-4,999	1,951	6,657,387	$3,412.29
621610	Home Health Care Services	5,000-7,499	672	3,912,082	$5,821.55
621610	Home Health Care Services	7,500-9,999	356	2,910,943	$8,176.81
621610	Home Health Care Services	10,000-14,999	346	3,767,710	$10,889.34
621610	Home Health Care Services	15,000-19,999	191	2,750,180	$14,398.85
621610	Home Health Care Services	≥20,000	961	51,776,636	$53,877.87
621610	Home Health Care Services	Total	23,801	82,961,284	$3,485.62

Source: Data obtained from United States Census Bureau table "us_6digitnaics_rcptsize_2017" (SOURCE: 2017 County Business Patterns and Economic Census) Release Date: 5/28/2021: https://www2.census.gov/programs-surveys/susb/tables/2017/

Notes: Estimated impact is calculated as Receipts ($1,000)/Enterprise Size.

The economic impact assessment is based on estimated Medicare payments (revenues) and HHS's practice in interpreting the RFA is to consider effects economically ''significant'' only if greater than 5 percent of providers reach a threshold of 3 to 5 percent or more of total revenue or total costs. The majority of HHAs' visits are Medicare paid visits and therefore the majority of HHAs' revenue consists of Medicare payments. Based on our analysis, we conclude that the policies proposed in this rule would not result in an estimated total impact of 3 to 5 percent or more on Medicare revenue for greater than 5 percent of HHAs. We note also, and as discussed in section XI.C.6. of this proposed rule, our proposal to prohibit payments for services and items furnished by deactivated providers and suppliers would affect only a very limited number of Medicare providers and suppliers. Therefore, the Secretary has determined that this HH PPS proposed rule would not have significant economic impact on a substantial number of small entities.

Guidance issued by the Department of Health and Human Services interpreting the Regulatory Flexibility Act considers the effects economically 'significant' only if greater than 5 percent of providers reach a threshold of 3- to 5-percent or more of total revenue or total costs. Among the over 7,500 HHAs that are estimated to qualify to compete in the expanded HHVBP Model, we estimate that the percent payment adjustment resulting from this rule would be larger than 3 percent, in magnitude, for about 28 percent of competing HHAs (estimated by applying the proposed 5-percent maximum payment adjustment under the expanded Model to CY 2019 data). As a result, more than the RFA threshold of 5-percent of HHA providers nationally would be significantly impacted. We refer readers to Tables G6 and G7 of this proposed rule for our analysis of

[143] *https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf.*

payment adjustment distributions by State, HHA characteristics, HHA size and percentiles.

Thus, the Secretary has determined that this proposed rule would have a significant economic impact on a substantial number of small entities. Though the RFA requires consideration of alternatives to avoid economic impacts on small entities, the intent of the rule, itself, is to encourage quality improvement by HHAs through the use of economic incentives. As a result, alternatives to mitigate the payment reductions would be contrary to the intent of the rule, which is to test the effect on quality and costs of care of applying payment adjustments based on HHAs' performance on quality measures.

I. Unfunded Mandates Reform Act (UMRA)

Section 202 of UMRA of 1995 UMRA also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2021, that threshold is approximately $158 million. This rule is not anticipated to have an effect on State, local, or tribal governments, in the aggregate, or on the private sector of $158 million or more.

J. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed rule under these criteria of Executive Order 13132, and have determined that it will not impose substantial direct costs on State or local governments.

K. Conclusion

In conclusion, we estimate that the provisions in this proposed rule would result in an estimated net increase in home health payments of 1.7 percent for CY 2022 ($310 million). The $310 million increase in estimated payments for CY 2022 reflects the effects of the CY 2022 home health payment update percentage of 1.8 percent ($330 million increase) and an estimated 0.1 percent decrease in payments due to the rural add-on percentages mandated by the Bipartisan Budget Act of 2018 for CY 2022 ($20 million decrease).

L. Executive Order 12866

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget reviewed this proposed rule.

I, Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on June 16, 2021.

List of Subjects

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 424

Emergency medical centers, Health facilities, Health professions, Medicare, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 484

Health facilities, Health professions, Medicare, and Reporting and recordkeeping requirements.

42 CFR Part 488

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare Reporting and recordkeeping requirements.

42 CFR Part 498

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as follows:

PART 409—HOSPITAL INSURANCE BENEFITS

■ 1. The authority citation for part 409 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

■ 2. Section 409.43 is amended—
■ a. By revising the paragraph (b) subject heading;
■ b. In paragraph (c)(1)(i)(C) by removing the phrase ''physician's orders'' and adding in its place the phrase ''physician's or allowed practitioner's orders'';
■ c. In paragraphs (c)(1)(i)(D), (c)(2)(i), and (c)(3) by removing the term ''physician'' and adding in its place the phrase ''physician or allowed practitioner''; and
■ d. In paragraph (d) by removing the phrase '' based on a physician's oral orders'' and adding in its place the phrase ''based on a physician's or allowed practitioner's oral orders''.

The revision reads as follows:

§ 409.43 Plan of care requirements.

* * * * *

(b) *Physician's or allowed practitioner's orders.* * * *

* * * * *

PART 424—CONDITIONS FOR MEDICARE PAYMENT

■ 3. The authority for part 424 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

■ 4. Section 424.520 is amended by revising paragraph (d) to read as follows:

§ 424.520 Effective date of billing privileges.

* * * * *

(d) *Additional provider and supplier types.* (1) The effective date of billing privileges for the provider and supplier types identified in paragraph (d)(2) of this section is the later of—

(i) The date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor; or

(ii) The date that the provider or supplier first began furnishing services at a new practice location.

(2) The provider and supplier types to which paragraph (d)(1) of this section applies are as follows:

(i) Physicians.

(ii) Non-physician practitioners.

(iii) Physician organizations.

(iv) Non-physician practitioner organizations.

(v) Ambulance suppliers.

(vi) Opioid treatment programs.

(vii) Part B hospital departments.

(viii) Clinical Laboratory Improvement Amendment labs.

(ix) Intensive cardiac rehabilitation facilities.

(x) Mammography centers.

(xi) Mass immunizers/pharmacies.

(xii) Radiation therapy centers.

(xiii) Home infusion therapy suppliers.

(xiv) Physical therapists.

(xv) Occupational therapists.

(xvi) Speech language pathologists.

■ 5. Section 424.521 is amended by revising the section heading and paragraph (a) to read as follows:

§ 424.521 Request for payment by certain provider and supplier types.

(a) *Request for payment by certain provider and supplier types.* (1) The providers and suppliers identified in paragraph (a)(2) of this section may retrospectively bill for services when

the provider or supplier has met all program requirements (including State licensure requirements), and services were provided at the enrolled practice location for up to—

(i) Thirty days prior to their effective date if circumstances precluded enrollment in advance of providing services to Medicare beneficiaries; or

(ii) Ninety days prior to their effective date if a Presidentially-declared disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act) precluded enrollment in advance of providing services to Medicare beneficiaries.

(2) The provider and supplier types to which paragraph (a) applies are as follows:

(i) Physicians.

(ii) Non-physician practitioners.

(iii) Physician organizations.

(iv) Non-physician practitioner organizations.

(v) Ambulance suppliers.

(vi) Opioid treatment programs.

(vii) Part B hospital departments.

(viii) Clinical Laboratory Improvement Amendment labs.

(ix) Intensive cardiac rehabilitation facilities.

(x) Mammography centers.

(xi) Mass immunizers/pharmacies.

(xii) Radiation therapy centers.

(xiii) Home infusion therapy suppliers.

(xiv) Physical therapists.

(xv) Occupational therapists.

(xvi) Speech language pathologists.

* * * * *

■ 6. Section 424.522 is added to read as follows:

§ 424.522 Additional effective dates.

(a) *Reassignments.* A reassignment of benefits under § 424.80 is effective beginning 30 days before the Form CMS–855R is submitted if all applicable requirements during that period were otherwise met.

(b) *Form CMS–855O enrollment.* The effective date of a Form CMS–855O enrollment is the date on which the Medicare contractor received the Form CMS–855O application if all other requirements are met.

■ 7. Section 424.525 is amended—

■ a. By revising paragraph (a)(1);

■ b. In paragraphs (a)(2), (a)(3), and (b) by removing the phrase ''prospective provider'' and adding the word ''provider'' each time it appears; and

■ c. By adding paragraph (e).

The revision and addition read as follows:

§ 424.525 Rejection of a provider's or supplier's application for Medicare enrollment.

(a) * * *

(1) The provider or supplier fails to furnish complete information on the provider/supplier enrollment application within 30 calendar days from the date of the Medicare contractor's request for the missing information. This includes the following situations:

(i) The application is missing data required by CMS or the Medicare contractor to process the application (such as, but not limited to, names, Social Security Number, contact information, and practice location information).

(ii) The application is unsigned or undated.

(iii) The application contains a copied or stamped signature.

(iv) The application is signed more than 120 days prior to the date on which the Medicare contractor received the application.

(v) The application is signed by a person unauthorized to do so under this subpart.

(vi) For paper applications, the required certification statement is missing.

(vii) The paper application is completed in pencil.

(viii) The application is submitted via fax or email when the provider or supplier was not otherwise permitted to do so.

(ix) The provider or supplier failed to submit all of the forms needed to process a Form CMS–855 reassignment package within 30 days of receipt.

(x) The provider or supplier submitted the incorrect Form CMS–855 application.

* * * * *

(e) *Applicability.* Except as otherwise specified in the applicable reason for rejection under paragraph (a) of this section, this section applies to all CMS Medicare provider enrollment application submissions, including, but not limited to, the following:

(1) Form CMS–855 initial applications, change of information requests, changes of ownership, revalidations, and reactivations.

(2) Form CMS–588 (Electronic Funds Transfer (EFT) Authorization Agreement) submissions.

(3) Form CMS–20134 (Medicare Enrollment Application; Medicare Diabetes Prevention Program (MDPP) Suppliers) submissions.

(4) Any electronic or successor versions of the forms identified in paragraphs (e)(1) through (3) of this section.

■ 8. Section 424.526 is added to read as follows:

§ 424.526 Return of a provider's or supplier's enrollment application.

(a) *Reasons for return.* CMS may return a provider's or supplier's enrollment application for any of the following reasons:

(1) The provider or supplier sent its paper Form CMS–855, Form CMS–588, or Form CMS–20134 application to the incorrect Medicare contractor for processing.

(2) The Medicare contractor received the application more than 60 days prior to the effective date listed on the application. (This does not apply to providers and suppliers submitting a Form CMS–855A application, ambulatory surgical centers, or portable x-ray suppliers.)

(3) The seller or buyer in a change of ownership submitted its Form CMS–855A or Form CMS–855B application more than 90 days prior to the anticipated date of the sale.

(4) The Medicare contractor received an initial application more than 180 days prior to the effective date listed on the application from a provider or supplier submitting a Form CMS–855A application, an ambulatory surgical center, or a portable x-ray supplier.

(5) The Medicare contractor confirms that the provider or supplier submitted an initial enrollment application prior to the expiration of the time period in which it is entitled to appeal the denial of its previously submitted application.

(6) The provider or supplier submitted an initial enrollment application prior to the expiration of their existing re-enrollment bar under § 424.535 or reapplication bar under § 424.530(f).

(7) The application is not needed for (or is inapplicable to) the transaction in question.

(8) The provider or supplier submitted a revalidation application more than 7 months prior to the provider's or supplier's revalidation due date.

(9) A Medicare Diabetes Prevention Program supplier submitted an application with a coach start date more than 30 days in the future.

(10) The provider or supplier requests that their application be withdrawn prior to or during the Medicare contractor's processing thereof.

(11) The provider or supplier submits an application that is an exact duplicate of an application that has already been processed or is currently being processed or is pending processing.

(12) The provider or supplier submits a paper Form CMS–855 or Form CMS–20134 enrollment application that is outdated or has been superseded by a revised version.

(13) The provider or supplier submits a Form CMS–855A or Form CMS–855B initial application followed by a Form CMS–855A or Form CMS–855B change of ownership application. If the Medicare contractor—

(i) Has not yet made a recommendation for approval concerning the initial application, both applications may be returned.

(ii) Has made a recommendation for approval concerning the initial application, the Medicare contractor may return the change of ownership application. If, per the Medicare contractor's written request, the provider or supplier fails to submit a new initial Form CMS–855A or Form CMS–855B application containing the new owner's information within 30 days of the date of the letter, the Medicare contractor may return the originally submitted initial Form CMS–855A or Form CMS–855B application.

(b) *Appeals.* A provider or supplier is not afforded appeal rights if their application is returned under this section.

(c) *Applicability.* Except as otherwise specified in the applicable return reason under paragraph (a) of this section, this section applies to all CMS Medicare provider enrollment application submissions including, but not limited to, the following:

(1) Form CMS–855 initial applications, change of information requests, changes of ownership, revalidations, and reactivations.

(2) Form CMS–588 submissions.

(3) Form CMS–20134 submissions.

(4) Any electronic or successor versions of the forms identified in paragraphs (c)(1) through (3) of this section.

■ 9. Section 424.540 is amended—

■ a. By revising paragraph (a)(2);

■ b. By adding paragraphs (a)(4) through (8);

■ c. By revising paragraphs (b)(1) and (c); and

■ d. By adding paragraphs (d) and (e).

The revisions and additions read as follows:

§ 424.540 Deactivation of Medicare billing privileges.

(a) * * *

(2) The provider or supplier does not report a change to the information supplied on the enrollment application within the applicable time period required under this title.

* * * * *

(4) The provider or supplier is not in compliance with all enrollment requirements in this title.

(5) The provider's or supplier's practice location is non-operational or otherwise invalid.

(6) The provider or supplier is deceased.

(7) The provider or supplier is voluntarily withdrawing from Medicare.

(8) The provider is the seller in an HHA change of ownership under § 424.550(b)(1).

(b) * * *

(1) In order for a deactivated provider or supplier to reactivate its Medicare billing privileges, the provider or supplier must recertify that its enrollment information currently on file with Medicare is correct, furnish any missing information as appropriate, and be in compliance with all applicable enrollment requirements in this title.

* * * * *

(c) *Effect of deactivation.* The deactivation of Medicare billing privileges does not have any effect on a provider's or supplier's participation agreement or any conditions of participation.

(d) *Effective dates.* (1)(i) Except as provided in paragraph (d)(1)(ii) of this section, the effective date of a deactivation is the date on which the deactivation is imposed under this section.

(ii) A retroactive deactivation effective date (based on the date that the provider's or supplier's action or non-compliance occurred or commenced (as applicable)) may be imposed in the following instances:

(A) For the deactivation reasons in paragraphs (a)(2) through (4) of this section, the effective date is the date on which the provider or supplier became non-compliant.

(B) For the deactivation reason in paragraph (a)(5) of this section, the effective date is the date on which the provider's or supplier's practice location became non-operational or otherwise invalid.

(C) For the deactivation reason in paragraph (a)(6) of this section, the effective date is the date of death of the provider or supplier.

(D) For the deactivation reason in paragraph (a)(7) of this section, the effective date is the date on which the provider or supplier voluntarily withdrew from Medicare.

(E) For the deactivation reason in paragraph (a)(8) of this section, the effective date is the date of the sale.

(2) The effective date of a reactivation of billing privileges under this section is the date on which the Medicare contractor received the provider's or supplier's reactivation submission that was processed to approval by the Medicare contractor.

(e) *Payment prohibition.* A provider or supplier may not receive payment for services or items furnished while deactivated under this section.

■ 10. Section 424.550 is amended by revising paragraph (b)(2)(i) to read as follows:

§ 424.550 Prohibitions on the sale or transfer of billing privileges.

* * * * *

(b) * * *

(2)(i) The HHA submitted two consecutive years of full cost reports since initial enrollment or the last change in majority ownership, whichever is later. For purposes of this exception, low utilization or no utilization cost reports do not qualify as full cost reports.

* * * * *

PART 484—HOME HEALTH SERVICES

■ 11. The authority citation for part 484 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

■ 12. Section 484.55 is amended by revising paragraphs (a)(2) and (b)(3) to read as follows:

§ 484.55 Condition of participation: Comprehensive assessment of patients.

* * * * *

(a) * * *

(2) When rehabilitation therapy service (speech language pathology, physical therapy, or occupational therapy) is the only service ordered by the physician or allowed practitioner who is responsible for the home health plan of care, the initial assessment visit may be made by the appropriate rehabilitation skilled professional. For Medicare patients, an occupational therapist may complete the initial assessment when occupational therapy is ordered with another qualifying rehabilitation therapy service (speech-language pathology or physical therapy) that establishes program eligibility.

(b) * * *

(3) When physical therapy, speech-language pathology, or occupational therapy is the only service ordered by the physician or allowed practitioner, a physical therapist, speech-language pathologist, or occupational therapist may complete the comprehensive assessment, and for Medicare patients, determine eligibility for the Medicare home health benefit, including homebound status. For Medicare patients, the occupational therapist may complete the comprehensive assessment when occupational therapy is ordered with another qualifying rehabilitation therapy service (speech-language pathology or physical therapy) that establishes program eligibility.

* * * * *

■ 13. Section 484.80 is amended by
■ a. Revising paragraph (h)(1)(i);
■ b. Redesignating paragraphs (h)(1)(ii) and (iii) as (h)(1)(iii) and (iv), respectively;
■ c. Adding a new paragraph (h)(1)(ii); and
■ d. Revising paragraphs (h)(2) and (3).

The revisions and addition read as follows:

§ 484.80 Condition of participation: Home health aide services.

* * * * *

(h) * * *

(1)(i) If home health aide services are provided to a patient who is receiving skilled nursing, physical or occupational therapy, or speech language pathology services—

(A) A registered nurse or other appropriate skilled professional who is familiar with the patient, the patient's plan of care, and the written patient care instructions described in paragraph (g) of this section, must complete a supervisory assessment of the aide services being provided no less frequently than every 14 days; and

(B) The home health aide does not need to be present during the supervisory assessment described in paragraph (h)(1)(i)(A) of this section.

(ii) The supervisory assessment must be completed onsite (that is, an in person visit), or by using two-way audio-video telecommunications technology that allows for real-time interaction between the registered nurse (or other appropriate skilled professional) and the patient, not to exceed 2 virtual supervisory assessments per HHA in a 60-day period.

* * * * *

(2)(i) If home health aide services are provided to a patient who is not receiving skilled nursing care, physical or occupational therapy, or speech language pathology services—

(A) The registered nurse must make an onsite, in person visit every 60 days to assess the quality of care and services provided by the home health aide and to ensure that services meet the patient's needs; and

(B) The home health aide does not need to be present during this visit.

(ii) Semi-annually the registered nurse must make an on-site visit to the location where a patient is receiving care in order to observe and assess each home health aide while he or she is performing non-skilled care.

(3) If a deficiency in aide services is verified by the registered nurse or other appropriate skilled professional during an on-site visit, then the agency must conduct, and the home health aide must complete, retraining and a competency evaluation for the deficient and all related skills.

* * * * *

Subpart F—Home Health Value-Based Purchasing (HHVBP) Models

■ 14. The heading for subpart F is revised to read as set forth above.
■ 15. Subpart F is amended by adding an undesignated center heading before § 484.300 to read as follows:

HHVBP Model Components for Competing Home Health Agencies Within State Boundaries for the Original HHVBP Model

■ 16. Section 484.305 is amended by revising the definition of ''Applicable percent'' to read as follows:

§ 484.305 Definitions.

* * * * *

Applicable percent means a maximum upward or downward adjustment for a given performance year, not to exceed the following:

(1) For CY 2018, 3-percent.
(2) For CY 2019, 5-percent.
(3) For CY 2020, 6-percent.
(4) For CY 2021, 7-percent.

* * * * *

§ 484.315 [Amended]

■ 17. Section 484.315 is amended by removing paragraph (d).
■ 18. Subpart F is amended by adding an undesignated center heading and §§ 484.340 through 484.375 to read as follows:

* * * * *

HHVBP Model Components for Competing Home Health Agencies (HHAs) for HHVBP Model Expansion—Effective January 1, 2022

Sec.

HHVBP Model Components for Competing Home Health Agencies (HHAs) for HHVBP Model Expansion—Effective January 1, 2022

§ 484.340 Basis and scope of subpart.

This subpart is established under sections 1102, 1115A, and 1871 of the Act (42 U.S.C. 1315a), which authorizes the Secretary to issue regulations to operate the Medicare program and test innovative payment and service delivery models to reduce program expenditures while preserving or enhancing the quality of care furnished to individuals under Titles XVIII and XIX.

§ 484.345 Definitions.

As used in this subpart—

Achievement threshold means the median (50th percentile) of home health agency performance on a measure during a baseline year, calculated separately for the larger- and smaller-volume cohorts.

Applicable measure means a measure (OASIS- and claims-based measures) or a measure component (HHCAHPS survey measure) for which a competing HHA has provided a minimum of one of the following:

(1) Twenty home health episodes of care per year for each of the OASIS-based measures.

(2) Twenty home health episodes of care per year for each of the claims-based measures.

(3) Forty completed surveys for each component included in the HHCAHPS Survey measure.

Applicable percent means a maximum upward or downward adjustment for a given payment year based on the applicable performance year, not to exceed 5 percent.

Baseline year means the year against which measure performance in a performance year will be compared.

Benchmark refers to the mean of the top decile of Medicare-certified HHA performance on the specified quality measure during the baseline year, calculated separately for the larger- and smaller-volume cohorts.

Competing home health agency or agencies (HHA or HHAs) means an agency or agencies that meet the following:

(1) Has or have a current Medicare certification; and

(2) Is or are being paid by CMS for home health care services.

Home health prospective payment system (HH PPS) refers to the basis of payment for HHAs as set forth in §§ 484.200 through 484.245.

Improvement threshold means an individual competing HHA's

performance level on a measure during the baseline year.

Larger-volume cohort means the group of competing HHAs that are participating in the HHCAHPS survey in accordance with § 484.245.

Linear exchange function is the means to translate a competing HHA's Total Performance Score into a value-based payment adjustment percentage.

Nationwide means the 50 States and the US territories, including the District of Columbia.

Payment adjustment means the amount by which a competing HHA's final claim payment amount under the HH PPS is changed in accordance with the methodology described in § 484.370.

Payment year means the calendar year in which the applicable percent, a maximum upward or downward adjustment, applies.

Performance year means the calendar year during which data are collected for the purpose of calculating a competing HHA's performance on measures.

Smaller-volume cohort means the group of competing HHAs that are exempt from participation in the HHCAHPS survey in accordance with § 484.245.

Total Performance Score (TPS) means the numeric score ranging from 0 to 100 awarded to each competing HHA based on its performance under the expanded HHVBP Model.

§ 484.350 Applicability of the Expanded Home Health Value-Based Purchasing (HHVBP) Model.

(a) *General rule.* The expanded HHVBP Model applies to all Medicare-certified HHAs nationwide.

(b) *New HHAs.* For an HHA that is certified by Medicare on or after January 1, 2019, the baseline year is the first full calendar year of services beginning after the date of Medicare certification, with the exception of HHAs certified on January 1, 2019 through December 31, 2019, for which the baseline year is CY 2021, and the first performance year is the first full calendar year following the baseline year.

§ 484.355 Data reporting for measures and evaluation and the public reporting of model data under the expanded Home Health Value-Based Purchasing (HHVBP) Model.

(a) Competing home health agencies will be evaluated using a set of quality measures.

(1) *Data submission.* Except as provided in paragraph (d) of this section, and for a performance year, an HHA must submit all of the following to CMS in the form and manner, and at a time, specified by CMS:

(i) Data on measures specified under the expanded HHVBP model.

(ii) HHCAHPS Survey data. For purposes of HHCAHPS Survey data submission, the following additional requirements apply:

(A) *Survey requirements.* An HHA must contract with an approved, independent HHCAHPS survey vendor to administer the HHCAHPS survey on its behalf.

(B) *CMS approval.* CMS approves an HHCAHPS survey vendor if the applicant has been in business for a minimum of 3 years and has conducted surveys of individuals and samples for at least 2 years.

(C) *Definition of survey of individuals.* For the HHCAHPS survey, a ''survey of individuals'' is defined as the collection of data from at least 600 individuals selected by statistical sampling methods and the data collected are used for statistical purposes.

(D) *Administration of the HHCAHPS survey.* No organization, firm, or business that owns, operates, or provides staffing for an HHA is permitted to administer its own HHCAHPS Survey or administer the survey on behalf of any other HHA in the capacity as an HHCAHPS survey vendor. Such organizations are not approved by CMS as HHCAHPS survey vendors.

(E) *Compliance by HHCAHPS survey vendors.* Approved HHCAHPS survey vendors must fully comply with all HHCAHPS survey oversight activities, including allowing CMS and its HHCAHPS survey team to perform site visits at the vendors' company locations.

(F) *Patient count exemption.* An HHA that has less than 60 eligible unique HHCAHPS survey patients must annually submit to CMS its total HHCAHPS survey patient count to be exempt from the HHCAHPS survey reporting requirements for a calendar year.

(2) [Reserved]

(b) Competing home health agencies are required to collect and report such information as the Secretary determines is necessary for purposes of monitoring and evaluating the expanded HHVBP Model under section 1115A(b)(4) of the Act (42 U.S.C. 1315a).

(c) For each performance year of the expanded HHVBP Model, CMS publicly reports applicable measure benchmarks and achievement thresholds for each cohort as well as all of the following for each competing HHA that qualified for a payment adjustment for the applicable performance year on a CMS website:

(1) The Total Performance Score.

(2) The percentile ranking of the Total Performance Score.

(3) The payment adjustment percentage.

(4) Applicable measure results and improvement thresholds.

(d) CMS may grant an exception with respect to quality data reporting requirements in the event of extraordinary circumstances beyond the control of the HHA. CMS may grant an exception as follows:

(1) A competing HHA that wishes to request an exception with respect to quality data reporting requirements must submit its request to CMS within 90 days of the date that the extraordinary circumstances occurred. Specific requirements for submission of a request for an exception are available on the CMS website.

(2) CMS may grant an exception to one or more HHAs that have not requested an exception if CMS determines either of the following:

(i) That a systemic problem with CMS data collection systems directly affected the ability of the HHA to submit data.

(ii) That an extraordinary circumstance has affected an entire region or locale.

§ 484.360 Calculation of the Total Performance Score.

A competing HHA's Total Performance Score for a performance year is calculated as follows:

(a) CMS awards points to the competing home health agency for performance on each of the applicable measures.

(1) CMS awards greater than or equal to 0 points and less than 10 points for achievement to each competing home health agency whose performance on a measure during the applicable performance year meets or exceeds the applicable cohort's achievement threshold but is less than the applicable cohort's benchmark for that measure.

(2) CMS awards greater than 0 but less than 9 points for improvement to each competing home health agency whose performance on a measure during the applicable performance year exceeds the improvement threshold but is less than the applicable cohort's benchmark for that measure.

(3) CMS awards 10 points to a competing home health agency whose performance on a measure during the applicable performance year meets or exceeds the applicable cohort's benchmark for that measure.

(b) For all performance years, CMS calculates the weighted sum of points awarded for each applicable measure within each category of measures (OASIS-based, claims-based, and

HHCAHPS Survey-based) weighted at 35 percent for the OASIS-based measure category, 35 percent for the claims-based measure category, and 30 percent for the HHCAHPS Survey measure category when all three measure categories are reported, to calculate a value worth 100 percent of the Total Performance Score.

(1) Where a single measure category is not included in the calculation of the Total Performance Score for an individual HHA, due to insufficient volume for all of the measures in the category, the remaining measure categories are reweighted such that the proportional contribution of each remaining measure category is consistent with the weights assigned when all three measure categories are available. Where two measure categories are not included in the calculation of the Total Performance Score for an individual HHA, due to insufficient volume for all measures in those measure categories, the remaining measure category is weighted at 100 percent of the Total Performance Score.

(2) When one or more, but not all, of the measures in a measure category are not included in the calculation of the Total Performance Score for an individual HHA, due to insufficient volume for at least one measure in the category, the remaining measures in the category are reweighted such that the proportional contribution of each remaining measure is consistent with the weights assigned when all measures within the category are available.

(c) The sum of the weight-adjusted points awarded to a competing HHA for each applicable measure is the competing HHA's Total Performance Score for the calendar year. A competing HHA must have a minimum of five applicable measures to receive a Total Performance Score.

§ 484.365 Payments for home health services under the Expanded Home Health Value-Based Purchasing (HHVBP) Model.

CMS determines a payment adjustment up to the applicable percent, upward or downward, under the expanded HHVBP Model for each competing HHA based on the agency's Total Performance Score using a linear exchange function that includes all other HHAs in its cohort that received a Total Performance Score for the applicable performance year. Payment adjustments made under the expanded HHVBP Model are calculated as a percentage of otherwise-applicable payments for home health services provided under section 1895 of the Act (42 U.S.C. 1395fff).

§ 484.370 Process for determining and applying the value-based payment adjustment under the Expanded Home Health Value-Based Purchasing (HHVBP) Model.

(a) *General.* Competing home health agencies are ranked within the larger-volume and smaller-volume cohorts nationwide based on the performance standards that apply to the expanded HHVBP Model for the baseline year, and CMS makes value-based payment adjustments to the competing HHAs as specified in this section.

(b) *Calculation of the value-based payment adjustment amount.* The value-based payment adjustment amount is calculated by multiplying the Home Health Prospective Payment final claim payment amount as calculated in accordance with § 484.205 by the payment adjustment percentage.

(c) *Calculation of the payment adjustment percentage.* The payment adjustment percentage is calculated as the product of all of the following:

(1) The applicable percent as defined in § 484.345.

(2) The competing HHA's Total Performance Score divided by 100.

(3) The linear exchange function slope.

§ 484.375 Appeals process for the Expanded Home Health Value-Based Purchasing (HHVBP) Model.

(a) *Requests for recalculation*—(1) *Matters for recalculation.* Subject to the limitations on judicial and administrative review under section 1115A of the Act, a HHA may submit a request for recalculation under this section if it wishes to dispute the calculation of the following:

(i) Interim performance scores.

(ii) Annual total performance scores.

(iii) Application of the formula to calculate annual payment adjustment percentages.

(2) *Time for filing a request for recalculation.* A recalculation request must be submitted in writing within 15 calendar days after CMS posts the HHA-specific information on the CMS website, in a time and manner specified by CMS.

(3) *Content of request.* (i) The provider's name, address associated with the services delivered, and CMS Certification Number (CCN).

(ii) The basis for requesting recalculation to include the specific data that the HHA believes is inaccurate or the calculation the HHA believes is incorrect.

(iii) Contact information for a person at the HHA with whom CMS or its agent can communicate about this request, including name, email address, telephone number, and mailing address (must include physical address, not just a post office box).

(iv) The HHA may include in the request for recalculation additional documentary evidence that CMS should consider. Such documents may not include data that was to have been filed by the applicable data submission deadline, but may include evidence of timely submission.

(4) *Scope of review for recalculation.* In conducting the recalculation, CMS reviews the applicable measures and performance scores, the evidence and findings upon which the determination was based, and any additional documentary evidence submitted by the HHA. CMS may also review any other evidence it believes to be relevant to the recalculation.

(5) *Recalculation decision.* CMS issues a written notification of findings. A recalculation decision is subject to the request for reconsideration process in accordance with paragraph (b) of this section.

(b) *Requests for reconsideration*—(1) *Matters for reconsideration.* A home health agency may request reconsideration of the recalculation of its annual total performance score and payment adjustment percentage following a decision on the HHA's recalculation request submitted under paragraph (a) of this section, or the decision to deny the recalculation request submitted under paragraph (a).

(2) *Time for filing a request for reconsideration.* The request for reconsideration must be submitted via the CMS website within 15 calendar days from CMS' notification to the HHA contact of the outcome of the recalculation process.

(3) *Content of request.* (i) The name of the HHA, address associated with the services delivered, and CMS Certification Number (CCN).

(ii) The basis for requesting reconsideration to include the specific data that the HHA believes is inaccurate or the calculation the HHA believes is incorrect.

(iii) Contact information for a person at the HHA with whom CMS or its agent can communicate about this request, including name, email address, telephone number, and mailing address (must include physical address, not just a post office box).

(iv) The HHA may include in the request for reconsideration additional documentary evidence that CMS should consider. The documents may not include data that was to have been filed by the applicable data submission deadline, but may include evidence of timely submission.

(4) *Scope of review for reconsideration.* In conducting the reconsideration review, CMS reviews the applicable measures and performance scores, the evidence and findings upon which the determination was based, and any additional documentary evidence submitted by the HHA. CMS may also review any other evidence it believes to be relevant to the reconsideration. The HHA must prove its case by a preponderance of the evidence with respect to issues of fact.

(5) *Reconsideration decision.* CMS reconsideration officials issue a written final determination.

PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

■ 19. The authority citation for part 488 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

■ 20. Section 488.2 is amended by adding provision ''1822'' in numerical order to read as follows:

§ 488.2 Statutory basis.

* * * * *

1822—Hospice Program survey and enforcement procedures.

* * * * *

■ 21. Section 488.5 is amended by adding paragraph (a)(4)(x) to read as follows:

§ 488.5 Application and re-application procedures for national accrediting organizations.

* * * * *

(a) * * *

(4) * * *

(x) For accrediting organizations applying for approval or re-approval of CMS-approved hospice programs, a statement acknowledging that the AO will include a statement of deficiencies (that is, the Form CMS–2567 or a successor form) to document findings of the hospice Medicare conditions of participation in accordance with section 1822(a)(2)(A)(ii) of the Act and will submit such in a manner specified by CMS.

* * * * *

■ 22. Section 488.7 is amended by revising paragraph (b) by adding paragraph (c) to read as follows.

§ 488.7 Release and use of accreditation surveys.

* * * * *

(b) With the exception of home health agency and hospice program surveys, general disclosure of an accrediting organization's survey information is prohibited under section 1865(b) of the Act. CMS may publicly disclose an accreditation survey and information related to the survey, upon written request, to the extent that the accreditation survey and survey information are related to an enforcement action taken by CMS.

(c) CMS posts inspection reports from a State or local survey agency or accreditation organization conducted on or after October 1, 2022, for hospice programs, including copies of a hospice program's survey deficiencies, and enforcement actions (for example, involuntary terminations) taken as a result of such surveys, on its public website in a manner that is prominent, easily accessible, readily understandable, and searchable for the general public and allows for timely updates.

■ 23. Section 488.28 is amended by revising the section heading to read as follows:

§ 488.28 Providers or suppliers, other than SNFs, NFs, HHAs, and Hospice programs with deficiencies.

* * * * *

■ 24. Add subparts M and N to read as follows:

Subpart M—Survey and Certification of Hospice Programs

Sec.

Subpart N—Enforcement Remedies for Hospice Programs with Deficiencies

Sec.

Subpart M—Survey and Certification of Hospice Programs

§ 488.1100 Basis and scope.

Sections 1812, 1814, 1822, 1861, 1864, and 1865 of the Act establish requirements for Hospice programs and to authorize surveys to determine whether they meet the Medicare conditions of participation.

§ 488.1105 Definitions.

As used in this subpart—

Abbreviated standard survey means a focused survey other than a standard survey that gathers information on hospice program's compliance with specific standards or conditions of participation. An abbreviated standard survey may be based on complaints received or other indicators of specific concern.

Complaint survey means a survey that is conducted to investigate substantial allegations of noncompliance as defined in § 488.1.

Condition-level deficiency means noncompliance as described in § 488.24.

Deficiency is a violation of the Act and regulations contained in part 418, subparts C and D of this chapter, is determined as part of a survey, and can be either standard or condition-level.

Noncompliance means any deficiency found at the condition-level or standard-level.

Standard-level deficiency means noncompliance with one or more of the standards that make up each condition of participation for hospice programs.

Standard survey means a survey conducted in which the surveyor reviews the hospice program's compliance with a select number of standards or conditions of participation or both to determine the quality of care and services furnished by a hospice program.

Substantial compliance means compliance with all condition-level requirements, as determined by CMS or the State.

§ 488.1110 Hospice program: surveys and hotline.

(a) *Basic period.* Each hospice program as defined in section 1861(dd) of the Act is subject to a standard survey by an appropriate State or local survey agency, or an approved accreditation agency, as determined by the Secretary, not less frequently than once every 36 months. Additionally, a survey may be conducted as frequently as necessary to—

(1) Assure the delivery of quality hospice program services by determining whether a hospice program complies with the Act and conditions of participation; and

(2) Confirm that the hospice program has corrected deficiencies that were previously cited.

(b) *Complaints.* A standard survey, or abbreviated standard survey—

(1) Must be conducted of a hospice program when complaints against the hospice program are reported to CMS, the State, or local agency.

(2) The State, or local agency is responsible for maintaining a toll-free hotline to collect, maintain, and continually update information on Medicare-participating hospice programs including significant deficiencies found regarding patient care, corrective actions, and remedy activity during its most recent survey, and to receive complaints and answer questions about hospice programs. The State or local agency is also responsible for maintaining a unit for investigating such complaints.

§ 488.1115 Surveyor qualifications and prohibition of conflicts of interest.

(a) *Minimum qualifications:* Surveyors must meet minimum qualifications prescribed by CMS. Before any accrediting organization, State or Federal surveyor may serve on a hospice survey team (except as a trainee), he/she must have successfully completed the relevant CMS-sponsored Basic Hospice Surveyor Training Course, and additional training as specified by CMS.

(b) *Disqualifications.* Any of the following circumstances disqualifies a surveyor from surveying a particular hospice program:

(1) The surveyor currently serves, or, within the previous 2 years has served, with the hospice program to be surveyed as one of the following:

(i) A direct employee.

(ii) An employment agency staff at the hospice program.

(iii) An officer, consultant, or agent for the hospice program to be surveyed concerning compliance with conditions of participation specified in or in accordance with sections 1861(dd) of the Act.

(2) The surveyor has a financial interest or an ownership interest in the hospice program to be surveyed.

(3) The surveyor has an immediate family member, as defined at. § 411.351 of this chapter, who has a financial interest or an ownership interest with the hospice program to be surveyed.

(4) The surveyor has an immediate family member, as defined at § 411.351 of this chapter, who is a patient of the hospice program to be surveyed.

§ 488.1120 Survey teams.

Standard surveys conducted by more than one surveyor must be conducted by a multidisciplinary team of professionals typically involved in hospice care and identified as professionals providing hospice core services at § 418.64 of this chapter. The multidisciplinary team must include a registered nurse. Surveys conducted by a single surveyor, must be conducted by a registered nurse.

§ 488.1125 Consistency of survey results.

A survey agency or accrediting organization must provide a corrective action plan to CMS for any disparity rates that are greater than the threshold established by CMS.

§ 488.1130 Special focus program.

(a) *In general.*—The Secretary must conduct a special focus program for the enforcement of conditions of participation for hospice programs that the Secretary has identified as having substantially failed to meet applicable requirements for Medicare participation.

(b) *Criteria for inclusion in the hospice special focus program.* (1) A hospice program may be required to participate in a special focus program if any one of the following criteria exists:

(i) The hospice program is found to be deficient with condition-level findings during two consecutive standard surveys.

(ii) The hospice program is found to be deficient with condition-level findings during two consecutive complaint surveys.

(iii) The hospice program is found to be deficient with two or more condition-level findings during a validation survey.

(2) CMS provides the State survey agencies with a list of hospice programs identified as meeting the criteria for inclusion in the special focus program. A program that meets the criteria will be placed on the special focus program candidate list and selected for the program as specified by CMS.

(c) *Periodic surveys.* The State Survey Agency, on CMS's behalf, conducts an onsite survey of each hospice in the program not less than once every 6 months to examine all the Medicare hospice program conditions of participation and recommend progressive enforcement in accordance with an enforcement remedy or remedies until the hospice program either of the following:

(1) Graduates from the special focus program by coming back into full compliance with the hospice conditions of participation on two consecutive 6-month surveys.

(2) Is terminated from the Medicare or Medicaid or both programs.

Subpart N—Enforcement Remedies for Hospice Programs with Deficiencies

§ 488.1200 Statutory basis.

Section 1822 of the Act authorizes the Secretary to take actions to remove and correct deficiencies in a hospice program through an enforcement remedy or termination or both. This section specifies that these remedies are in addition to any others available under State or Federal law, and, except for the final determination of civil money penalties, are imposed prior to the conduct of a hearing.

§ 488.1205 Definitions.

As used in this subpart—

Directed plan of correction means CMS or the temporary manager (with CMS/SA approval) may direct the hospice program to take specific corrective action to achieve specific outcomes within specific timeframes.

Immediate jeopardy means a situation in which the provider's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a patient(s).

New admission means an individual who becomes a patient or is readmitted to the hospice program on or after the effective date of a suspension of payment remedy.

Per instance means a single event of noncompliance identified and corrected during a survey, for which the statute authorizes CMS to impose a remedy.

Plan of correction means a plan developed by the hospice program and approved by CMS that is the hospice program's written response to survey findings detailing corrective actions to cited deficiencies and specifies the date by which those deficiencies will be corrected.

Repeat deficiency means a condition-level deficiency that is cited on the current survey and is substantially the same as or similar to, a finding of a standard-level or condition-level deficiency cited on the most recent previous standard survey or on any intervening survey since the most recent standard survey. Repeated non-compliance is not on the basis that the exact regulation (that is, tag number) for the deficiency was repeated.

Temporary management means the temporary appointment by CMS or by a CMS authorized agent, of a substitute manager or administrator. The hospice program's governing body must ensure that the temporary manager has authority to hire, terminate or reassign staff, obligate funds, alter procedures, and manage the hospice program to

correct deficiencies identified in the hospice program's operation.

§ 488.1210 General provisions.

(a) *Purpose of remedies.* The purpose of remedies is to ensure prompt compliance with program requirements in order to protect the health and safety of individuals under the care of a hospice program.

(b) *Basis for imposition of remedies.* When CMS chooses to apply one or more remedies specified in § 488.1220, the remedies are applied on the basis of noncompliance with one or more conditions of participation and may be based on failure to correct previous deficiency findings as evidenced by repeat condition-level deficiencies.

(c) *Number of remedies.* CMS may impose one or more remedies specified in § 488.1220 of this part for each condition-level deficiency constituting noncompliance.

(d) *Plan of correction requirement.* Regardless of which remedy is applied, a non-compliant hospice program must submit a plan of correction for approval by CMS or the State Survey Agency.

(e) *Notification requirements*—(1) *Notice of intent.* CMS provides written notification to the hospice program of the intent to impose the remedy, the statutory basis for the remedy, the nature of the noncompliance, the proposed effective date of the sanction, and the appeal rights. For payment suspensions, the notice of intent would also identify which payments are being suspended, and for civil money penalties, the notice of intent would also include the amount being imposed.

(2) *Final notice.* With respect to civil money penalties, CMS provides a written final notice to the hospice program, as set forth in § 488.1245(e), once the administrative determination is final.

(3) *Date of enforcement action.* The notice periods specified in § 488.1225(b) and § 488.1230(b) begin the day after the hospice receives the notice of intent.

(f) *Appeals.* (1) The hospice program may request a hearing on a determination of noncompliance leading to the imposition of a remedy, including termination of the provider agreement, under the provisions of part 498 of this chapter.

(2) A pending hearing does not delay the effective date of a remedy, including termination, against a hospice program. Remedies continue to be in effect regardless of the timing of any appeals proceedings.

§ 488.1215 Factors to be considered in selecting remedies.

CMS bases its choice of remedy or remedies on consideration of one or more factors that include, but are not limited to, the following:

(a) The extent to which the deficiencies pose immediate jeopardy to patient health and safety.

(b) The nature, incidence, manner, degree, and duration of the deficiencies or noncompliance.

(c) The presence of repeat deficiencies, the hospice program's overall compliance history and any history of repeat deficiencies at either the parent hospice program or any of its multiple locations.

(d) The extent to which the deficiencies are directly related to a failure to provide quality patient care.

(e) The extent to which the hospice program is part of a larger organization with performance problems.

(f) An indication of any system-wide failure to provide quality care.

§ 488.1220 Available remedies.

The following enforcement remedies are available instead of, or in addition to, termination of the hospice program's provider agreement under § 489.53, for a period not to exceed 6 months:

(a) Civil money penalties.

(b) Suspension of payment for all or part of the payments.

(c) Temporary management of the hospice program.

(d) Directed plan of correction.

(e) Directed in-service training.

§ 488.1225 Action when deficiencies pose immediate jeopardy.

(a) *Immediate jeopardy.* If there is immediate jeopardy to the hospice program's patient health or safety, the following rules apply:

(1) CMS immediately terminates the hospice program provider agreement in accordance with § 489.53 of this chapter.

(2) CMS terminates the hospice program provider agreement no later than 23 calendar days from the last day of the survey, if the immediate jeopardy has not been removed by the hospice program.

(3) In addition to a termination, CMS may impose one or more enforcement remedies, as appropriate.

(b) *2-day notice.* Except for civil money penalties, for all remedies specified in § 488.1220 imposed when there is immediate jeopardy, notice must be given at least 2 calendar days before the effective date of the enforcement action. The requirements of the notice are set forth in § 488.1225(e).

(c) *Transfer of care.* A hospice program, if its provider agreement is terminated, is responsible for providing information, assistance, and arrangements necessary for the proper and safe transfer of patients to another local hospice program within 30 calendar days of termination.

§ 488.1230 Action when deficiencies are at the condition-level but do not pose immediate jeopardy.

(a) *Noncompliance with conditions of participation.* If the hospice program is no longer in compliance with the conditions of participation, either because the condition-level deficiency or deficiencies substantially limit the provider's capacity to furnish adequate care but do not pose immediate jeopardy, or the hospice program has repeat condition-level deficiencies based on the hospice program's failure to correct and sustain compliance, CMS does either of the following.

(1) Terminates the hospice program's provider agreement.

(2) Imposes one or more enforcement remedies set forth in § 488.1220(a) through (e) in lieu of termination, for a period not to exceed 6 months.

(b) *15-day notice.* Except for civil money penalties, for all remedies specified in § 488.1220 imposed when there is no immediate jeopardy, notice must be given at least 15 calendar days before the effective date of the enforcement action. The requirements of the notice are set forth in § 488.1210(e).

(c) *Not meeting criteria for continuation of payment.* If a hospice program does not meet the criteria for continuation of payment under § 488.1260(a), CMS terminates the hospice program's provider agreement in accordance with § 488.1265.

(d) *Termination timeframe when there is no immediate jeopardy.* CMS terminates a hospice program within 6 months of the last day of the survey, if the hospice program is not in compliance with the conditions of participation, and the terms of the plan of correction have not been met.

(e) *Transfer of care.* A hospice program, if its provider agreement terminated, is responsible for providing information, assistance, and arrangements necessary for the proper and safe transfer of patients to another local hospice program within 30 calendar days of termination. The State must assist the hospice program in the safe and orderly transfer of care and services for the patients to another local hospice program.

§ 488.1235 Temporary management.

(a) *Application.* (1) CMS may impose temporary management of a hospice program if it determines that a hospice program has a condition-level deficiency and CMS determines that management limitations or the

deficiencies are likely to impair the hospice program's ability to correct the noncompliance and return the hospice program to compliance with all of the conditions of participation within the timeframe required.

(b) *Procedures*—(1) *Notice of intent.* Before imposing this remedy, CMS notifies the hospice program in accordance with § 488.1210(e) that a temporary manager is being appointed.

(2) *Termination.* If the hospice program fails to relinquish authority and control to the temporary manager, CMS terminates the hospice program's provider agreement in accordance with § 488.1265.

(c) *Duration and effect of remedy.* Temporary management continues until one of the following occur:

(1) CMS determines that the hospice program has achieved substantial compliance and has the management capability to ensure continued compliance with all the conditions of participation.

(2) CMS terminates the provider agreement.

(3) The hospice program resumes management control without CMS approval. In this case, CMS initiates termination of the provider agreement and may impose additional remedies.

(4) Temporary management will not exceed a period of 6 months from the date of the survey identifying noncompliance.

(d) *Payment of salary.* (1) The temporary manager's salary must meet the following:

(i) Is paid directly by the hospice program while the temporary manager is assigned to that hospice program.

(ii) Must be at least equivalent to the sum of the following:

(A) The prevailing salary paid by providers for positions of this type in what the State considers to be the hospice program's geographic area (prevailing salary based on the Bureau of Labor Statistics, National Occupational Employment and Wage Estimates)).

(B) Any additional costs that would have reasonably been incurred by the hospice program if such person had been in an employment relationship.

(C) Any other costs incurred by such a person in furnishing services under such an arrangement or as otherwise set by the State.

(2) A hospice program's failure to pay the salary and other costs of the temporary manager described in paragraph (d)(1) of this section is considered a failure to relinquish authority and control to temporary management.

§ 488.1240 Suspension of all or part of the payments.

(a) *Application.* (1) CMS may suspend all or part of the payments to which a hospice program would otherwise be entitled with respect to items and services furnished by a hospice program on or after the date on which the Secretary determines that remedies should be imposed.

(2) CMS considers this remedy for any deficiency related to poor patient care outcomes, regardless of whether the deficiency poses immediate jeopardy.

(b) *Procedures*—(1) *Notice of intent.* (i) Before suspending payments, CMS provides the hospice program notice of the suspension of payment in accordance with § 488.1210(e).

(ii) The hospice program may not charge a newly admitted hospice patient who is a Medicare beneficiary for services for which Medicare payment is suspended unless the hospice program can show that, before initiating care, it gave the patient or his or her representative oral and written notice of the suspension of Medicare payment in a language and manner that the beneficiary or representative can understand.

(2) *Restriction.* (i) Suspension of payment remedy may be imposed anytime a hospice program is found to be out of substantial compliance with the conditions of participation.

(ii) Suspension of payment remains in place until CMS determines that the hospice program has achieved substantial compliance with the conditions of participation or is terminated, as determined by CMS.

(3) *Resumption of payments.* Payments to the hospice program resume prospectively on the date that CMS determines that the hospice program has achieved substantial compliance with the conditions of participation.

(c) *Duration and effect of remedy.* This remedy ends when any of the following occur:

(1) CMS determines that the hospice program has achieved substantial compliance with all of the conditions of participation.

(2) When the hospice program is terminated or CMS determines that the hospice program is not in compliance with the conditions of participation at a maximum of 6 months from the date of the survey identifying the noncompliance.

§ 488.1245 Civil money penalties.

(a) *Application.* (1) CMS may impose a civil money penalty against a hospice program for either the number of days the hospice program is not in compliance with one or more conditions of participation or for each instance that a hospice program is not in compliance, regardless of whether the hospice program's deficiencies pose immediate jeopardy.

(2) CMS may impose a civil money penalty for the number of days of immediate jeopardy.

(3) A per-day and a per-instance CMP may not be imposed simultaneously for the same deficiency in conjunction with a survey.

(4) CMS may impose a civil money penalty for the number of days of noncompliance since the last standard survey, including the number of days of immediate jeopardy.

(b) *Amount of penalty*—(1) *Factors considered.* CMS takes into account the following factors in determining the amount of the penalty:

(i) The factors set out at § 488.1215.

(ii) The size of a hospice program and its resources.

(iii) Evidence that the hospice program has a built-in, self-regulating quality assessment and performance improvement system to provide proper care, prevent poor outcomes, control patient injury, enhance quality, promote safety, and avoid risks to patients on a sustainable basis that indicates the ability to meet the conditions of participation and to ensure patient health and safety.

(2) *Adjustments to penalties.* Based on revisit survey findings, adjustments to penalties may be made after a review of the provider's attempted correction of deficiencies.

(i) CMS may increase a CMP in increments based on a hospice program's inability or failure to correct deficiencies, the presence of a system-wide failure in the provision of quality care, or a determination of immediate jeopardy with actual harm versus immediate jeopardy with potential for harm.

(ii) CMS may also decrease a CMP in increments to the extent that it finds, in accordance with a revisit, that substantial and sustainable improvements have been implemented even though the hospice program is not yet in compliance with the conditions of participation.

(iii) No penalty assessment exceeds $10,000, as adjusted annually under 45 CFR part 102, for each day a hospice program is not in substantial compliance with one or more conditions of participation.

(3) *Upper range of penalty.* Penalties in the upper range of $8,500 to $10,000 per day, as adjusted annually under 45 CFR part 102, are imposed for a condition-level deficiency that is

immediate jeopardy. The penalty in this range continues until substantial compliance can be determined based on a revisit survey.

(i) $10,000, as adjusted annually under 45 CFR part 102, per day for a deficiency or deficiencies that are immediate jeopardy and that result in actual harm.

(ii) $9,000, as adjusted annually under 45 CFR part 102, per day for a deficiency or deficiencies that are immediate jeopardy and that result in a potential for harm.

(iii) $8,500, as adjusted annually under 45 CFR part 102, per day for a deficiency based on an isolated incident in violation of established hospice policy.

(4) *Middle range of penalty.* Penalties in the range of $1,500 up to $8,500, as adjusted annually under 45 CFR part 102, per day of noncompliance are imposed for a repeat or condition-level deficiency or both that does not constitute immediate jeopardy but is directly related to poor quality patient care outcomes.

(5) *Lower range of penalty.* Penalties in this range of $500 to $4,000, as adjusted annually under 45 CFR part 102, are imposed for a repeat or condition-level deficiency or both that does not constitute immediate jeopardy and that are related predominately to structure or process-oriented conditions rather than directly related to patient care outcomes.

(6) *Per instance penalty.* Penalty imposed per instance of noncompliance may be assessed for one or more singular events of condition-level deficiency that are identified and where the noncompliance was corrected during the onsite survey. When penalties are imposed for per instance of noncompliance, or more than one per instance of noncompliance, the penalties will be in the range of $1,000 to $10,000 per instance, not to exceed $10,000 each day of noncompliance, as adjusted annually under 45 CFR part 102.

(7) *Decreased penalty amounts.* If the immediate jeopardy situation is removed, but a condition-level deficiency exists, CMS shifts the penalty amount imposed per day from the upper range to the middle or lower range. An earnest effort to correct any systemic causes of deficiencies and sustain improvement must be evident.

(8) *Increased penalty amounts.* (i) In accordance with paragraph (b)(2) of this section, CMS increases the per day penalty amount for any condition-level deficiency or deficiencies which, after imposition of a lower-level penalty amount, become sufficiently serious to pose potential harm or immediate jeopardy.

(ii) CMS increases the per day penalty amount for deficiencies that are not corrected and found again at the time of revisit survey(s) for which a lower-level penalty amount was previously imposed.

(iii) CMS may impose a more severe amount of penalties for repeated noncompliance with the same condition-level deficiency or uncorrected deficiencies from a prior survey.

(c) *Procedures*—(1) *Notice of intent.* CMS provides the hospice program with written notice of the intent to impose a civil money penalty in accordance with § 488.1210(e).

(2) *Appeals*—(i) *Appeals procedures.* A hospice program may request a hearing on the determination of the noncompliance that is the basis for imposition of the civil money penalty. The request must meet the requirements in § 498.40 of this chapter.

(ii) *Waiver of a hearing.* A hospice program may waive the right to a hearing, in writing, within 60 calendar days from the date of the notice imposing the civil money penalty. If a hospice program timely waives its right to a hearing, CMS reduces the penalty amount by 35 percent, and the amount is due within 15 calendar days of the hospice program agreeing in writing to waive the hearing. If the hospice program does not waive its right to a hearing in accordance to the procedures specified in this section, the civil money penalty is not reduced by 35 percent.

(d) *Accrual and duration of penalty*—(1) *Accural of per day penalty.* (i) The per day civil money penalty may start accruing as early as the beginning of the last day of the survey that determines that the hospice program was out of compliance, as determined by CMS.

(ii) A civil money penalty for each per instance of noncompliance is imposed in a specific amount for that particular deficiency, with a maximum of $10,000 per day per hospice program.

(2) *Duration of per day penalty when there is immediate jeopardy.* (i) In the case of noncompliance that poses immediate jeopardy, CMS must terminate the provider agreement within 23 calendar days after the last day of the survey if the immediate jeopardy is not removed.

(ii) A penalty imposed per day of noncompliance will stop accruing on the day the provider agreement is terminated or the hospice program achieves substantial compliance, whichever occurs first.

(3) *Duration of penalty when there is no immediate jeopardy.* (i) In the case of noncompliance that does not pose immediate jeopardy, the daily accrual of per day civil money penalties is imposed for the days of noncompliance prior to the notice of intent specified in paragraph (c)(1) of this section and an additional period of no longer than 6 months following the last day of the survey.

(ii) If the hospice program has not achieved compliance with the conditions of participation within 6 months following the last day of the survey, CMS terminates the provider agreement. The accrual of civil money penalty stops on the day the hospice program agreement is terminated or the hospice program achieves substantial compliance, whichever is earlier.

(e) *Computation and notice of total penalty amount.* (1) When a civil money penalty is imposed on a per day basis and the hospice program achieves compliance with the conditions of participation as determined by a revisit survey, once the administrative determination is final, CMS sends a final notice to the hospice program containing of the following information:

(i) The amount of penalty assessed per day.

(ii) The total number of days of noncompliance.

(iii) The total amount due.

(iv) The due date of the penalty.

(v) The rate of interest to be assessed on any unpaid balance beginning on the due date, as provided in paragraph (f)(6) of this section.

(2) When a civil money penalty is imposed per instance of noncompliance, once the administrative determination is final, CMS sends a final notice to the hospice program containing all of the following information:

(i) The amount of the penalty that was assessed.

(ii) The total amount due.

(iii) The due date of the penalty.

(iv) The rate of interest to be assessed on any unpaid balance beginning on the due date, as provided in paragraph (f)(6) of this section.

(3) In the case of a hospice program for which the provider agreement has been involuntarily terminated, CMS sends the final notice after one of the following actions has occurred:

(i) The administrative determination is final.

(ii) The hospice program has waived its right to a hearing in accordance with paragraph (c)(2)(ii) of this section.

(iii) Time for requesting a hearing has expired and the hospice program has not requested a hearing.

(f) *Due date for payment of penalty.* A penalty is due and payable 15 calendar days from notice of the final administrative decision.

(1) Payments are due for all civil money penalties within 15 calendar days of any of the following:

(i) After a final administrative decision when the hospice program achieves substantial compliance before the final decision or the effective date of termination occurs before the final decision.

(ii) After the time to appeal has expired and the hospice program does not appeal or fails to timely appeal the initial determination.

(iii) After CMS receives a written request from the hospice program requesting to waive its right to appeal the determinations that led to the imposition of a remedy.

(iv) After the effective date of termination.

(2) A request for hearing does not delay the imposition of any penalty; it only potentially delays the collection of the final penalty amount.

(3) If a hospice program waives its right to a hearing according to paragraph (c)(2)(ii) of this section, CMS applies a 35 percent reduction to the CMP amount for any of the following:

(i) The hospice program achieved compliance with the conditions of participation before CMS received the written waiver of hearing.

(ii) The effective date of termination occurs before CMS received the written waiver of hearing.

(4) The period of noncompliance may not extend beyond 6 months from the last day of the survey.

(5) The amount of the penalty, when determined, may be deducted (offset) from any sum then or later owing by CMS or State Medicaid to the hospice program.

(6) Interest is assessed and accrues on the unpaid balance of a penalty, beginning on the due date. Interest is computed at the rate specified in § 405.378(d) of this chapter.

(g) *Review of the penalty.* When an administrative law judge finds that the basis for imposing a civil monetary penalty exists, as specified in this part, the administrative law judge, may not do any of the following:

(1) Set a penalty of zero or reduce a penalty to zero.

(2) Review the exercise of discretion by CMS to impose a civil monetary penalty.

(3) Consider any factors in reviewing the amount of the penalty other than those specified in paragraph (b) of this section.

§ 488.1250 Directed plan of correction.

(a) *Application.* CMS may impose a directed plan of correction when a hospice program—

(1) Has one or more condition-level deficiencies that warrant directing the hospice program to take specific actions; or

(2) Fails to submit an acceptable plan of correction.

(b) *Procedures.* (1) Before imposing this remedy, CMS notifies the hospice program in accordance with § 488.1210(e).

(2) CMS or the temporary manager (with CMS approval) may direct the hospice program to take corrective action to achieve specific outcomes within specific timeframes.

(c) *Duration and effect of remedy.* If the hospice program fails to achieve compliance with the conditions of participation within the timeframes specified in the directed plan of correction, which may not to exceed 6 months, CMS does one of the following:

(1) May impose one or more other remedies set forth in § 488.1220.

(2) Terminates the provider agreement.

§ 488.1255 Directed in-service training.

(a) *Application.* CMS may require the staff of a hospice program to attend in-service training program(s) if CMS determines all of the following:

(1) The hospice program has condition-level deficiencies.

(2) Education is likely to correct the deficiencies.

(3) The programs are conducted by established centers of health education and training or consultants with background in education and training with Medicare hospice providers, or as deemed acceptable by CMS or the State (by review of a copy of curriculum vitas or resumes and references to determine the educator's qualifications).

(b) *Procedures*—(1) *Notice of intent.* Before imposing this remedy, CMS notifies the hospice program in accordance with § 488.1210(e).

(2) *Action following training.* After the hospice program staff has received in-service training, if the hospice program has not achieved substantial compliance, CMS may impose one or more other remedies specified in § 488.1220.

(3) *Payment.* The hospice program pays for the directed in-service training for its staff.

§ 488.1260 Continuation of payments to a hospice program with deficiencies.

(a) *Continued payments.* CMS may continue payments to a hospice program with condition-level deficiencies that do not constitute immediate jeopardy for up to 6 months from the last day of the survey if the criteria in paragraph (a)(1) of this section are met.

(1) *Criteria.* CMS may continue payments to a hospice program not in compliance with the conditions of participation for the period specified in paragraph (a) of this section if all of the following criteria are met:

(i) An enforcement remedy, or remedies, (with the exception of suspension of all payment) has been imposed on the hospice program and termination has not been imposed.

(ii) The hospice program has submitted a plan of correction approved by CMS.

(iii) The hospice program agrees to repay the Federal government payments received under this provision if corrective action is not taken in accordance with the approved plan and timetable for corrective action.

(2) *Termination.* CMS may terminate the hospice program's provider agreement any time if the criteria in paragraph (a)(1) of this section are not met.

(b) *Cessation of payments for new admissions.* If termination is imposed, either on its own or in addition to an enforcement remedy or remedies, or if any of the criteria set forth in paragraph (a)(1) of this section are not met, the hospice program will receive no Medicare payments, as applicable, for new admissions following the last day of the survey.

(c) *Failure to achieve compliance with the conditions of participation.* If the hospice program does not achieve compliance with the conditions of participation by the end of the period specified in paragraph (a) of this section, CMS terminates the provider agreement of the hospice program in accordance with § 488.1265.

§ 488.1265 Termination of provider agreement.

(a) *Effect of termination by CMS.* Termination of the provider agreement ends—

(1) Payment to the hospice program; and

(2) Any enforcement remedy.

(b) *Basis for termination.* CMS terminates a hospice program's provider agreement under any one of the following conditions:

(1) The hospice program is not in compliance with the conditions of participation.

(2) The hospice program fails to submit an acceptable plan of correction within the timeframe specified by CMS.

(3) The hospice program fails to relinquish control to the temporary manager, if that remedy is imposed by CMS.

(4) The hospice program fails to meet the eligibility criteria for continuation of payment as set forth in § 488.1260(a)(1).

(c) *Notice.* CMS notifies the hospice program and the public of the termination, in accordance with procedures set forth in § 489.53 of this chapter.

(d) *Procedures for termination.* CMS terminates the provider agreement in accordance with procedures set forth in § 489.53 of this chapter.

(e) *Payment post termination.* Payment is available for up to 30 calendar days after the effective date of termination for hospice care furnished under a plan established before the effective date of termination as set forth in § 489.55 of this chapter.

(f) *Appeal.* A hospice program may appeal the termination of its provider agreement by CMS in accordance with part 498 of this chapter.

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

■ 25. The authority citation for part 489 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395i–3, 1395x, 1395aa(m), 1395cc, 1395ff, and 1395(hh).

■ 26. Section 489.28 is amended by revising paragraphs (d) and (e) to read as follows:

§ 489.28 Special capitalization requirements for HHAs

* * * * *

(d) *Required proof of availability of initial reserve operating funds.* The HHA must provide CMS with adequate proof of the availability of initial reserve operating funds. Such proof, at a minimum, will include a copy of the statement(s) of the HHA's savings, checking, or other account(s) that contains the funds, accompanied by an attestation from an officer of the bank or other financial institution (if the financial institution offers such attestations) that the funds are in the account(s) and that the funds are immediately available to the HHA. In some cases, an HHA may have all or part of the initial reserve operating funds in cash equivalents. For the purpose of this section, cash equivalents are short-term, highly liquid investments that are readily convertible to known amounts of cash and that present insignificant risk of changes in value. A cash equivalent that is not readily convertible to a known amount of cash as needed during the initial 3-month period for which the initial reserve operating funds are required does not qualify in meeting the initial reserve operating funds requirement. Examples of cash equivalents for the purpose of this section are Treasury bills, commercial paper, and money market funds. As with funds in a checking, savings, or other account, the HHA also must be able to document the availability of any cash equivalents. CMS later may require the HHA to furnish another attestation from the financial institution that the funds remain available, or, if applicable, documentation from the HHA that any cash equivalents remain available, until a date when the HHA will have been surveyed by the State agency or by an approved accrediting organization. The officer of the HHA who will be certifying the accuracy of the information on the HHA's cost report must certify what portion of the required initial reserve operating funds is non-borrowed funds, including funds invested in the business by the owner. That amount must be at least 50 percent of the required initial reserve operating funds. The remainder of the reserve operating funds may be secured through borrowing or line of credit from an unrelated lender.

(e) *Borrowed funds.* If borrowed funds are not in the same account(s) as the HHA's own non-borrowed funds, the HHA also must provide proof that the borrowed funds are available for use in operating the HHA, by providing, at a minimum, a copy of the statement(s) of the HHA's savings, checking, or other account(s) containing the borrowed funds, accompanied by an attestation from an officer of the bank or other financial institution (if the financial institution offers such attestations) that the funds are in the account(s) and are immediately available to the HHA. As with the HHA's own (that is, non-borrowed) funds, CMS later may require the HHA to establish the current availability of such borrowed funds, including furnishing an attestation from a financial institution or other source, as may be appropriate, and to establish that such funds will remain available until a date when the HHA will have been surveyed by the State agency or by an approved accrediting organization.

* * * * *

§ 489.53 [Amended]

■ 27. Section 489.53 is amended in paragraph (a)(17) by removing the phrase ''an HHA,'' and adding in its place the phrase ''an HHA or hospice program,''.

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM AND FOR DETERMINATIONS THAT AFFECT THE PARTICIPATION OF ICFS/IID AND CERTAIN NFs IN THE MEDICAID PROGRAM

■ 28. The authority citation for part 498 continues to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7j, and 1395hh.

■ 29. Section 498.1 is amended by adding paragraph (l) to read as follows:

§ 498.1 Statutory basis.

* * * * *

(l) Section 1822 of the Act provides that for hospice programs that are no longer in compliance with the conditions of participation, the Secretary may develop remedies to be imposed instead of, or in addition to, termination of the hospice program's Medicare provider agreement.

■ 30. Section 498.3 is amended—

■ a. By revising paragraph (b)(13);

■ b. In paragraph (b)(14) introductory text, by removing the phrase ''NF or HHA but only'' and adding in its place the phrase ''NF, HHA or hospice program, but only'';

■ c. By revising paragraph (b)(14)(i); and

■ d. In paragraph (d)(10) introductory text, by removing the phrase ''NF or HHA—'' and adding in its place the phrase ''NF, HHA or hospice program—''.

The revisions read as follows:

§ 498.3 Scope and applicability.

* * * * *

(b) * * *

(13) Except as provided at paragraph (d)(12) of this section for SNFs, NFs, HHAs, and hospice programs, the finding of noncompliance leading to the imposition of enforcement actions specified in § 488.406, § 488.820, or § 488.1170 of this chapter, but not the determination as to which sanction or remedy was imposed. The scope of review on the imposition of a civil money penalty is specified in § 488.438(e), § 488.845(h), or § 488.1195(h) of this chapter.

(14) * * *

(i) The range of civil money penalty amounts that CMS could collect (for SNFs or NFs, the scope of review during a hearing on imposition of a civil money penalty is set forth in § 488.438(e) of this chapter and for HHAs and hospice programs, the scope of review during a hearing on the imposition of a civil money penalty is set forth in

§§ 488.845(h) and 488.1195(h) of this chapter); or

* * * * *

§ 498.60 [Amended]

■ 31. Section 498.60 is amended—

■ a. In paragraph (c)(1) by removing the reference ''§§ 488.438(e) and 488.845(h)'' and adding in its place the reference ''§§ 488.438(e), 488.845(h), and 488.1195(g)''.

■ b. In paragraph (c)(2) by removing the phrase ''or HHA'' and adding in its place the phrase ''HHA or hospice program''.

Dated: June 23, 2021.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2021–13763 Filed 6–28–21; 4:15 pm]

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Part III

Department of Energy

10 CFR Parts 429 and 431
Energy Conservation Program: Test Procedure for Dehumidifying Direct Expansion-Dedicated Outdoor Air Systems; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[EERE–2017–BT–TP–0018]

RIN 1904–AD93

Energy Conservation Program: Test Procedure for Dehumidifying Direct Expansion-Dedicated Outdoor Air Systems

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The U.S. Department of Energy (DOE) is proposing to establish definitions for ''direct expansion-dedicated outdoor air systems'' (DX–DOAS or DX–DOASes) and ''dehumidifying direct expansion-dedicated outdoor air systems'' (DDX–DOAS or DDX–DOASes). DX–DOASes are a category of small, large, and very large commercial package air conditioning and heating equipment under the Energy Policy and Conservation Act (EPCA), as amended. In addition, DOE is proposing to establish a test procedure to measure the energy efficiency of DDX–DOASes, which aligns with the most recent version of the relevant industry consensus test standards for DDX–DOASes, with certain minor modifications. Lastly, DOE is proposing to add supporting definitions, energy efficiency metrics for dehumidification and heating modes, and provisions governing public representations as part of this rulemaking. DOE welcomes written comment from the public on any subject within the scope of this document (including topics not specifically raised in this proposal), as well as the submission of data and other relevant information.

DATES: Comments: DOE will accept written comments, data, and information regarding this notice of proposed rulemaking (NOPR) on or before September 7, 2021. See section V, ''Public Participation,'' for details.

Meeting: DOE will hold a webinar on Monday, August 2, 2021 from 10:00 a.m. to 4:00 p.m. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at www.regulations.gov. Follow the instructions for submitting comments.

Alternatively, interested persons may submit comments, identified by docket number EERE–2017–BT–TP–0018, by any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov*.

2. *Email:* to *CommACHeatingEquipCat2017TP0018@ee.doe.gov*. Include docket number EERE–2017–BT–TP–0018 in the subject line of the message.

No telefacsimiles (faxes) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section V of this document (Public Participation).

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing Covid–19 pandemic. DOE is currently accepting only electronic submissions at this time. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the Covid–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

Docket: The docket, which includes **Federal Register** notices, public meeting/webinar attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov*. All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at: *www.regulations.gov/#docketDetail;D=EERE-2017-BT-TP-0018*. The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section V (Public Participation) for information on how to submit comments through *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Rivest, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC, 20585–0121. Telephone: (202) 586–7335. Email: *ApplianceStandardsQuestions@ee.doe.gov*.

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–5827. Email: *Eric.Stas@hq.doe.gov*.

For further information on how to submit a comment, review other public comments and the docket, or participate in the webinar, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov*.

SUPPLEMENTARY INFORMATION: DOE proposes to incorporate by reference the following industry standards into title 10 of the Code of Federal Regulations (CFR) part 431:

Air-Conditioning, Heating, and Refrigeration Institute (AHRI) Standard 920–2020 (I–P), ''2020 Standard for Performance Rating of Direct Expansion-Dedicated Outdoor Air System Units,'' approved February 4, 2020.

American National Standards Institute (ANSI)/AHRI Standard 1060–2018, ''2018 Standard for Performance Rating of Air-to-Air Exchangers for Energy Recovery Ventilation Equipment,'' approved 2018.

Copies of AHRI Standard 920–2020 (I–P), and ANSI/AHRI Standard 1060–2018 can be obtained from the Air-conditioning, Heating, and Refrigeration Institute, 2311 Wilson Blvd., Suite 400, Arlington, VA 22201, (703) 524–8800, or online at: *www.ahrinet.org*.

ANSI/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 37–2009, ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,'' ASHRAE approved June 24, 2009.

ANSI/ASHRAE Standard 41.1–2013, ''Standard Method for Temperature Measurement,'' ANSI approved January 30, 2013.

ANSI/ASHRAE Standard 41.6–2014, ''Standard Method for Humidity Measurement,'' ANSI approved July 3, 2014.

ANSI/ASHRAE Standard 198–2013, ''Method of Test for Rating DX-Dedicated Outdoor Air Systems for Moisture Removal Capacity and Moisture Removal Efficiency,'' ANSI approved January 30, 2013.

Copies of ANSI/ASHRAE Standard 37–2009, ANSI/ASHRAE Standard 41.1–2013, ANSI/ASHRAE Standard 41.6–2014, and ANSI/ASHRAE Standard 198–2013 can be obtained from the American Society of Heating,

Refrigerating and Air-Conditioning Engineers, 180 Technology Parkway, Peachtree Corners, GA 30092, (404) 636–8400, or online at: *www.ashrae.org*.

See section IV.M of this document for a further discussion of these standards.

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I. Authority and Background

Small, large, and very large commercial package air conditioning and heating equipment are included in the list of ''covered equipment'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6311(1)(B)–(D)) As defined by the Energy Policy and Conservation Act, as amended (EPCA), ''commercial package air conditioning and heating equipment'' means air-cooled, water-cooled, evaporatively-cooled, or water-source (not including ground-water-source) electrically operated, unitary central air conditioners and central air conditioning heat pumps for commercial application. (42 U.S.C. 6311(8)(A)) Industry standards generally describe unitary central air conditioning equipment as one or more factory-made assemblies that normally include an evaporator or cooling coil and a compressor and condenser combination. Units equipped to also perform a heating function are included as well.[1] Direct expansion-dedicated outdoor air systems (DX–DOASes) provide conditioning of outdoor ventilation air using a refrigeration cycle consisting of a compressor, condenser, expansion valve, and evaporator,[2] and therefore, DOE has initially concluded that DX–DOASes are a category of commercial package air conditioning and heating equipment subject to EPCA. An industry consensus test standard has been established for a subset of DX–DOASes (*i.e.,* dehumidifying DX–DOASes (DDX–DOASes)), which are the subject of this test procedure proposal. The following sections discuss DOE's authority to establish test procedures for DDX–DOASes, as well as relevant background information regarding DOE's proposed adoption of the industry consensus test standard, and proposed clarifications to the industry test procedure for this equipment.

A. Authority

EPCA,[3] as amended, among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part C[4] of EPCA, Public Law 94–163 (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, Title IV, § 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This covered equipment includes small, large, and very large commercial package air conditioning and heating equipment. (42 U.S.C. 6311(1)(B)–(D)) DOE has initially determined that commercial package air conditioning and heating equipment includes DX–DOASes. As discussed in section I.B of this document, DX–DOASes had not previously been addressed in DOE rulemakings and are not currently subject to Federal test procedures or energy conservation standards.

Under EPCA, DOE's energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314),

[1] *See* American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 90.1, ''Energy Standard for Buildings Except Low-Rise Residential Buildings.''

[2] Other types of dedicated outdoor air systems are available that do not utilize direct expansion (*e.g.,* units that use chilled water, rather than refrigerant, as the heat transfer medium); these are discussed in section III.B.3.e.v. of this document.

[3] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

[4] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) Certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(b); 42 U.S.C. 6296), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA.

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption in limited circumstances for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6316(b)(2)(D))

Under 42 U.S.C. 6314, the statute also sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered equipment. Specifically, EPCA requires that any test procedure prescribed or amended shall be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of covered equipment during a representative average use cycle and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

EPCA requires that the test procedures for commercial package air conditioning and heating equipment be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), as referenced in ASHRAE Standard 90.1, ''Energy Standard for Buildings Except Low-Rise Residential Buildings'' (ASHRAE Standard 90.1). (42 U.S.C. 6314(a)(4)(A)) Further, if such an industry test procedure is amended, DOE must update its test procedure to be consistent with the amended industry test procedure, unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that such amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3), related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B))

EPCA also requires that, at least once every seven years, DOE evaluate test procedures for each type of covered equipment, including commercial package air conditioning and heating equipment to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures not to be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1)–(3)) In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures in the **Federal Register** and afford interested persons an opportunity (of not less than 45 days duration) to present oral and written data, views, and arguments on the proposed test procedures. (42 U.S.C. 6314(b)) If DOE determines that test procedure revisions are not appropriate, DOE must publish in the **Federal Register** its determination not to amend the test procedures. (42 U.S.C. 6314(a)(1)(A)(ii))

As discussed in section I.B of this document, a test procedure for a subset of DX–DOASes (*i.e.,* DDX–DOASes), was first specified by ASHRAE Standard 90.1 in the 2016 edition (ASHRAE Standard 90.1–2016). Pursuant to 42 U.S.C. 6314(a)(4)(B), and following updates to the relevant test procedures which were referenced in ASHRAE Standard 90.1, DOE is publishing this NOPR proposing to establish a test procedure for DDX–DOASes in satisfaction of its aforementioned obligations under EPCA.

B. Background

From a functional perspective, DX–DOASes operate similarly to other categories of commercial package air conditioning and heat pump equipment, in that they provide conditioning using a refrigeration cycle consisting of a compressor, condenser, expansion valve, and evaporator. DX–DOASes provide ventilation and conditioning of 100-percent outdoor air to the conditioned space, whereas for typical commercial package air conditioners that are central air conditioners, outdoor air makes up only a small portion of the total airflow (usually less than 50 percent). DX–DOASes are typically installed in addition to a local, primary cooling or heating system (*e.g.,* commercial unitary air conditioner, variable refrigerant flow system, chilled water system, water-source heat pumps)—the DX–DOAS conditions the outdoor ventilation air, while the primary system provides cooling or heating to balance building shell and interior loads and solar heat gain. According to ASHRAE, a well-designed system using a DX–DOAS can ventilate a building at lower installed cost, reduce overall annual building energy use, and improve indoor environmental quality.[5]

On October 26, 2016, ASHRAE published ASHRAE Standard 90.1–2016, which for the first time specified a test standard and efficiency standards for DX–DOASes. ASHRAE Standard 90.1–2016 (and the subsequent 2019 edition) defines DX–DOAS as a type of air-cooled, water-cooled, or water-source factory assembled product that dehumidifies 100% outdoor air to a low dew point and includes reheat that is capable of controlling the supply dry-bulb temperature of the dehumidified air to the designed supply air temperature. This conditioned outdoor air is then delivered directly or indirectly to the conditioned spaces. It may precondition outdoor air by containing an enthalpy wheel, sensible wheel, desiccant wheel, plate heat exchanger, heat pipes, or other heat or mass transfer apparatus.

Although ASHRAE Standard 90.1–2016 uses the term ''DX–DOAS,'' the definition of this term provided therein describes a subset of DX–DOASes, specifically DDX–DOASes. The ASHRAE definition of ''DX–DOAS'' is generally equivalent to the equipment DOE is proposing to define as DDX–DOAS and for which DOE is proposing to adopt the industry consensus standard. DDX–DOASes dehumidify air to a low dew point. When operating in humid conditions, the dehumidification load from the outdoor ventilation air is a much larger percentage of the total cooling load for a DDX–DOAS than for a typical commercial air conditioner. Additionally, compared to a typical commercial air conditioner, the amount of total cooling (both sensible and latent) is much greater per pound of air for a DDX–DOAS at design conditions (*i.e.,* the warmest/most humid expected summer conditions), and a DDX–DOAS is designed to accommodate greater variation in entering air temperature and humidity (*i.e.,* a typical commercial air conditioner would not be able to dehumidify 100-percent outdoor ventilation air to the levels achieved by

[5] From the June 2018 ASHRAE eSociety Newsletter (Available at: *www.ashrae.org/news/esociety/what-s-new-in-doas-and-refrigerant-research*) (Last accessed May 24, 2021).

a DDX–DOAS). Not all DX–DOASes have this dehumidification capability, which is why DOE is proposing a separate definition. (See section III.B.2.a of this NOPR for further details.)

The amendment to ASHRAE Standard 90.1 to specify an industry test standard for equipment that DOE calls DDX–DOAS triggered DOE's obligations vis-à-vis test procedures under 42 U.S.C. 6314(a)(4)(B), as outlined previously. On July 25, 2017, DOE published a request for information (RFI) (the July 2017 ASHRAE TP RFI) in the **Federal Register** to collect information and data to consider new and amended DOE test procedures for commercial package air conditioning and heating equipment, given the test procedure updates included in ASHRAE Standard 90.1–2016. 82 FR 34427. As part of the July 2017 ASHRAE TP RFI, DOE requested comment on several aspects regarding test procedures for DDX–DOASes in consideration of adopting a new DOE test procedure for this equipment, including: Incorporation by reference of the relevant industry test standard(s); efficiency metrics and calculations, and additional topics that may inform DOE's decisions in a future test procedure rulemaking.[6] 82 FR 34427, 34435–34439 (July 25, 2017). On October 25, 2019, ASHRAE published an updated version of ASHRAE Standard 90.1 (*i.e.,* ASHRAE Standards 90.1–2019), which maintained the DDX–DOAS provisions as first introduced in ASHRAE Standard 90.1–2016 without revisions.

DOE received a number of comments from interested parties in response to the July 2017 ASHRAE TP RFI, which covered multiple categories of equipment. Table I–1 lists the commenters relevant to DDX–DOASes, along with each commenter's abbreviated name used throughout this NOPR. DOE considered these comments in the preparation of this NOPR. Discussion of the relevant comments, and DOE's responses, are provided in the appropriate sections of this document.

TABLE I–1—INTERESTED PARTIES PROVIDING DX–DOAS-RELATED COMMENTS ON THE JULY 2017 ASHRAE TEST PROCEDURE RFI

Name	Abbreviation	Type [1]
Air-Conditioning, Heating, and Refrigeration Institute	AHRI	IR
Appliance Standards Awareness Project (ASAP), Alliance to Save Energy (ASE), American Council for an Energy-Efficient Economy (ACEEE), Northwest Energy Efficiency Alliance (NEEA), and Northwest Power and Conservation Council (NPCC).	Joint Advocates	EA
Carrier Corporation, part of United Technologies Climate, Controls & Security (CCS) business	Carrier	M
Goodman Global, Inc	Goodman	M
The Greenheck Group	Greenheck	M
Ingersoll Rand	Ingersoll Rand	M
Lennox International, Inc	Lennox	M
Mitsubishi Electric Cooling & Heating [2]	Mitsubishi	M
National Comfort Institute	NCI	IR
Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SoCalGas), San Diego Gas and Electric (SDG&E), and Southern California Edison (SCE), collectively referred to as California Investor-Owned Utilities (CA IOUs).	CA IOUs	U

[1] EA: Efficiency/Environmental Advocate; IR: Industry Representative; M: Manufacturer; U: Utility.
[2] Mitsubishi commented that it fully supports all of the comments submitted by AHRI on DX–DOAS issues.

On February 14, 2020, DOE published a final rule updating its procedures for consideration of new and amended energy conservation standards at 10 CFR part 430, subpart C, appendix A, ''Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Certain Commercial/Industrial Equipment'' (the Process Rule). 85 FR 8626. As part of the update, the Process Rule now applies explicitly to commercial and industrial equipment. 10 CFR 431.4. The updated Process Rule also includes provisions specific to the consideration of new and amended energy conservation standards and test procedures for covered equipment subject to the ASHRAE provisions of EPCA. *See* Process Rule, 10 CFR part 430, subpart C, appendix A, sections 2 and 9.

With respect to DOE's consideration of changes to the relevant industry consensus test procedure(s) for covered ASHRAE equipment, the Process Rule now provides that DOE will do so only if it can meet a very high bar to demonstrate the ''clear and convincing evidence'' threshold. 10 CFR part 430, subpart C, appendix A, section 9(b). Clear and convincing evidence would exist only where the specific facts and data made available to DOE regarding a particular ASHRAE amendment demonstrates that there is no substantial doubt that that the industry test procedure does not meet the EPCA requirements. *Id.* DOE will make this determination only after seeking data and information from interested parties and the public to help inform DOE's views. DOE will seek from interested stakeholders and the public data and information to assist in making this determination, prior to publishing a proposed rule to adopt a different test procedure. *Id.*

II. Synopsis of the Notice of Proposed Rulemaking

In this NOPR, DOE is proposing to establish a definition for DX–DOAS as a category of commercial package air conditioning and heating equipment and adopt a new test procedure for a subset of DX–DOASes (*i.e.,* DDX–DOASes), consistent with the industry consensus test standard as specified in ASHRAE Standard 90.1–2019. The proposed test procedure applies to all DDX–DOASes for which ASHRAE 90.1–2019 specifies standards, with the exception of ground-water-source DDX–DOASes, as discussed in section III.A.1 of this NOPR. More specifically, DOE proposes to update 10 CFR 431.96, ''Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps,'' to adopt a new test procedure for DDX–DOASes as follows: (1) Incorporate by reference AHRI Standard 920–2020 (I–P), ''Performance Rating of

[6] In the July 2017 ASHRAE TP RFI, DOE referred to DDX–DOASes simply as ''DOASes.''

Direct Expansion-Dedicated Outdoor Air System Units'' (AHRI 920–2020), the most recent version of the test procedure recognized by ASHRAE Standard 90.1 for DDX–DOASes, and the relevant industry standards referenced therein; (2) establish the scope of coverage for the DDX–DOAS test procedure; (3) add definitions for DX–DOASes and DDX–DOASes, as well as additional terminology required by the test procedure; (4) adopt the integrated seasonal moisture removal efficiency, as measured according to the most recent applicable industry standard (ISMRE2), and integrated seasonal coefficient of performance (ISCOP2), as measured according to the most recent applicable industry standard, as energy efficiency descriptors for dehumidification and heating mode, respectively; and (5) establish representation requirements. DOE proposes to add a new Appendix B to Subpart F of Part 431, titled ''Uniform test method for measuring the energy consumption of dehumidifying direct expansion-dedicated outdoor air systems,'' (Appendix B) that would include the new test procedure requirements for DDX–DOASes. In conjunction, DOE proposes to amend Table 1 in 10 CFR 431.96 to identify the newly added Appendix B as the applicable test procedure for testing DDX–DOASes. DOE has tentatively determined that the proposed test procedure would not be unduly burdensome to conduct.

DOE's proposed actions are summarized in Table II.1 and addressed in detail in section III of this document.

TABLE II.1—SUMMARY OF PROPOSED TEST PROCEDURE FOR DDX–DOASES

Proposed test procedure	Attribution
Incorporates by reference AHRI 920–2020 and other relevant industry test standards referenced by that standard. AHRI 920–2020 includes: —test methods for DDX–DOAS with and without ventilation energy recovery systems (VERS); —test operating conditions, including Standard Rating Conditions, simulated ventilation air conditions for optional test methods for DDX–DOASes with VERS, supply air target conditions, supply and return airflow rates, and external static pressure; —testing instrumentation and apparatus instructions; —test operating and condition tolerances [7]; —a list of components that must be present for testing; and —provisions for testing units with certain optional features.	Adopt industry test procedure.
Defines DX–DOASes as covered equipment which meet the EPCA definition for small, large, or very-large commercial package air conditioning and heating equipment.	Establish equipment coverage.
Defines the scope of coverage of the test procedure, including defining DDX–DOASes to distinguish them from other kinds of equipment and a capacity limit based on moisture removal capacity (MRC).	Clarify scope of test procedure.
Adopts ISMRE2 and ISCOP2 as the seasonal efficiency descriptors for dehumidification and heating mode, respectively, as specified in AHRI 920–2020.	Adopt industry test procedure.
Provides minor corrections and additional instruction consistent with AHRI 920–2020 by: —specifying the external head pressure requirements for DDX–DOASes with integral water pumps; —specifying general control setting requirements; —correcting a typographical error in the calculation of the degradation coefficient; and —providing a missing definition necessary for the interpretation of the airflow setting instructions.	Clarify instructions in the industry test procedure.
Specifies representation requirements, including a basic model definition, sampling plan requirements, and use of alternative energy-efficiency determination methods (AEDMs).	Provide for representations of energy efficiency consistent with other commercial air conditioner/heat pump equipment.

III. Discussion

The following sections discuss DOE's proposal to define DX–DOASes as a category of small, large and extra-large commercial package air conditioning and heating equipment and to adopt a new test procedure for DDX–DOASes, a subset of DX–DOASes, and address relevant comments received in response to specific issues DOE raised in the July 2017 ASHRAE TP RFI. Commenters' references to ''DX–DOASes'' or ''DOASes'' have been changed to ''DDX–DOASes'' where DOE understands the commenters to be specifically discussing DX–DOASes that would meet the dehumidification performance criterion as proposed.

A. Scope of Applicability

1. Equipment Coverage

As discussed, DOE has initially determined that DX–DOASes are a category of small, large, and very large commercial package air conditioning and heating equipment and, therefore, are covered equipment under EPCA. (42 U.S.C. 6311(1)(B)–(D)) DX–DOASes operate similarly to more typical commercial package air conditioning equipment in that they provide conditioning of outdoor ventilation air using a refrigeration cycle consisting of a compressor, condenser, expansion valve, and evaporator. However, DX–DOASes are designed to provide ventilation and conditioning of 100-percent outdoor air, while outdoor air makes up only a small portion of the total airflow for typical commercial package air conditioning and heating equipment (*e.g.,* usually less than 50 percent).

As discussed further in section III.A.4 of this document, industry provides several definitions for DX–DOASes, but DOE notes that the industry definitions for ''DX–DOAS'' specifically refer to the DDX–DOASes that are covered by the scope of those industry test standards, which does not include non-dehumidifying (*i.e.,* sensible-only) DX–DOASes that exist on the market.

In this NOPR, DOE is proposing to define ''direct expansion-dedicated outdoor air system, or DX–DOAS,'' as a category of small, large, or very large commercial package air conditioning and heating equipment which is capable of providing ventilation and conditioning of 100-percent outdoor air or marketed in materials (including but not limited to, specification sheets, insert sheets, and online materials) as having such capability. This proposed definition is based, in part, on the definition in section 3.6 of AHRI 920–

[7] ''Test operating tolerance'' refers to the maximum permissible range that a measurement may vary over a specified test interval. ''Test condition tolerance'' refers to the maximum permissible difference between the average value of the measured test parameter and the specified test condition.

2020, as discussed in section III.A.4 of this document.

The proposed definition of DX–DOAS would include all air-cooled, air-source heat pump, and water-cooled equipment subcategories specified in ASHRAE Standard 90.1. For water-source heat pump equipment, ASHRAE Standard 90.1 includes three configurations—ground-source, closed loop; ground-water-source; and water-source. The EPCA definition for ''commercial package air conditioning and heating equipment'' specifically excludes ground-water-source equipment (42 U.S.C. 6311(8)(A)), so in proposing to define (at 10 CFR 431.92) DX–DOAS as a category of small, large, or very large commercial package air conditioning and heating equipment, ground-water-source DX–DOASes would be excluded from coverage under EPCA.

Issue–1: DOE requests comment on the proposed definition for ''direct expansion-dedicated outdoor air system.'' DOE also requests comment on any additional characteristics not yet considered that could help to distinguish DX–DOASes from other commercial package air conditioning and heating equipment.

2. Scope of Test Procedure

DOE is proposing to establish a test procedure for a subset of DX–DOASes (*i.e.,* DDX–DOASes). When operating in humid conditions, the dehumidification load is a much larger percentage of the total cooling load for a DDX–DOAS than for a typical commercial package air conditioning system. DDX–DOASes in particular handle a significantly higher amount of total cooling (both sensible and latent) per pound of air at design conditions (*i.e.,* the warmest or most humid expected summer conditions), and a DDX–DOAS is designed to accommodate greater variation in entering air temperature and humidity, because outdoor conditions can vary much more than typical indoor conditions. As discussed, not all DX–DOASes are designed to dehumidify outdoor air at the most humid expected summer conditions to a level consistent with comfortable indoor conditions, such as a dew point temperature less than 55 °F (*e.g.,* sensible-only cooling [8] DX–DOASes). AHRI stated that sensible-only 100-percent outdoor air units should not be covered by ANSI/AHRI 920–2015 because they are not intended to dehumidify the ventilation air. (AHRI, No. 11 at pp. 10–11) [9]

Because DOE is aware of sensible-only DX–DOASes, DOE aims to further delineate those DX–DOASes that would be subject to the proposed test procedure (*i.e.,* DDX–DOASes). Section 2.2 of AHRI 920–2020 explicitly excludes ''Sensible-only 100% Outdoor Air Units'' from the scope of its test standard. Accordingly, DOE proposes to define DDX–DOASes (the subject of this proposed test procedure) in 10 CFR 431.92 as those DX–DOASes specifically having the capability to dehumidify air to a dew point of 55 °F when operating under Standard Rating Condition A as specified in Table 4 or Table 5 of AHRI 920–2020 with a barometric pressure of 29.92 in Hg. The 55 °F dew point is specified in ANSI/AHRI 920–2015 and AHRI 920–2020 as the maximum dew point temperature for the supply air for the dehumidification mode tests.[10] This maximum dew point temperature requirement for DDX–DOASes provides a key differentiator from other DX–DOASes, which typically cannot dehumidify 100-percent outdoor air to a dew point this low. This element is consistent with the definition in AHRI 920–2020.

AHRI 920–2020 does not specify at what airflow the dehumidification element is to be evaluated. DOE proposes to include within the proposed definition of DDX–DOAS that the DDX–DOAS be capable of providing the specified dehumidification capability for any portion of the range of air flow rates advertised in manufacturer materials. This provision would provide additional specificity to the definition found in AHRI 920–2020 to account for manufacturers that may specify a range of airflows for a given model.

As proposed, the test procedure would apply to DDX–DOASes within the capacity limits as discussed in the following section.

Issue–1: DOE requests comment on the proposed definition for ''dehumidifying direct expansion-dedicated outdoor air system.'' Specifically, DOE requests comment on the proposed criteria for distinguishing a ''dehumidifying direct expansion-dedicated outdoor air system'' from a ''direct expansion-dedicated outdoor air system'' more generally. DOE also requests comment on any additional characteristics not yet considered that could help to distinguish DDX–DOASes from DX–DOASes more generally.

3. Capacity Limit

As stated, EPCA defines as covered equipment small, large, and very large commercial package air conditioning and heating equipment. (42 U.S.C. 6311(1)(B)–(D)) EPCA defines ''small commercial package air conditioning and heating equipment'' as commercial package air conditioning and heating equipment that is rated below 135,000 Btu per hour (cooling capacity). (42 U.S.C. 6311(8)(B)) The term ''large commercial package air conditioning and heating equipment'' means commercial package air conditioning and heating equipment that is rated—(i) at or above 135,000 Btu per hour; and (ii) below 240,000 Btu per hour (cooling capacity). (42 U.S.C. 6311(8)(C)) The term ''very large commercial package air conditioning and heating equipment'' means commercial package air conditioning and heating equipment that is rated—(i) at or above 240,000 Btu per hour; and (ii) below 760,000 Btu per hour (cooling capacity). (42 U.S.C. 6311(8)(D))

In response to the July 2017 ASHRAE TP RFI, AHRI commented that DOE's regulations for DDX–DOASes should be capped at a reasonable capacity, similar to the 760,000 Btu/h limit for commercial packaged air conditioning equipment. AHRI stated that laboratory limitations may limit testing using ANSI/AHRI 920–2015 to 300 lbs. of moisture per hour at Standard Rating Condition A and to units not physically larger than more typical commercial package air conditioning and heating equipment with a capacity of 760,000 Btu/h. The commenter also stated that the market for these larger, typical commercial package air conditioning equipment and DDX–DOAS units (with a capacity greater than 760,000 Btu/h, or equivalent) is very small and customized. AHRI stated that the customization helps customers minimize energy consumption for their application. (AHRI, No. 11 at p. 20)

As discussed, DOE has tentatively concluded that DX–DOASes meet the EPCA definition for ''commercial package air conditioning and heating equipment,'' and, thus, are to be considered as a category of that covered equipment. (42 U.S.C. 6311(8)(A)) The upper capacity limit of commercial

[8] ''Sensible cooling'' refers to the process of cooling air by reducing its dry bulb temperature without changing its moisture content.

[9] A notation in the form ''AHRI, No. 11 at pp. 10–11'' identifies a written comment: (1) Made by AHRI; (2) recorded in document number 11 that is filed in the docket of this test procedure rulemaking (Docket No. EERE–2017–BT–TP–0018) and available for review at *www.regulations.gov;* and (3) which appears on pages 10 through 11 of document number 11.

[10] AHRI 920–2020 acknowledges the influence of barometric pressure on humidity ratio for the inlet air conditions specified in terms of dry bulb and wet bulb temperature, allowing an upward adjustment of the maximum supply air dew point temperature that must be achieved, such that the moisture removal rate matches that which would occur at standard barometric pressure when supplying 55 °F dew-point supply air—this maximum supply air dew point increases linearly as barometric pressure decreases, up to 57.3 °F at the minimum-allowed 13.7 psia test pressure.

package air conditioning subject to the DOE test procedures is 760,000 Btu per hour, based on the definition of ''very large commercial package air conditioning and heating equipment.'' (42 U.S.C. 6311(8)(D))

For DDX–DOASes specifically, AHRI 920–2020 does not provide a method for determining capacity in terms of Btu per hour, but instead, it specifies a determination of capacity in terms of moisture removal capacity (MRC). DOE proposes to translate the upper capacity for coverage of commercial package air conditioning and heating units established in EPCA (*i.e.,* 760,000 Btu per hour) from Btu per hour to MRC for DDX–DOASes. Specifically, DOE is proposing, consistent with section 6 of AHRI 920–2020, to translate the upper limit from Btu per hour to MRC of the DDX–DOAS when delivering dehumidified supply air at a 55 °F dew point. Manufacturers would use their tested value of MRC to determine if a DDX–DOAS is subject to the test procedure.

To translate Btu per hour to MRC, DOE calculated the maximum airflow that could be supplied at a 55 °F dewpoint for Standard Rating Condition A as specified in Table 4 and Table 5 of AHRI 920–2020 by cooling and dehumidifying it with an evaporator with a refrigeration capacity of 760,000 Btu per hour. DOE calculated this based on air entering the evaporator at Standard Rating Condition A (95 °F dry-bulb temperature and 78 °F wet-bulb temperature) and air exiting the evaporator at 55 °F dew point and 95-percent relative humidity at a standard barometric pressure of 29.92 in Hg. DOE then calculated the MRC that corresponds to those conditions. Based on these calculations, DOE is proposing to limit the scope of this proposed test procedure to DDX–DOAS units with a MRC less than 324 lbs. per hour based on Standard Rating Condition A as specified in Table 4 or Table 5 of AHRI 920–2020.

Issue–2: DOE seeks comment on its translation of Btu per hour to MRC and specifically its proposal to translate the upper capacity limit for DDX–DOASes such that a model would be considered in scope if it has an MRC less than 324 lbs. per hour.

4. Industry Terminology

As stated, DOE is proposing definitions for DX–DOAS and DDX–DOAS following a review of industry standards and consistent with the applicability of the relevant industry testing standard. Both ANSI/AHRI 920–2015 and ANSI/ASHRAE 198–2013 include definitions for ''DX-Dedicated Outdoor Air System Units.'' Section 3.3 of ANSI/AHRI 920–2015 defines ''DX-Dedicated Outdoor Air System Units'' as a type of air-cooled, water-cooled, or water-source factory assembled product which dehumidifies 100-percent outdoor air to a low dew point, and includes reheat that is capable of controlling the supply dry-bulb temperature of the dehumidified air to the designed supply air [11] temperature. This conditioned outdoor air is then delivered directly or indirectly to the conditioned space(s). It may pre-condition outdoor air by containing an enthalpy wheel, sensible wheel, desiccant wheel, plate heat exchanger, heat pipes, or other heat or mass transfer apparatus. This is the same definition used in ASHRAE Standard 90.1–2019.

Section 3 of ANSI/ASHRAE 198–2013 defines a ''DX Dedicated Outdoor Air Systems Unit (DX–DOAS)'' as a type of air-cooled, water-cooled, or water-source factory-assembled product that is capable of dehumidifying 100-percent outdoor air to a low dew point and may be capable of controlling the dry-bulb temperature of the dehumidified air to the designed supply air temperature. This conditioned outdoor air may be delivered directly or indirectly to the conditioned space(s). It may pre-condition outdoor air prior to direct expansion cooling by incorporating an enthalpy wheel, sensible wheel, desiccant wheel, plate heat exchanger, heat pipes, or other heat or mass transfer apparatus. The product may also include a supplementary heating system for use when outdoor air requires heating beyond the capability of the refrigeration system and/or other heat transfer apparatus.

As part of the July 2017 ASHRAE TP RFI, DOE requested comment on certain aspects of these two industry definitions of dedicated outdoor air systems. 82 FR 34427, 34435–34436 (July 25, 2017). On February 4, 2020, AHRI published AHRI 920–2020, which made changes to the definition of ''Dedicated Outdoor Air System Unit'' as compared to the definition in ANSI/AHRI 920–2015 (and ASHRAE Standard 90.1–2019). Section 3.6 of AHRI 920–2020 defines ''Dedicated Outdoor Air System Unit'' as a type of air-cooled, evaporatively-cooled, or water-cooled air-conditioner, or an air-source or water source heat pump, that is a factory assembled product designed and marketed and sold to provide ventilation and dehumidification of 100% outdoor air, is capable of dehumidifying air to a 55 °F dew point when operating under Standard Rating Condition A as specified in Table 4 or Table 5 of this test standard with a barometric pressure of 29.92 in Hg, and may include reheat. It may include pre-conditioning of outdoor air using an enthalpy wheel, sensible wheel, desiccant wheel, plate heat exchanger, heat pipes, or other heat or mass transfer apparatus. Heating components are optional and may include electrical resistance, steam, hot water, or gas heat. In addition, it may provide for air cleaning or may include mixing box or economizer dampers to allow return air to be intermittently used as allowed by the controls.

Both ANSI/AHRI 920–2015 and ANSI/ASHRAE 198–2013 address equipment that dehumidifies (or is capable of dehumidifying) 100-percent outdoor air to a low dew point. As discussed, in its review of available equipment, DOE found units marketed as ''dedicated outdoor air systems,'' and other units marketed for ''100-percent outdoor air'' applications, both of which can also operate with less than 100-percent outdoor air. Such units have a return air damper that allows modulating the amount of return air that is recirculated from the conditioned space and mixed with the incoming outdoor air before the mixed air is conditioned. More typical commercial package air conditioning equipment also often incorporates a similar damper to mix return air and outdoor air. Additionally, like the industry definitions for dedicated outdoor air systems, which DOE notes would be DDX–DOASes as that term is proposed to be defined, some categories of commercial package air conditioning equipment can dehumidify 100-percent outdoor air, although typically not to a dew point as low as the industry specification for DDX–DOASes.

As part of the July 2017 ASHRAE TP RFI, DOE requested information on the range of the maximum percentage of return air intake relative to total airflow of models of equipment that DOE generally referred to as ''DOASes'' in order to determine whether the maximum return air percentage is an important distinguishing feature of DDX–DOASes. DOE also requested information on the difference in dehumidification capabilities of more typical commercial package air conditioning equipment and equipment that DOE referred to as DOASes when operating with 100-percent outdoor air. 82 FR 34427, 34435 (July 25, 2017).

Ingersoll Rand and Carrier commented that there are not one or two features or criteria that definitively distinguish DDX–DOASes from more

[11] ''Supply air'' for a DDX–DOAS refers to conditioned air that is supplied to the conditioned space.

typical commercial package air conditioning equipment. (Ingersoll Rand, No. 12 at p. 2; Carrier, No. 6 at p. 2) AHRI and Carrier commented that there may be several potential applications for DDX–DOASes, some of which may not be 100-percent outdoor air. (AHRI, No. 11 at p. 9; Carrier, No. 6 at p. 2) AHRI and Ingersoll Rand stated, for example, that DDX–DOASes may be supplied with recirculation dampers that allow them to efficiently dehumidify recirculated air when the building is unoccupied. AHRI stated that, as a result, it is not possible to select a specific crossover percentage of return air intake relative to total airflow that would differentiate DDX–DOASes from more typical commercial package air conditioning equipment. (AHRI, No. 11 at p. 9; Ingersoll Rand, No. 12 at p. 2) Goodman supported AHRI's position, adding that when the return air intake relative to the total airflow is less than 10–30 percent, ANSI/AHRI 920–2015 is more appropriate than ANSI/AHRI 340/360 [12] in non-western climates. (Goodman, No. 14 at p. 2)

As discussed, not all DX–DOASes are designed to provide dehumidification (to a low dew point) over larger variation in entering air temperature and humidity. As such, DOE is proposing to define DDX–DOAS to distinguish such equipment from DX–DOAS more generally, as provided in the previous sections. The DDX–DOAS definition is consistent with the definition in section 3.6 of AHRI 920–2020 for the equipment subject to the scope of that industry test standard.

DOE noted in the July 2017 ASHRAE TP RFI that one difference between the definitions in ANSI/ASHRAE 198–2013 and ANSI/AHRI 920–2015 (and now AHRI 920–2020) is related to reheat. ANSI/AHRI 920–2015 specifies that a Direct Expansion-Dedicated Outdoor Air System Unit includes reheat, which is used to raise the temperature of cooled and dehumidified air to a design supply air temperature. The ANSI/ASHRAE 198–2013 definition provides that a DX Dedicated Outdoor Air Systems Unit, as defined by that industry standard, may have reheat but does not require reheat. DOE requested comment on whether and how reheating functionality should be included in the DDX–DOAS definition. 82 FR 34427, 34435–34436 (July 25, 2017).

In response to the July 2017 ASHRAE TP RFI, AHRI and Greenheck commented that while capturing reheat performance in the test procedure for DDX–DOAS equipment is an important aspect to many installations, some building HVAC designs incorporating DDX–DOAS equipment operate without any reheat capabilities. AHRI and Greenheck suggested that the definition of DDX–DOAS should not require reheat, as it is important for owners and designers to be able to select 100-percent outdoor air units with varying amounts of reheat or no reheat. (AHRI, No. 11 at pp. 10–11, 20–21; Greenheck, No. 13 at p. 2) AHRI further commented that DDX–DOAS design and optimum efficiency varies with climate and application, and that the design is often customized to accommodate the different needs of different applications. AHRI asserted that regulations must allow for these differences to avoid increasing energy consumption for a given project. (AHRI, No. 11 at p. 20–21) Greenheck commented that the supplementary heat penalty included in ANSI/AHRI 920–2015 unfairly penalizes units without reheat, and Greenheck suggested two options for rating units without reheat. (Greenheck, No. 13 at pp. 2–3). Carrier also commented that reheat functionality is an application issue and is not applicable to the definition in a test standard. (Carrier, No. 6 at p. 3)

DOE recognizes that the optimum-efficiency DDX–DOAS design varies with climate and application. DOE also understands that the supplementary heat penalty in ANSI/AHRI 920–2015 is not representative of the way that units without reheat are used in the field. As is discussed in section III.B.2.a of this document, as part of AHRI 920–2020, AHRI modified the ISMRE metric to remove the supplementary heat penalty in recognition that some installation conditions may not require reheating. As is discussed in section III.B.1 of this document, this metric was re-designated in AHRI 920–2020 as ISMRE2. AHRI 920–2020 also includes a separate application rating metric, ISMRE270, to account for installations where reheating is required. Moreover, the updated definition in AHRI 920–2020 recognizes that there are units without reheat. As such, DOE is not proposing to include a reheat requirement in the DX–DOAS or DDX–DOAS definition, consistent with AHRI 920–2020.

Because of the difference in terminology between the proposed DOE test procedure and the relevant industry standards, DOE proposes to include a section 2.3(a) in its proposed Appendix B indicating that the different synonymous terms all refer to dehumidifying direct expansion-dedicated outdoor air system as defined in 10 CFR 431.92.

Issue–3: DOE requests comment on its proposal to clarify what terms are synonymous with DDX–DOAS.

B. Test Procedure for Dehumidifying Dedicated Outdoor Air Systems

Pursuant to EPCA, in response to the DDX–DOAS-related updates to ASHRAE 90.1–2016 (maintained in ASHRAE 90.1–2019) and updates to the industry test standard referenced in ASHRAE 90.1, DOE proposes to adopt a test procedure for DDX–DOASes that incorporates by reference the latest applicable industry consensus test standards.

In the following sections, DOE presents analysis and discussion of several test procedure issues and proposes a test procedure for DDX–DOASes. As discussed in more detail in the following sections, DOE has initially determined that the proposed test procedure for DDX–DOASes would be representative of an average use cycle and not be unduly burdensome to conduct.

DOE is adopting the generally accepted industry testing procedures for DDX–DOASes developed by AHRI (*i.e.,* AHRI 920–2020) and referenced by ASHRAE Standard 90.1, with the following modifications as discussed in this NOPR:

- Using the nomenclature DDX–DOAS, rather than DX–DOAS, to define the equipment subject to the test procedure;
- Defining an upper limit of capacity consistent with EPCA's definition of very large commercial package air conditioning and heating equipment;
- Defining ''non-standard low-static fan motor,'' in order to determine the appropriate airflow setting procedure;
- Specifying the external head pressure requirements for testing DDX–DOASes with integral water pumps;
- Requiring that control settings remain unchanged for all Standard Rating Conditions once system set-up has been completed prior to testing;
- Specifying requirements for testing equipment available with multiple refrigerant options; and
- Correcting a typographical error within one of the equations.

1. Industry Consensus Test Standards

As first established in ASHRAE 90.1–2016, ASHRAE Standard 90.1–2019 specifies separate equipment classes for DDX–DOASes [13] and sets minimum

[12] ANSI/AHRI Standard 340/360, ''Performance Rating of Commercial and Industrial Unitary Air-conditioning and Heat Pump Equipment'' (Available at: *www.ahrinet.org/*) (Last accessed April 19, 2021).

[13] As discussed, the term DX–DOAS as defined by ASHRAE 90.1–2019 is equivalent to the term DDX–DOAS as defined by DOE in this NOPR.

efficiency levels using the integrated seasonal moisture removal efficiency (ISMRE) metric for all DDX–DOAS classes and also the integrated seasonal coefficient of performance (ISCOP) metric for air-source heat pump and water-source heat pump DDX–DOAS classes. ASHRAE Standard 90.1–2019 specifies that both metrics are to be measured in accordance with ANSI/AHRI Standard 920–2015, ''Performance Rating of DX-Dedicated Outdoor Air System Units'' (ANSI/AHRI 920–2015). ANSI/AHRI 920–2015 specifies the method for testing DDX–DOASes, in part, through a reference to ANSI/ASHRAE Standard 198–2013, ''Method of Test for Rating DX-Dedicated Outdoor Air Systems for Moisture Removal Capacity and Moisture Removal Efficiency'' (ANSI/ASHRAE 198–2013).

ANSI/AHRI 920–2015 specifies Standard Rating Conditions (*i.e.,* instructions on setting air and liquid flow rates, and equations for calculating ISMRE and ISCOP). Table 2 and Table 3 of ANSI/AHRI 920–2015 provide outdoor and return air conditions for four Standard Rating Conditions for the dehumidification test and two Standard Rating Conditions for the heating test for heat pump DDX–DOASes. These tables also provide condenser cooling water temperatures (for both cooling tower and chilled water condensers) for water-cooled (cooling-only) DDX–DOASes and water temperatures for water-source, ground-source closed-loop, and ground-water source [14] heat pump DDX–DOASes.

ANSI/ASHRAE 198–2013 includes requirements on instrumentation, test set-up, tolerances, method of test, and calculations for moisture removal capacity (MRC), moisture removal efficiency (MRE), heating capacity (*qhp*) and heating coefficient of performance (COP). The MRE for the dehumidification test is calculated for Standard Rating Conditions [15] A, B, C, and D of Table 2 or Table 3 of ANSI/AHRI 920–2015 for air-cooled, water-cooled, and water-source heat pump DDX–DOASes. Similarly, COP is calculated for the heating mode test for Standard Rating Conditions E and F of Table 2 or Table 3 of ANSI/AHRI 920–2015 for heat pump DDX–DOASes. The MRE and COP values are subsequently used to calculate ISMRE and ISCOP using weights that correspond to temperature bin data for representative cities in the United States.

DOE notes that AHRI recently revised AHRI 920 and published an updated version on February 4, 2020, AHRI Standard 920–2020 (I–P), ''Performance Rating of Direct Expansion Dedicated Outdoor Air System Units'' (AHRI 920–2020). AHRI 920–2020, which continues to reference ANSI/ASHRAE 198–2013, includes revisions that DOE has initially determined improve the representativeness, repeatability, and reproducibility of the test methods while also reducing test burden. These revisions include, among other things, the following: (1) Expanded scope of coverage of the test procedure by no longer imposing an upper limit of 97 lbs/hr on DDX–DOAS MRC, thereby making the test procedure applicable to all DDX–DOASes subject to standards under ASHRAE Standard 90.1; (2) revised outdoor air dry-bulb temperature conditions, external static pressures, humidity conditions, and weighting factors for ISMRE and ISCOP, which were redesignated as ISMRE2 and ISCOP2, respectively; (3) revised calculations for achieving the target supply air conditions for units with staged capacity control; (4) added a supplementary cooling penalty when the supply air dry-bulb temperature is greater than 75 °F in dehumidification mode; (5) removed a supplementary heat penalty for the efficiency metric ISMRE2 when the supply air dry-bulb temperature is less than 70 °F in dehumidification mode; [16] (6) revised condenser water conditions for water-cooled and water-source heat pump DDX–DOASes; (7) added requirements for supply air dew point temperature; [17] (8) added requirements for outdoor coil liquid flow rate; (9) provided additional test unit, test facility, instrumentation, and apparatus set-up provisions; (10) revised test methods for DDX–DOASes equipped with VERS; (11) added requirements for relief-air-cooled DDX–DOASes and DDX–DOASes equipped with desiccant wheels; and (12) included requirements for secondary capacity tests.

DOE carefully reviewed both ANSI/AHRI 920–2015 and ANSI/ASHRAE 198–2013, as well as the latest changes in AHRI 920–2020, in consideration of this NOPR. In the following sections, DOE discusses the proposed definition for DDX–DOASes, scope of the test procedure, efficiency metrics, test methods (including the updates to AHRI 920 in the 2020 version listed in the prior paragraph), and sampling requirements. Generally, DOE incorporates industry standards into the regulations by reference to the standard. In this NOPR, DOE has proposed to incorporate by reference AHRI 920–2020.

DOE is also proposing to incorporate by reference several industry standards that are referenced by AHRI 920–2020, as shown in Table III–1.

TABLE III–1—ADDITIONAL INDUSTRY STANDARDS PROPOSED TO BE INCORPORATED BY REFERENCE

Industry standard	Section(s) in AHRI 920–2020 that reference this industry standard
ANSI/ASHRAE 198–2013.	Section 5; Section 6; Appendix C.
ANSI/ASHRAE 37–2009.	Section 5; Section 6; Appendix C.
ANSI/ASHRAE 1060–2018.	Section C4.
ANSI/ASHRAE 41.1–2013.	Section C3.3.1.
ANSI/ASHRAE 41.6–2014.	Section C3.1.3.2.

In response to the July 2017 ASHRAE TP RFI, AHRI commented that the ISMRE and ISCOP levels specified for DDX–DOASes in ASHRAE 90.1–2016 will need adjustment if changes to the test procedure negatively impact these values (AHRI, No. 11 at p. 20).

This NOPR proposes to incorporate by reference the latest version of the industry test procedure for DDX–DOASes which is recognized by ASHRAE Standard 90.1: AHRI 920 (the latest version being AHRI 920–2020). When the test procedures referenced in ASHRAE Standard 90.1 are updated, EPCA requires DOE to amend the Federal test procedures for such covered ASHRAE equipment (which manufacturers are required to use in order to certify compliance with energy

[14] As discussed in section III.A.1 of this NOPR, the EPCA definition for ''commercial package air conditioning and heating equipment'' specifically excludes ground-water-source equipment (42 U.S.C. 6311(8)(A)). Accordingly, DOE is proposing to exclude this equipment from the scope of applicability of the test procedure.

[15] Standard Rating Conditions in the AHRI 920 test procedure represent full-load and part-load operating conditions for testing DX–DOASes. Standard Rating Condition A represents full-load operation in dehumidification mode, whereas Standard Rating Conditions B–D represent part-load operation in dehumidification mode. Standard Rating Condition F represents full-load operation in heat pump mode at low temperatures, and Standard Rating Condition E represents full-load operation in heat pump mode at high temperatures.

[16] As discussed in section III.B.3.a of this NOPR, AHRI 920–2020 additionally provides a method for calculating $ISMRE2_{70}$, an application metric for the dehumidification efficiency with the inclusion of the supplementary heat penalty. The subscript ''70'' indicates the inclusion of energy use from any supplementary heat that is required to raise the supply air dry bulb temperature to 70 °F.

[17] Dew point is the temperature below which water begins to condense from the water vapor state in humid air into liquid water droplets. Dew point varies with humidity (*e.g.,* a low dew point indicates low humidity and vice versa) and is, therefore, used to specify the humidity of the supply air.

conservation standards mandated under EPCA) to be consistent with the amended industry consensus test procedure. (42 U.S.C. 6314(a)(4)(B))

The energy efficiency standards specified in ASHRAE Standard 90.1 are based on ANSI/AHRI 920–2015 and ANSI/ASHRAE 198–2013. However, the amendments adopted in AHRI 920–2020 result in changes to the measured efficiency metrics as compared to the results under ANSI/AHRI 920–2015. As discussed, DOE has not established in its regulations energy conservation standards specifically for DDX–DOASes. DOE will address any potential differences in the measured energy efficiency under the most recent industry test procedure as compared to the industry test procedure on which the ASHRAE Standard 90.1 levels are based at such time as DOE evaluates the ASHRAE Standard 90.1 levels for DDX–DOASes (*i.e.,* by developing an appropriate crosswalk, as necessary). Specifically, DOE intends to request that DDX–DOAS manufacturers provide any data and/or analysis that indicates whether and how much the measured rating of DDX–DOASes would be expected to change under the most recent version of the industry consensus test standard.

Issue–4: DOE requests comment and data on the development of a crosswalk from the efficiency levels in ASHRAE Standard 90.1 based on ANSI/AHRI 920–2015 to efficiency levels based on AHRI 920–2020. DOE is specifically seeking data on how dehumidification and heating efficiency ratings for a given DDX–DOAS model are impacted when measured using AHRI 920–2020 as compared to ANSI/AHRI 920–2015.

2. Efficiency Metrics

a. Dehumidification Metric

ASHRAE 90.1–2016 adopted a dehumidification efficiency metric for DDX–DOASes. Specifically, ASHRAE 90.1–2016 uses ISMRE, as presented in section 3.10 of ANSI/AHRI 920–2015, as a seasonal efficiency metric calculated as a weighted average of MRE for four different dehumidification rating conditions. MRE for each test condition is the MRC for that condition divided by electric power input, including consideration of electric resistance reheat if needed to raise supply air temperature to 70 °F (*i.e.,* ''supplementary heat''). MRC represents the rate at which the DDX–DOAS removes humidity from the air in pounds of moisture per hour. As discussed further in section III.B.2.c of this document, AHRI indicated that the seasonal weighting factors for determining ISMRE, as specified in ANSI/AHRI 920–2015, were developed based on climate data from a sample of twelve cities chosen to be representative of a wide range of climatic data in the United States.

The primary function of DDX–DOASes is to provide conditioned (cooled and dehumidified, or heated) outdoor air. In the cooling/dehumidifying season, these units provide sensible cooling that reduces the temperature of the outdoor air in addition to dehumidifying. DOE noted in the July 2017 ASHRAE TP RFI that the ISMRE metric specified in ANSI/AHRI 920–2015 does not include any provisions to measure the sensible cooling contribution provided by the DDX–DOAS. 82 FR 34427, 34436 (July 25, 2017). For Standard Rating Conditions A and B in Table 2 and Table 3 of ANSI/AHRI 920–2015, conditioning the air to a space temperature (70 °F) requires sensible cooling as well as latent cooling. In the July 2017 ASHRAE TP RFI, DOE requested comment on whether the DDX–DOAS efficiency metric should account for this sensible cooling. 82 FR 34427, 34436 (July 25, 2017).

In response to the July 2017 ASHRAE TP RFI, AHRI commented that DDX–DOASes operate with a separate, sensible-cooling-only interior cooling system, and that adding sensible cooling to the metric for DDX–DOAS would skew efficiency values toward the non-primary function of the DDX–DOAS. AHRI also stated that the capacity for sensible cooling varies between DDX–DOAS designs, so the use of space-neutral air [18] gives a worst-case efficiency to be used as comparison. (AHRI, No. 11 at p. 12) Carrier expressed concern that the current metric focuses on latent capacity and that a shortcoming of the test procedure is that it does not consider sensible capacity. Carrier also stated that considering only latent capacity would be acceptable if the unit delivers space-neutral air, but some DDX–DOASes can provide sensible cooling. (Carrier, No. 6 at p. 3)

As discussed in section III.B.2.c of this NOPR, DOE proposes to incorporate by reference the dehumidification metrics contained in the updated version of the industry consensus standard, AHRI 920–2020. DOE notes that the revised dehumidification metric in AHRI 920–2020, ISMRE2, does not include provisions to determine the sensible cooling contribution in the metric. However, as discussed in section III.B.1 of this document, the ISMRE2 metric, which is specified in AHRI 920–2020 as the required rating metric for dehumidification efficiency, removes the supplementary heat penalty to avoid penalizing DDX–DOAS units that provide sensible cooling below 70 °F.

DOE recognizes that the sensible cooling provided by a DDX–DOAS unit may be valuable in many applications because it reduces the cooling that must be provided by interior cooling systems, especially at high outdoor temperatures. However, for certain applications it may be important to reheat the supply air to balance the building's sensible cooling load.[19] DOE may consider in a future rulemaking whether the efficiency metric should be revised to include sensible cooling, if information is made available to support such a change.

ASHRAE Standard 90.1–2016 uses ISMRE (using ANSI/AHRI 920–2015) as the metric for the specified minimum efficiencies for DDX–DOAS. As discussed in section III.B.1 of this NOPR, DOE is aware that updates to the industry test procedure in AHRI 920–2020 using ISMRE2 could impact the measured efficiencies of DDX–DOASes as compared to ISMRE measured in accordance with ANSI/AHRI 920–2015, thereby necessitating use of an appropriate crosswalk analysis. Therefore, DOE will address these potential impacts on the measured efficiencies in a separate standards rulemaking.

b. Heating Metric

ASHRAE 90.1–2016 adopted ISCOP, as presented in ANSI/AHRI 920–2015, as the heating efficiency metric, and it also set minimum ISCOP efficiency levels for both air-source and water-source heat pump DDX–DOASes. ISCOP is a seasonal energy efficiency metric and is calculated as the seasonal weighted average of heating COPs determined for two heating Standard Rating Conditions specified in Table 2 and Table 3 of ANSI/AHRI 920–2015.

In the July 2017 ASHRAE TP RFI, DOE noted that although the Department has identified air-source heat pump DDX–DOASes available on the market, section 3.9 of ANSI/AHRI 920–2015 defines ISCOP as an energy efficiency metric only for water-source heat pump DDX–DOASes. 82 FR 34427, 34436 (July 25, 2017). DOE also noted

[18] Space-neutral air, or neutral air, refers to air leaving an air conditioner being at the target conditions for the occupied space in the building (without the need for subsequent sensible or latent cooling).

[19] As discussed in section III.B.1 of this document, AHRI 920–2020 include separate application metrics (*i.e.,* ISMRE270) to be used for additional representations and that are calculated with a supplementary heat penalty based on raising the supply air dry-bulb temperature up to 70 °F.

in the July 2017 ASHRAE TP RFI that equations in section 10.9 of ANSI/ASHRAE 198–2013 for calculating the COP are labeled for application to water-source heat pump DDX–DOASes, although DOE once again noted that they could be applied to air-source heat pump DDX–DOASes. *Id.* As part of the July 2017 ASHRAE TP RFI, DOE requested comment on the calculation procedure for COP for air-source heat pumps, including whether the equations in ANSI/ASHRAE 198–2013 are applicable to air-source heat pumps. *Id.* DOE did not receive any comments on this topic. Because ASHRAE Standard 90.1–2016 specifies minimum efficiency levels for both air-source and water-source heat pump DDX–DOASes using ANSI/AHRI 920–2015, DOE considers the ISCOP and COP calculations to be applicable to the minimum efficiency levels in ASHRAE Standard 90.1–2016 for both equipment classes.

In further clarification, AHRI 920–2020 revised the definition of ''Direct Expansion-Dedicated Outdoor Air System Units'' and the heating efficiency metric (designated as ISCOP2) to include both air-source and water-source heat pump DDX–DOASes. The ISCOP2 metric specified in section 3.13 of AHRI 920–2020 also includes revisions to the outdoor air conditions, weighting factors, and treatment of heating capacity calculations. DOE is proposing to adopt ISCOP2 as the heating efficiency metric for DDX–DOASes under the DOE test procedure, expressed in Watts (W) of heating capacity per W of power input. As discussed in section III.B.1 of this NOPR, updates to the industry consensus test procedure in AHRI 920–2020 using ISCOP2 could impact the measured heating efficiencies of DDX–DOASes as compared to ISCOP measured in accordance with ANSI/AHRI 920–2015, thereby necessitating use of an appropriate crosswalk analysis. Therefore, DOE will address these potential impacts on the measured heating efficiencies in a separate standards rulemaking.

ISCOP2 is calculated using COPISCOP values for Standard Rating Conditions E and F that apply a supplementary heat penalty to the total power input if the supply air dry-bulb temperature is less 70 °F. Section 6.11 of AHRI 920–2020 includes additional application rating heating metrics, COP_{full} and $COP_{DX-DOAS}$, for additional representations. $COP_{DX-DOAS}$ is calculated without a supplementary heat penalty, while COP_{full} is used for manufacturer-specified outdoor conditions. DOE is proposing in section 2.2.2 of Appendix B to allow COP_{full} and $COP_{DX-DOAS}$ to be used by manufacturers for voluntary representations.

c. ISMRE2 and ISCOP2 Weighting Factors

As part of the July 2017 ASHRAE TP RFI, DOE requested information about analysis of climate data relevant to the development of the ISMRE and ISCOP test conditions and weighting factors. 82 FR 34427, 34436 (July 25, 2017). AHRI commented that the values and weightings for both the dehumidification and heating points in ANSI/AHRI 920–2015 were developed based on climatic data for a sample of twelve cities [20] chosen to be representative of a wide range of climatic conditions in the United States. According to AHRI, the climatic bin data were based on 24-hour operation per day due to the variety of applications where DDX–DOASes are installed and provide a reasonable standard for assessing the part-load situations that will be encountered. (AHRI, No. 11 at p. 12) DOE notes that these test conditions in ANSI/AHRI 920–2015 were established to represent specific regions of the psychrometric chart, as shown in the following Table III–2 and Table III–3.

In the development of AHRI 920–2020, DOE provided input on weather data, and AHRI also reviewed Typical Meteorological Year (TMY) 2 [21] weather data from the National Renewable Energy Laboratory. Based, in part, on this input and data, AHRI 920–2020 specifies the ISMRE2 and ISCOP2 test conditions and weighting factors, which represent the number of hours per year for each test condition. Accordingly, Table III–2 and Table III–3 also show the Standard Rating Conditions and weighting factors included in sections 6.1, 6.12, and 6.13 of AHRI 920–2020. DOE is proposing to adopt the weighting factors for the ISMRE2 (including the test conditions specific for $ISMRE2_{70}$) and ISCOP2 metrics, as specified in AHRI 920–2020.

TABLE III–2—ANSI/AHRI 920–2015 AND AHRI 920–2020 DEHUMIDIFICATION MODE STANDARD RATING CONDITIONS AND ISMRE/ISMRE2/$ISMRE2_{70}$ WEIGHTING FACTORS

Standard rating condition	Psychrometric chart region represented	ANSI/AHRI 920–2015		AHRI 920–2020	
		Representative condition (dry-bulb temperature/ wet-bulb temperature)	ISMRE weighting factor	Representative condition (dry-bulb temperature/ wet-bulb temperature)	ISMRE2 and $ISMRE2_{70}$ weighting factor
A	Above 55 °F dew point, Above 75 °F wet-bulb	95 °F/78 °F	12	95 °F/78 °F	14
B	Above 55 °F dew point, >69 °F and ≤75 °F wet-bulb.	80 °F/73 °F	28	80 °F/73 °F	34
C	Above 55 °F dew point, >62 °F and ≤69 °F wet-bulb.	68 °F/66 °F	36	70 °F/66 °F	39
D	Above 55 °F dew point, >56 °F and ≤62 °F wet-bulb.	60 °F/58 °F	24	63 °F/59 °F	13

[20] The sample of 12 cities analyzed were: New York City, Atlanta, Chicago, El Paso, Houston, Kansas City, Miami, Minneapolis, Nashville, New Orleans, Norfolk, and Tucson.

[21] TMY stands for ''typical meteorological year'' and is a widely used type of data available through the National Solar Radiation Database. TMYs contain one year of hourly data that best represents median weather conditions over a multiyear period. The datasets have been updated occasionally, thus TMY, TMY2, and TMY3 data are available. See *nsrdb.nrel.gov/about/tmy.html* (last accessed 4/28/21).

TABLE III–3—ANSI/AHRI 920–2015 AND AHRI 920–2020 HEATING MODE STANDARD RATING CONDITIONS AND ISCOP/ISCOP2 WEIGHTING FACTORS

Standard rating condition	Psychrometric chart region represented	ANSI/AHRI 920–2015		AHRI 920–2020	
		Representative condition (dry-bulb temperature/ wet-bulb temperature)	ISCOP weighting factor	Representative condition (dry-bulb temperature/ wet-bulb temperature)	ISCOP2 weighting factor
E	Below 55 °F dew point, >23 °F and ≤64 °F dry-bulb.	35 °F/29 °F	77	47 °F/43 °F	91
F	Below 55 °F dew point, ≤23 °F dry-bulb	16 °F/12 °F	23	17 °F/15 °F	9

3. Test Method

This section discusses the various issues that DOE identified in the industry consensus test standards applicable to DDX–DOASes, including those raised in the July 2017 ASHRAE TP RFI and considered as part of DOE's review of AHRI 920–2020. These issues include: (1) Definitions for certain terms used in the DDX–DOAS test procedure; (2) optional break-in period for DDX–DOASes; (3) test facility, instrumentation, and apparatus set-up issues; (4) DDX–DOAS unit set-up; (5) test operating conditions; (6) requirements for water-cooled and water-source heat pump DDX–DOASes; (7) defrost energy use; (8) test methods for DDX–DOASes equipped with VERS; (9) tolerances; and (10) secondary verification tests for dehumidification and heating tests.

Table 1 to 10 CFR 431.96 specifies the applicable industry test procedure for each category of commercial package air conditioning and heating equipment and specifies any additional testing requirements that may also apply. In this NOPR, DOE is proposing to add test procedure requirements for DDX–DOASes in a separate appendix in subpart F to 10 CFR part 431 (*i.e.,* proposed Appendix B). Accordingly, DOE proposes to include DDX–DOASes in Table 1 to 10 CFR 431.96 and to reference Appendix B for the DDX–DOASes test procedure.

a. Definitions

Section 3 of AHRI 920–2020 and section 3 of ANSI/ASHRAE 198–2013 define terms used in the industry consensus test standards for DDX–DOASes. DOE reviewed these sections and is proposing generally to adopt the definitions in section 3 of AHRI 920–2020 (as enumerated in section 2.2.1(a) of proposed Appendix B). As discussed, DOE is proposing definitions in the test procedure provisions for ''direct expansion-dedicated outdoor air system, or DX–DOAS'' as a category of commercial package air conditioning and heating equipment, and ''dehumidifying direct expansion-dedicated outdoor air system, or DDX–DOAS,'' as a subset of DX–DOAS.

As discussed in the following paragraphs DOE is also proposing to define ''integrated seasonal coefficient of performance 2, or ISCOP2,'' ''integrated seasonal moisture removal efficiency 2, or ISMRE2,'' and ''ventilation energy recovery system, or VERS.'' In section 1.1 of Appendix B, DOE proposes to provide that where any definitions conflict between AHRI 920–2020 (or any of the industry standards referenced) and the CFR, the CFR provisions control.

DOE notes that 10 CFR 431.92 includes definitions for the efficiency metrics used for commercial package air conditioners and heat pumps. Consistent with this approach, DOE is proposing definitions at 10 CFR 431.92 for ''integrated seasonal coefficient of performance 2, or ISCOP2'' and ''integrated seasonal moisture removal efficiency 2, or ISMRE2'' that are consistent with the definitions for these metrics defined in sections 3.12 and 3.13 of AHRI 920–2020 and that specifically reference the DDX–DOAS test procedure in proposed Appendix B.

A ''ventilation energy recovery system'' (VERS) pre-conditions the outdoor air before it enters the conditioning coil, thereby reducing the cooling, dehumidification, or heating load on the refrigeration system of the DDX–DOAS. ASHRAE Standard 90.1–2019 specifies separate equipment classes and minimum efficiency levels for DDX–DOASes with VERS equipment. DOE notes that neither a definition for a VERS nor a different term for this system is included in the previous test standards ANSI/AHRI 920–2015 and ANSI/ASHRAE 198–2013. However, AHRI 920–2020 does include a definition for VERS. DOE proposes, consistent with AHRI 920–2020, to define a VERS as a system that preconditions outdoor ventilation air entering the equipment through direct or indirect thermal and/or moisture exchange with the exhaust air, which is defined as the building air being exhausted to the outside from the equipment.

A VERS may also be used by commercial air-conditioning equipment other than DDX–DOASes. However, for commercial air-conditioning equipment other than DDX–DOASes, neither ASHRAE Standard 90.1–2019 nor the DOE energy conservation standards establish equipment classes based on the presence of VERS. Under the DOE test procedures for commercial package air conditioners and heat pump equipment other than DDX–DOASes, VERS is a feature that is not installed for testing. Because an understanding of VERS may be relevant to commercial package air conditioners and heat pumps other than the proposed DDX–DOAS category of equipment, DOE is proposing to establish a definition of VERS, consistent with AHRI 920–2020, in 10 CFR 431.92 so that it is broadly applicable when used in reference to both DDX–DOASes as well as other commercial package air conditioning and heat pump equipment.

Additionally, DOE is proposing to amend the definition of ''commercial HVAC & WH product'' at 10 CFR 431.2 to explicitly include DDX–DOAS.

Issue–5: DOE requests comment on the terminology DOE proposes to use for DDX–DOASes, including ''integrated seasonal coefficient of performance 2, or ISCOP2;'' ''integrated seasonal moisture removal efficiency 2, or ISMRE2;'' and ''ventilation energy recovery system, or VERS.''

In the July 2017 ASHRAE TP RFI, DOE sought clarification on the difference between a reheat system and supplementary heat in ANSI/AHRI 920–2015 and ANSI/ASHRAE 198–2013. 82 FR 34427, 34436 (July 25, 2017). The definition for supplementary heat provided in section 3.21 of ANSI/AHRI 920–2015 does not state whether it includes heat provided by reheat systems such as wrap-around heat pipes and wrap-around vapor compression systems.

In response to the July 2017 ASHRAE TP RFI, AHRI suggested a revised definition for ''supplementary heat'' that

excludes heat provided by the vapor compression cycle or a sub-system that transfers heat from one part of the unit to another (*e.g.,* wrap-around heat pipe, wrap-around vapor compression system). (AHRI, No. 11 at p. 11)

DOE notes that section 3.25 of AHRI 920–2020 has clarified this issue by defining ''supplementary heat'' to exclude a system that transfers heat from the outdoor air to the supply air. The AHRI 920–2020 definition distinguishes reheat provided by a vapor compression cycle that is driving the dehumidification process from common supplementary heat options such as fuel-fired heating, steam or hot water heating coils, and electric resistance. Further, section 3.25 of AHRI 920–2020 also states that reheat provided by secondary heat pumps, wrap around heat pumps, or wrap around heat pipes are not considered as supplementary heat. As discussed, DOE proposes to adopt the definition for ''supplementary heat'' provided in section 3.25 of AHRI 920–2020, as enumerated in section 2.2.1(a) of the proposed Appendix B, which references section 3 of AHRI 920–2020.

b. Break-In Period

As part of the DOE test procedures for other commercial package air conditioners and heat pumps, DOE provides the option for a ''break-in'' period, not to exceed 20 hours, with no ambient temperature requirements, prior to performing a test. *See* 10 CFR 431.96(c). This is intended to allow the unit to achieve optimal performance prior to the test. Neither ANSI/AHRI 920–2015 nor ANSI/ASHRAE 198–2013 specify a break-in period for testing DDX–DOASes. In response to the July 2017 ASHRAE TP RFI, AHRI commented that proper compressor break-in must be allowed to provide a fair and accurate test. AHRI also stated that it had previously submitted comments that 16 hours is not sufficient. (AHRI, No. 11 at p. 20)

DOE addressed comments previously submitted by AHRI that DOE should require a minimum 16-hour break-in period for all commercial air conditioning equipment as part of the rulemaking finalized in a May 16, 2012 final rule for energy conservation standards and test procedures for commercial heating, air-conditioning, and water-heating equipment. 77 FR 28928, 28943. As part of that final rule, DOE determined that adopting a minimum break-in period of 16 hours would unnecessarily increase testing costs for manufacturers of equipment that can achieve stability in less than 16 hours. In recognition that different equipment will require different amounts of break-in time to achieve optimal performance and that break-in periods of longer than 16 hours may be required for some equipment, DOE adopted an optional break-in period up to a maximum period of 20 hours to allow the unit to achieve optimal performance before testing for commercial air conditioning and heating equipment. 77 FR 28928, 28943–28944 (May 16, 2012). Section 5.6 of AHRI 920–2020 incorporates the same break-in period provision, not to exceed 20 hours. Therefore, DOE proposes to adopt the optional break-in period up to a maximum of 20 hours for DDX–DOASes specified in AHRI 920–2020 (section 5.6 *Break-in*), as enumerated in section 2.2.1(b) of the proposed Appendix B, which references section 5 of AHRI 920–2020.

c. Airflow-Measuring Apparatus

Figures 1 and 2 of ANSI/ASHRAE 198–2013 present the typical test set-up for DDX–DOASes with and without energy recovery. The figures show airflow and condition measuring apparatus at both the inlet and the outlet ends of each airflow path (*i.e.,* the outdoor/supply and return/exhaust paths). DOE stated in the July 2017 ASHRAE TP RFI that it is not clear whether airflow-measuring apparatus are required for both entering and leaving air of each airflow path. 82 FR 34427, 34439 (July 25, 2017). DOE requested comment on whether it is beneficial or necessary to use two airflow-measuring apparatus per airstream when testing DDX–DOAS equipment. *Id.*

AHRI and Carrier both commented that using two airflow devices per airstream would be difficult and costly due to challenges with space constraints, additional physical barriers that can increase temperature stratification in the test chamber, and issues associated with meeting the specified design conditions due to fan reheat energy in the airflow measuring stations. (AHRI, No. 11 at p. 19; Carrier, No. 6 at p. 7) AHRI further commented that while additional airflow measuring stations have the benefit of monitoring cross-leakage or general leakage in the cabinet, it makes testing difficult, if not impossible, to perform. (AHRI, No. 11 at p. 19) None of the commenters indicated that use of two airflow-measuring apparatus per airflow path is necessary to obtain accurate measurements.

Based on comments from AHRI and Carrier, DOE tentatively concludes that requiring two airflow-measuring apparatus per airflow path may be unduly burdensome for certain manufacturers. However, DOE also recognizes that the additional measurements may provide an indication of crossflow and/or leakage. DOE has tentatively concluded that AHRI 920–2020 offers a more suitable approach to airflow measurement, for the reasons that follow. Section C2.2 of AHRI 920–2020 requires just one airflow-measuring apparatus per airflow path. To provide a check for general cabinet leakage, section C5.1 of AHRI 920–2020 specifies a methodology for performing a secondary capacity measurement that does not require a second airflow-measuring apparatus (rather, the methodology for verifying dehumidification capacity is based on a measurement of the weight of collected condensate). The requirement for just one airflow-measuring apparatus per airflow path is consistent with the DOE test procedures for all other commercial and residential air-conditioning and heating systems and limits the testing costs and burden on manufacturers.

Regarding the commenters' concern that the fan heat of the airflow-measuring apparatus might affect the controlled air conditions, DOE recognizes that this could affect the temperature of the return air entering the DDX–DOAS under test. A similar issue could occur when duct-inlet booster fans are used for moving outdoor air either to the outdoor ventilation air inlet from a separate room, or when moving desiccant regeneration air from another room. On this topic, section C3.2.2 of AHRI 920–2020 specifies that in such circumstances, the air conditions are to be measured downstream of the fan and that the sampled air used for the air condition measurement be returned: (a) To a location between the flow nozzles and the fan of a return airflow-measuring apparatus, or (b) to the separate room from which air is drawn when a boost fan is used in the inlet duct. Accordingly, in this NOPR, DOE is proposing to adopt the provisions for the airflow-measuring apparatus specified in AHRI 920–2020 section C2.2, ''*Use of a Single Airflow Rate Measuring Apparatus per Airflow Path*'' in Appendix C of AHRI 920–2020 (rather than the dual measurement apparatus specifications in Figures 1 and 2 of ANSI/ASHRAE 198–2013), as enumerated in section 2.2.1(f) of the proposed Appendix B, which references Appendix C of AHRI 920–2020.

d. Test Operating Conditions

Through incorporation by reference of AHRI 920–2020, DOE is proposing to adopt the test operating conditions

specified in AHRI 920–2020 for DDX–DOAS units. These include: (1) Standard Rating Conditions (Tables 4 and 5 of section 6 of AHRI 920–2020, as enumerated in section 2.2.1(c) of the proposed Appendix B, which references section 6 of AHRI 920–2020 omitting sections 6.1.2 and 6.6.1); (2) simulated ventilation air conditions for testing under Option 2 for DDX–DOASes with VERS (section 5 of AHRI 920–2020 (which includes section 5.4.1.2 *Option 2*), as enumerated in section 2.2.1(b) of the proposed Appendix B, which references section 5 of AHRI 920–2020); (3) atmospheric pressure (section 5 of AHRI 920–2020 (which includes section 5.10 *Atmospheric Pressure*), as enumerated in section 2.2.1(b) of the proposed Appendix B); (4) target supply air conditions (section 6 of AHRI 920–2020 (which includes section 6.1.3 *Supply Air Dewpoint Temperature* and section 6.1.4 *Supply Air Dry Bulb Temperature*), as enumerated in section 2.2.1(c) of the proposed Appendix B); (5) external static pressure (section 6 of AHRI 920–2020 (which includes section 6.1.5.6 *External Static Pressure*), as enumerated in section 2.2.1(c) of the proposed Appendix B); and (6) target supply and return airflow rates (section 6 of AHRI 920–2020 (which includes section 6.1.5 *Supply and Return Airflow Rates*), as enumerated in section 2.2.1(c) of the proposed Appendix B).

DOE received comments from interested parties regarding target supply and return airflow rates and target supply air conditions in response to the July 2017 ASHRAE TP RFI, and the following section discusses these specific issues.

i. Target Supply and Return Airflow Rates

Section 5.2.2 of ANSI/AHRI 920–2015 and section 8.1 of ANSI/ASHRAE 198–2013 require the supply airflow rate to be set in accordance with manufacturer specifications. In the July 2017 ASHRAE TP RFI, DOE observed that many DDX–DOAS models are capable of operating over a range of airflow rates. 82 FR 34427, 34437 (July 25, 2017). DOE expects these models to have supply air fans that can be configured with a range of speeds to accommodate the airflow range and the variation in duct length in field installations. *Id.* The performance of these models may also vary significantly from the low end to the high end of the specified airflow range. As part of the July 2017 ASHRAE TP RFI, DOE sought comments on how manufacturers select the airflow rate for testing, given the large range of airflows that are typical of DDX–DOAS units. *Id.*

In response to this issue, AHRI commented that the optimum-efficiency airflow varies with each application and that the manufacturer should specify the design airflow rate as long as it achieves the 55 °F dew point temperature. (AHRI, No. 11 at pp. 13–14) The approach described by AHRI is consistent with the approach of AHRI 920–2020, which stipulates the use of the manufacturer-specified airflow in section 6.1.5 of that document. This section of AHRI 920–2020 also addresses how to set the airflow when it is not specified by the manufacturer and the case where the dehumidification provided is not consistent with DDX–DOAS performance (*i.e.,* provision of supply air at 55 °F or lower dew point, when using the manufacturer-specified airflow).[22]

As discussed, DOE is proposing to adopt the provisions in section 6.1.3 and 6.1.5 of AHRI 920–2020, which specify that the target supply airflow rate be the manufacturer-specified airflow rate and that, for Standard Rating Condition A, achieves dehumidification consistent with providing a 55 °F dew point temperature in standard atmospheric pressure conditions. In cases where supply airflow is not specified by the manufacturer, or supply air dew point exceeds the maximum when using the manufacturer-specified airflow, AHRI 920–2020 requires setting airflow for Standard Rating Condition A such that the supply air dew point does not exceed the maximum.

ii. Units With Cycle Reheat Functions

As part of the July 2017 RFI, DOE noted that provisions regarding reheat and the supplementary heat penalty specified in ANSI/AHRI 920–2015 and ANSI/ASHRAE 198–2013 were unclear. 82 FR 34427, 34436 (July 25, 2017). Most of the DDX–DOAS models that are equipped with the capability to reheat dehumidified air to space-neutral conditions use hot refrigerant gas discharged by the compressor to reheat the dehumidified air leaving the evaporator coil. Other approaches can also be used to transfer heat from one part of the DDX–DOAS to another. (Section 3.21.1 of AHRI 920–2020 defines all of these methods as ''cycle reheat.'') Reheat may also be provided by supplementary heat sources, such as a gas furnace or an electric resistance heater, but these are not considered cycle reheat. A discussion of cycle reheat capability with respect to the scope of this test procedure is provided in section III.A.4 of this document, and a discussion of the supplementary heat penalty is provided in section III.B.3.a of this document.

ANSI/AHRI 920–2015 requires that supply air dew point temperature be 55 °F or lower, which generally means (*i.e.,* for a DDX–DOAS that removes moisture by latent cooling without the use of desiccants) that the air must be cooled to a temperature that is, at most, a few degrees above 55 °F. Section 6 of ANSI/AHRI 920–2015 does not explicitly require testing with reheat turned on, but note 3 to Table 2 and note 3 to Table 3 of that industry standard require the DDX–DOAS to condition supply air to a minimum dry-bulb temperature of 70 °F for all dehumidification and heating tests—and this would have to be accomplished with active reheat (as discussed in the following paragraphs). Further, for units unable to meet this minimum threshold, section 6.1.3.1 of ANSI/AHRI 920–2015 specifies the application of a supplementary heat penalty to represent the power input that would be required to heat the supply air to the 70 °F target using electric resistance heating.

DOE noted in the July 2017 RFI that ANSI/ASHRAE 198–2013 includes two dehumidification tests, one with cycle reheat functions turned on and the other with cycle reheat functions turned off (sections 8.3.1.1 and 8.3.1.2, respectively). DOE further noted that ANSI/AHRI 920–2015 does not, however, specify which of these values is used in the calculation of ISMRE. 82 FR 34427, 34436 (July 25, 2017).

As part of the July 2017 ASHRAE TP RFI, DOE requested comment on whether the dehumidification test with cycle reheat on or off should be used to calculate ISMRE, and how and when the supplementary heat penalty is applied. 82 FR 34427, 34436 (July 25, 2017). AHRI commented that the dehumidification efficiency metrics specified in ANSI/AHRI 920–2015 are based on supply air at a dry-bulb temperature of 70 °F, and if the unit requires reheat to be on (as described in ANSI/ASHRAE 198–2013) for supply air temperature control, then this reheat-on test is needed to determine dehumidification capacity and efficiency. (AHRI, No. 11 at p. 11) DOE understands AHRI's comment to mean that ANSI/AHRI 920–2015 effectively requires cycle reheat to be activated during dehumidification tests in order to meet both the supply air dew point and dry-bulb temperature requirements.

In contrast to ANSI/AHRI 920–2015, AHRI 920–2020 more explicitly

[22] Section 6.1.3 of AHRI 920–2020 includes an adjustment for maximum supply air dew point temperature to increase linearly as barometric pressure decreases, up to 57.3 °F at the minimum-allowed 13.7 psia test pressure.

addresses the use of cycle reheat for dehumidification tests and provides more information on when the supplementary heat penalty should be used. As discussed in section III.B.2.a of this NOPR, DOE is proposing to adopt the revised MRE and ISMRE2 metrics specified in AHRI 920–2020, which do not include a supplementary heat penalty. Section 6.1.4.2 of AHRI 920–2020 specifies that when determining MRE and ISMRE2, the manufacturer shall specify whether cycle reheat is to be activated for the test. As discussed in section III.B.2.a of this document, AHRI 920–2020 provides separate application metrics (*i.e.,* MRE_{70} and $ISMRE2_{70}$) which may be used for representations and which require a supply air dry-bulb temperature above 70 °F (and below 75 °F). For these separate application metrics, if cycle reheat cannot achieve 70 °F, a supplementary heat penalty is applied based on raising the supply air dry-bulb temperature up to 70 °F (see section 6.1.4.1 of AHRI 920–2020). DOE has tentatively determined that these provisions in AHRI 920–2020 clarify the requirements for cycle reheat and the supplementary heat penalty, so the Department is proposing to adopt these provisions in this NOPR (section 6 of AHRI 920–2020, as enumerated in section 2.2.1(c) of the proposed Appendix B).

iii. Target Supply Air Dry-Bulb Temperature

As discussed, in the July 2017 ASHRAE TP RFI, DOE noted that ANSI/AHRI 920–2015 includes a requirement of minimum supply air temperature of 70.0 °F for all Standard Rating Conditions and a maximum dew-point temperature of 55.0 °F for Standard Rating Conditions for dehumidification. In that document, DOE further noted that ANSI/ASHRAE 198–2013 requires a supply air temperature of 75.2 °F or as close to this value as the controls will allow during testing. As part of the July 2017 ASHRAE TP RFI, DOE requested comment on the difference in target supply air temperature requirements between ANSI/AHRI 920–2015 and ANSI/ASHRAE 198–2013, and the appropriate supply air temperature for use in the DOE test procedure for DDX–DOASes. 82 FR 34427, 34438 (July 25, 2017).

AHRI and Goodman commented that the minimum supply air temperature should be 70 °F. AHRI added that ANSI/ASHRAE 198–2013, which was developed based on previous versions of AHRI 920 that required a supply air temperature of 75 °F, is being updated to reflect the new value of 70 °F. (AHRI, No. 11 at p. 17; Goodman, No. 14 at p. 2)

As discussed in the previous subsection, DOE proposes to incorporate by reference the provisions in section 6.1.4 of AHRI 920–2020, which specifies setting the supply air dry-bulb temperature to within a range of 70–75 °F for tests to determine dehumidification metrics. For all dehumidification tests, 75 °F represents the maximum supply air dry-bulb temperature above which a supplementary cooling penalty must be applied. As noted in section III.B.3.d.ii of this NOPR, a supplementary heat penalty must be applied for ISCOP2 calculations when the minimum supply air dry-bulb temperature of 70 °F cannot be met in heating mode.

iv. Target Supply Air Dew-Point Temperature

Note 5 to Table 2 and note 6 to Table 3 in ANSI/AHRI 920–2015 state that the maximum dew point for Standard Rating Conditions A through D shall be 55.0 °F. The industry consensus standard does not specify whether these conditions apply to the outdoor air, supply air, or return air. DOE interprets these requirements to apply to the supply air because the humidity levels for outdoor air and return air are already specified in the same tables.

Furthermore, although ANSI/AHRI 920–2015 specifies a maximum dew point temperature, the industry test standard does not include requirements to ensure that the dew-point temperature is maintained at the same level while testing at the different Standard Rating Conditions specified in ANSI/AHRI 920–2015. Many DDX–DOASes are equipped with modulating/variable capacity compressors, thereby allowing control for a given supply air dew point temperature. Allowing a lower dew point temperature for Standard Rating Conditions B, C, and D specified in ANSI/AHRI 920–2015 could give a better MRE rating for those test points, but the unit would use more energy to the extent it provides unnecessary excess dehumidification if operated in that manner. DOE also recognizes that the conditioned space latent cooling requirements for Standard Rating Condition A specified in ANSI/AHRI 920–2015 represent the worst-case scenario, so there would be no need to deliver a lower dew point (*i.e.,* excess dehumidification) for Standard Rating Conditions B, C, and D. AHRI 920–2020 revises the supply air dew point requirements. Section 6.1.3 of AHRI 920–2020 requires that the average supply air dew point for Standard Rating Condition B, C, and D must be within 0.3 °F of the Standard Rating Condition A dew point value.

Accordingly, in this NOPR, DOE proposes to adopt the relevant provisions found in section 6.1.3 in AHRI 920–2020, which explicitly state that the supply air dew point temperature shall be 55.0 °F or below for all Standard Rating Conditions A through D when operated at a barometric pressure of 29.92 in Hg, and that the supply air dew point temperature for Standard Rating Conditions B, C, and D must be within 0.3 °F of the measured supply air dew point temperature for Standard Rating Condition A, as noted above.

v. Units With Staged Capacity Control

During testing, DDX–DOAS units with modulating compressors may be able to achieve supply air conditions within the proposed tolerances of the target conditions for Standard Rating Conditions B, C, and D. However, units with staged capacity will not likely be able to do this because they control capacity in larger increments. DDX–DOAS units with staged capacity or reheat control unable to maintain stable operation at the proposed dry-bulb and dew-point temperature targets within proposed tolerances would have to cycle between two stages (or cycle between the compressor(s) being on and off) to deliver average conditioning consistent with the target.

Neither ANSI/AHRI 920–2015 nor ANSI/ASHRAE 198–2013 have provisions to address units that cycle. In response to the July 2017 ASHRAE TP RFI, AHRI commented that the time average testing method suggested by DOE in its initial review section 6.6 of ANSI/AHRI 920–2015 would prevent credit for over-dehumidifying at Standard Rating Conditions B, C, and D, but is excessively complex. Instead, AHRI recommended a calculated adjustment that does not credit moisture removal in excess of the Standard Rating Condition A design dew-point temperature. (AHRI, No. 11 at p. 20)

This issue has now largely been addressed in AHRI 920–2020. Specifically, section 6 of AHRI 920–2020 prescribes a method to address DDX–DOASes with staged capacity control that is consistent with the aforementioned method of DOE's initial review. It differs from DOE's suggested method in that it applies the weighted averaging on the basis of the supply air humidity ratio rather than the dew point, and that it applies any applicable supplementary cooling or heat penalty to operation at each particular stage rather than after determination of a weighted average supply air dry-bulb

temperature. Given the development of defined test requirements and equations addressing over-dehumidification, DOE initially concludes that the method in AHRI 920–2020 is not excessively complex. AHRI 920–2020 requires that when testing DDX–DOASes with staged capacity control in a dehumidification test condition having a supply condition dew point target (*e.g.,* Conditions B, C, or D), if the dew point temperature cannot be controlled within the specified test tolerances for a given part-load condition, a weighted average of the results of two tests that bracket the target dew point temperature will be used. In this NOPR, DOE is proposing to adopt the provisions in section 6 of AHRI 920–2020 for achieving the target supply air conditions for units with staged capacity control.

Staging of compressor capacity may also affect operation in heating mode. Section 6 of AHRI 920–2020 prescribes methods for determining COP to account for cycling between compressor stages, or for operation when the lowest-capacity compressor stage provides more capacity than required to heat the supply air to 75 °F. These methods are similar to the AHRI 920–2020 method for addressing staged compressor capacity for dehumidification. Accordingly, DOE proposes to adopt the provisions in AHRI 920–2020 for staged capacity heat pump DDX–DOASes in heating mode.

e. Water-Cooled and Water-Source Heat Pump DX–DOAS Equipment

i. Test Conditions for Multiple-Inlet Water Sources

As discussed in the July 2017 ASHRAE TP RFI, the inlet water temperatures in ANSI/AHRI 920–2015 Table 2 for testing water-cooled DDX–DOASes differ from the water-source heat pump inlet temperature conditions specified in Table 3 for water-source heat pump DDX–DOASes tested using the ''water source'' test conditions. DOE requested comment on the need for different dehumidification test conditions for a water-cooled DDX–DOAS as compared to a water-source heat pump DDX–DOAS using the closed water loop test conditions. 82 FR 34427, 34438 (July 25, 2017). In the July 2017 ASHRAE TP RFI, DOE also pointed out that Tables 2 and 3 in ANSI/AHRI 920–2015 include two application configurations [23] for water-cooled DDX–DOASes and three application configurations for water-source heat pump DDX–DOASes. *Id.* DOE notes that ASHRAE 90.1–2016 established different standards for each of these five application configurations.

In response to the July 2017 ASHRAE TP RFI on this issue, AHRI commented that the two sets of water temperatures for water-cooled DDX–DOASes and water-source heat pump DDX–DOASes should be identical and that the differences would be resolved in an update to ANSI/AHRI 920–2015. (AHRI, No. 11 at p. 17) AHRI also commented that in almost all cases, a single design is used for water-cooled equipment used with cooling tower water and chilled water, and, similarly, a single design is used for all of the water-source applications, adding that for each of these cases, a single set of water conditions can be used for testing. AHRI recommended that the various entering water and inlet fluid conditions remain as presented in the ANSI/AHRI 920–2015 standard, but any regulated products are to be tested to the ''Chilled Water Entering Condenser Temperature'' column values in Table 2 and the ''Water Source Heat Pumps'' column values in Table 3. (AHRI, No. 11 at p. 17)

In response, DOE notes that AHRI 920–2020 still provides separate inlet fluid rating conditions for the different water-cooled and water-source heat pump DDX–DOAS applications but now identifies some as optional application rating conditions. In light of the retention of these separate inlet fluid rating conditions in AHRI 920–2020, DOE surmises that AHRI's and industry's original position on these conditions, as set forth in the comments in response to the July 2017 ASHRAE TP RFI, changed during the course of developing that industry consensus standard. Table 4 of AHRI 920–2020 continues to include separate inlet fluid rating conditions for water-cooled cooling tower and water-cooled chilled water DDX–DOASes, but Note 3 to Table 4 of AHRI 920–2020 indicates that the water-cooled chilled water condition is the optional application rating condition, contrary to AHRI's recommendation in response to the July 2017 ASHRAE TP RFI. Table 5 of AHRI 920–2020 includes separate inlet fluid rating conditions for water-source and ground-source closed-loop heat pump DDX–DOASes but identifies the ground-source closed-loop conditions as the optional application rating condition. Tables 4 and 5 of AHRI 920–2020 also revise the inlet temperatures of the rating conditions for water-cooled cooling tower, water-source heat pump, and water-source ground-source closed-loop heat pump DDX–DOASes. In this NOPR, DOE is proposing to adopt the water/fluid rating conditions provided in AHRI 920–2020 (section 6 of AHRI 920–2020, which includes Table 4 and Table 5, as enumerated in section 2.2.1(c) and 2.2.2 of the proposed Appendix B), including the chilled water and ground-source closed-loop conditions specified as optional in AHRI 920–2020 so as to allow for voluntary representations for those applications. In any future energy conservation standards rulemaking for DDX–DOASes, DOE would consider establishing standards and the corresponding certification requirements in the context of the inlet fluid temperature conditions specific for water-cooled cooling towers and for water-source heat pumps provided in Table 4 and Table 5 of AHRI 920–2020, respectively.

ii. Condenser Liquid Flow Rate

In the July 2017 ASHRAE TP RFI, DOE noted that ANSI/AHRI 920–2015 provides instructions for setting the condenser liquid flow rate in section 6.1.4 and condenser liquid entering temperature in Tables 2 and 3 when conducting the dehumidification test for water-cooled and water-source heat pump DDX–DOASes. 82 FR 34427, 34437 (July 25, 2017). Section 6.1.4 of ANSI/AHRI 920–2015 indicates to use the liquid flow rates ''specified by the manufacturer.'' The manufacturer must specify a single liquid flow rate for tests at all Standard Rating Conditions as defined in ANSI/AHRI 920–2015, unless the unit is equipped with automatic control of the liquid flow rate.

In the July 2017 ASHRAE TP RFI, DOE noted that ANSI/AHRI 340/360–2007 and ANSI/AHRI 210/240–2008, which are incorporated by reference as DOE's test procedures for rating water-cooled commercial air-conditioning equipment, specify inlet and outlet water temperature requirements rather than relying on manufacturers to determine water flow rate. Further, both of these industry consensus standards specify that the full-load water flow rate determined for the Standard Rating Conditions should also be used for part-load rating conditions. DOE further stated in the July 2017 ASHRAE TP RFI that these test methods reflect the typical design temperature differential for cooling towers serving water-cooled equipment, and they are very common for control of condenser water pumps; hence, it is not clear to DOE why the same test method would not be adopted for water-cooled DDX–DOAS. 82 FR 34427, 34437 (July 25 2017). As part of the July 2017 ASHRAE TP RFI, DOE requested information on how

[23] In the context of ANSI/AHRI 920–2015, an application configuration specifies test conditions based on the expected application of the DDX–DOAS.

condenser water flow rates are set in the field, how they are controlled at part-load, and whether the relevant provisions in ANSI/AHRI 920–2015 provide sufficient guidance regarding how to set up water flow for DDX–DOASes with automatic water flow control systems. *Id.*

AHRI and Carrier commented that the condenser water flow rates should be set by the manufacturer or the installation instructions, consistent with ANSI/AHRI 920–2015. (AHRI, No. 11 at p. 15; Carrier, No. 6 at p. 5) Carrier added that for part-load conditions, setting the condenser water flow rate will depend on what is needed for head pressure control, and that this should be defined in the installation instructions and followed for the test. Carrier stated that some equipment may require no control and that others may use head pressure flow regulating valves. (Carrier, No. 6 at p. 5) AHRI argued that any variation in flow rate that occurs automatically based on the operation and the equipment design will be measured during testing, with the pressure drop at that flow rate also being measured. AHRI indicated that the pumping penalty accounts for different manufacturer specifications of flow rates and pressure drop at each of the test conditions. (AHRI, No. 11 at p. 15)

As part of its update to the industry consensus test standard for DDX–DOASes, AHRI added additional requirements for liquid flow rate. More specifically, while section 6.1.6.1 of AHRI 920–2020 continues to provide that the water flow rate be specified by the manufacturer, the test method now adds that it must deliver a liquid temperature rise no less than 8 °F when testing under Standard Rating Condition A. Section 6.1.6.2 of AHRI 920–2020 requires that the flow rate set under Standard Rating Condition A be used for testing at the remaining Standard Rating Conditions (B through F), unless automatic adjustment of the liquid flow rate is provided by the equipment. Section 6.1.6.2 of AHRI 920–2020 also requires that if condenser water flow rate is modulated under part-load conditions, the flow rate must not exceed the flow rate set for Condition A.

DOE has tentatively concluded that the addition of a minimum temperature differential in AHRI 920–2020 better reflects control strategies for cooling towers serving water-cooled equipment and for condenser water pumps while still leaving flexibility for manufacturers to specify full-load flow rate and to implement options for modulating flow rate at part-load conditions. The Department notes that the provision allowing for automatic adjustment of the liquid flow rate for part-load tests accounts for manufacturer control strategies, such as condenser head pressure control, and is also accounted for in the water pump effect (discussed in the following section). DOE has tentatively concluded that these provisions would be representative of flow rates during an average use cycle and would not be unduly burdensome to conduct. Therefore, DOE is proposing to adopt the liquid flow requirements in AHRI 920–2020 for water-cooled and water-source heat pump DDX–DOASes (section 6 of AHRI 920–2020, which includes section 6.1.6 *Liquid Flow Rates for Water-Cooled, Water-Source Heat Pump, and Ground-Source Heat Pump*), as enumerated in section 2.2.1(c) of the proposed Appendix B.

iii. Water Pump Effect

As part of the July 2017 ASHRAE TP RFI, DOE noted that ANSI/AHRI 920–2015 includes an equation for calculating the ''water pump effect,'' which is an estimate of the energy consumption of non-integral water pumps (*i.e.,* pumps that are not part of the DDX–DOAS unit and whose power consumption would, therefore, not already be part of the measured power). 82 FR 34427, 34438 (July 25 2017). DOE noted that section 6.1.3 of ANSI/AHRI 920–2015 implies that this calculation applies solely to water pumps serving refrigerant-to-liquid heat recovery devices—no indication is given whether the equation also applies for pumps serving water-source or water-cooled condensers—although it is possible that the term ''refrigerant-to-liquid heat recovery device'' refers to the condenser of a water-source heat pump DDX–DOAS. *Id.*

In the July 2017 ASHRAE TP RFI, DOE requested confirmation that the ''refrigerant-to-liquid heat recovery device'' cited in section 6.1.3 of ANSI/AHRI 920–2015 is intended to include heat exchangers used for heat rejection during the dehumidification cycle, and comment on whether Equation 1 of this section for estimating the energy use of water pumps is appropriate for DDX–DOASes with water-cooled condensers. *Id.* In its comments, AHRI confirmed that the term ''refrigerant-to-liquid heat recovery device'' is intended to include liquid-to-refrigerant heat exchangers used in the dehumidification cycle and heating cycle. (AHRI, No. 11 at p. 16)

The revisions to the industry consensus testing standard in AHRI 920–2020 clarify this matter and are consistent with the public comments received. Section 6.1.6.4 of AHRI 920–2020 provides the water pump effect equation, and section 11.1 of AHRI 920–2020 states within the definition of symbol $P_{E,x}$ that the water pump effect applies to all water-cooled and water-source units without integral water pumps. Thus, DOE is proposing to adopt the water pump effect provisions in sections 6.1.6.4 and 11.1 of AHRI 920–2020 to account for the energy use of water pumps for water-cooled condensers, as enumerated in section 2.2.1(c) and section 2.2.1(d) of the proposed Appendix B, which reference sections 6 and 11 of AHRI 920–2020, respectively.

In further clarification, the total pump effect does not need to be calculated for pumps that are integral to the DDX–DOAS, because the power for these pumps would be measured as part of the main DDX–DOAS power measurement. Currently, the number of DDX–DOAS models on the market with integral pumps is very limited. However, AHRI 920–2020 does not explicitly state the amount of external head pressure [24] to use when testing DDX–DOASes with integral pumps, a necessary parameter. DOE notes that the calculation of the water pump effect for DDX–DOASes without integral pumps specified AHRI 920–2020 includes a fixed adder of 25 Watts per gallon per minute based on 20 feet of water column of external head pressure, a value which the Department reasons could be suitably applied to DDX–DOASes with integral pumps. Accordingly, DOE is proposing to include additional specifications in section 2.2.1(c)(ii) of proposed Appendix B that DDX–DOASes with integral pumps be configured with an external head pressure equal to 20 feet of water column (*i.e.,* the same level of external head pressure used in the calculation of the pump effect for DDX–DOASes without integral pumps).

DOE has initially determined that the proposal to specify the same external head pressure for integral pumps as the external head pressure used in the calculation of the pump effect for DDX–DOASes without integral pumps is consistent with the industry consensus test procedure. The proposed requirement would provide additional direction for treatment of integral pumps consistent with the treatment of non-integral pumps and would provide for the representative comparability of results between DDX–DOASes with and without integral pumps. To the extent the industry test procedure does not specify an external head pressure for DDX–DOASes with an integral pump,

[24] ''External head pressure'' reflects the pump power output, in that it represents the height to which the pump can raise the water if the water were being moved opposite the force of gravity.

the industry test procedure would not ensure that measured results are comparative, and due to the potential variation resulting from the absence of the specification, the industry test procedure would not ensure that the results reflect the equipment's representative average energy efficiency or energy use. As such, DOE has initially determined, supported by clear and convincing evidence, that in the absence of a specification for the external head pressure for an integrated pump, the industry test procedure would not meet the statutory requirements of 42 U.S.C. 6314(a)(2)–(3) and is, therefore, proposing the supplemental specification.

In addition, DOE is proposing a condition tolerance of up to 1 foot of water column greater than the 20-foot requirement (which equates to 5 percent), which is equivalent to the condition tolerance on air side external static pressure in Table 9 of AHRI 920–2020 (Test Operating and Test Condition Tolerances); namely, the provision in that table provides for up to 0.05 inch of water column greater than the target external static pressure, which is around 1 inch of water column. Similarly, DOE is proposing an operating tolerance of up to 1 foot of water column, which is equivalent to the operating tolerance on air side external static pressure in Table 9 of AHRI 920–2020; namely, the provision in that table provides for 0.05 inch of water column. To the extent the industry test procedure does not specify a condition tolerance and operating tolerance for the water column, the industry test procedure would not ensure consistent and comparable results and would not ensure that the results reflect the equipment's representative average energy efficiency or energy use. As such, DOE has initially determined, supported by clear and convincing evidence, in the that absence of such tolerances for the water column, the industry test procedure would not meet the statutory requirements of 42 U.S.C. 6314(a)(2)–(3) and is, therefore, proposing the supplemental specification.

Issue–6: DOE requests comment on the proposal to require that water-cooled and water-source DDX–DOASes with integral pumps be set up with an external pressure rise equal to 20 feet of water column with a condition tolerance of −0/+1 foot and an operating tolerance of 1 foot.

iv. Energy Consumption of Heat Rejection Fans and Chillers

Neither ANSI/AHRI 920–2015 nor ANSI/ASHRAE 198–2013 address accounting for the energy consumption of heat rejection fans (*e.g.,* cooling tower fans) for water loops serving the condensers of water-cooled DDX–DOASes. 82 FR 34427, 34438 (July 25, 2017). DOE noted that section 6.1 of AHRI 340/360–2007, which is used for rating certain water-cooled commercial package air conditioning and heat pump equipment, provides a power consumption adjustment for both the cooling tower fan and the circulating water pump (it is assumed that the pump is external to the air conditioning equipment). *Id.* In addition, neither ANSI/AHRI 920–2015 nor ANSI/ASHRAE 198–2013 address accounting for the energy consumption of chiller systems used to provide chilled water to DDX–DOASes with chilled-water-cooled condensers. In the July 2017 ASHRAE TP RFI, DOE requested comment on accounting for the energy consumption for heat-rejection fans and chiller systems employed in water-cooled or water-loop DDX–DOASes. *Id.*

AHRI commented that the AHRI test standard for certain commercial package air conditioning and heat pump equipment includes the cooling tower fan and pump energy as part of a flat rate adjustment, but that the International Organization for Standardization (ISO) test standard for water-source heat pumps does not account for cooling tower fan energy use at this time. AHRI stated that the minimum efficiency values for DDX–DOASes specified in ASHRAE 90.1–2016 were based on the current ANSI/AHRI 920–2015 standard that does not account for the energy consumption of heat-rejection fans or the chiller system, although it does account for the additional water pumping energy (see the discussion of the water pump effect in section III.B.3.e.iii of this document). AHRI stated that, as a result, DOE should not account for this energy in the efficiency metric for DDX–DOASes because doing so introduces unknown impacts on the design and costs associated with meeting the minimum efficiency requirements. (AHRI, No. 11 at pp. 16–17) Carrier also commented that heat-rejection fans are not part of a water-cooled unit but are part of the cooling tower rating and are covered by Table 6.8.1.7 in ASHRAE 90.1–2016. (Carrier, No. 6 at p. 5) Carrier commented that chiller system energy use should not be included in the efficiency metric because this is not a system rating and is only a component rating method for the DDX–DOAS itself. (Carrier, No. 6 at p. 6)

The revised AHRI 920–2020 also does not include energy use of the heat-rejection fans and chiller systems employed in water-cooled or water-loop DDX–DOASes. DOE observes that accounting for this energy use is not a consistent industry practice, as evidenced by the differences between the AHRI 340/360–2007 approach for more typical commercial package air conditioning equipment and the ISO approach for water-source heat pumps. The heat rejection fan addition for more typical water-cooled commercial package air conditioning equipment is a modest energy adder (around 10 percent of unit power).[25] Furthermore, including the energy of the heat rejection fan and chiller systems would not help to distinguish between models of different efficiency, since the adder would be identical for two same-capacity models with different efficiencies. For these reasons, and consistent with AHRI 920–2020, DOE is not proposing in this NOPR to include any energy consumption associated with heat rejection fans, cooling towers, or chiller systems used to cool the water loops of water-cooled or water-source DDX–DOASes.

v. Chilled Water Coil Exclusion

In the July 2017 ASHRAE TP RFI, DOE noted that section 2 of ANSI/ASHRAE 198–2013 specifically excludes equipment with water coils that are supplied by a chiller located outside of the unit. 82 FR 34427, 34438 (July 25 2017). However, Table 2 in ANSI/AHRI 920–2015 includes operating conditions for which a water-cooled condenser is supplied with chilled water, and ASHRAE 90.1–2016 established standard levels for DDX–DOASes that operate with chilled water as the condenser cooling fluid. As part of the July 2017 ASHRAE TP RFI, DOE requested confirmation that the ANSI/ASHRAE 198–2013 chiller exclusion applies to cooling coils rather than condenser coils. *Id.*

In response to the July 2017 ASHRAE TP RFI, AHRI commented that both ANSI/AHRI 920–2015 and ANSI/ASHRAE 198–2013 were designed for units that contain vapor compression cycle-based cooling and dehumidification with direct expansion coils. AHRI stated that direct application of chilled water coils to cool and dehumidify is outside the scope of the standard, as the energy for cooling is expended at an external source of chilled water. (AHRI, No. 11 at p. 18) Carrier commented that chillers should

[25] For example, for a minimally-compliant 120,000 Btu/h water-cooled unit with gas heat having a 12.5 EER (*see* 10 CFR 431.97 Table 1), the total electricity use is 120,000 Btu/h ÷ 11.9 Btu/Wh = 10,084 W, and the heat rejection fan adder is 120,000 Btu/h × (10 W per 1,000 Btu/h) = 1,200 W.

only be used for cooling coils and not for condenser heat rejection unless there is heat reclaim, and that this should be addressed through a building efficiency standard such as ASHRAE 90.1. (Carrier, No. 6 at p. 7)

AHRI 920–2020 did not make a change to the exclusion of DOASes with water coils that are supplied by a chiller located outside of the unit; AHRI's comment explains that the exclusion exists because chilled water coil units that use the chilled water for cooling are not DX units, and the industry test procedures are only for DOASes with DX cooling. ASHRAE Standard 90.1 does not include standards for non-DX DOASes such as those with chilled water coils used for cooling. Based on AHRI 920–2020, and ANSI/ASHRAE 198–2013 as referenced, and the comments received, DOE did not consider DOAS units that use chilled water coils directly for cooling and dehumidifying. However, the comments provided in response to the July 2017 ASHRAE TP RFI, as discussed in section III.B.3.e.i of this document, indicate that DX–DOASes and DDX–DOASes may still use chilled water for condenser coils. (AHRI, No. 11 at p. 17)

f. Defrost Energy Use for Air-Source Heat Pump

In the July 2017 ASHRAE TP RFI, DOE noted that tests conducted at 35 °F dry-bulb temperature for consumer central air conditioning heat pumps (which are air-source) consider the impacts of defrosting of the outdoor coil in the energy use measurement (see section 3.9 of 10 CFR part 430, subpart B, appendix M), while defrost is not addressed in ANSI/ASHRAE 198–2013. 82 FR 34427, 34436 (July 25 2017). DOE stated that defrost has a real impact on efficiency because of energy use associated with defrost and because a system cannot continue to provide heating during defrost operation, thereby reducing time-averaged capacity. *Id.* Hence, DOE noted that consideration of defrost could provide a more field-representative measurement of performance. DOE requested comment on whether testing for test condition E of ANSI/AHRI 920–2015 Table 2 (*i.e.,* 35 °F dry-bulb/29 °F wet-bulb) should consider energy use associated with defrost. *Id.*

On this issue, AHRI commented that, due to the constant volume nature of the airflow in DDX–DOASes, the addition of defrost to DDX–DOASes presents challenges, and it is not in a position to present a proper solution at this time. AHRI also stated that it is aware of manufacturers that disable the heat pump operation in cold temperatures to avoid this issue. (AHRI, No. 11 at p. 13) The Joint Advocates, Goodman, and Carrier commented that defrost should be accounted for in the test procedure to provide a more representative measurement of field energy use. (Joint Advocates, No. 9 at p. 4; Goodman, No. 14 at p. 2; Carrier, No. 6 at p. 4) Carrier added that DOE should use the T-test [26] defined in ANSI/AHRI 340/360 and ANSI/AHRI 210/240. (Carrier, No. 6 at p. 4) Goodman indicated that it will be very difficult to precisely capture defrost in the DDX–DOASes test procedure. (Goodman, No. 14 at p. 2)

DOE understands that AHRI is referring to challenges in field operation defrosting for air-source heat pump DDX–DOASes. Preventing cold outdoor air from being brought into the supply air stream during a defrosting sequence (when the DDX–DOAS cannot operate as a heat pump) would require interruptions to the supply airflow, which is inconsistent with building code requirements to provide a continuous supply of ventilation air for most DDX–DOAS applications. DOE is aware of only a limited number of air-source heat pump DDX–DOAS units. DOE understands that these units may not continue heat pump operation during potential frosting conditions as a result of these challenges in field operation. Given these factors, DOE is not aware of test data (*e.g.,* from T-tests) for such heat pumps during extended heating mode operation to understand better the level of frost accumulation and associated defrost energy expenditure. DOE also notes that AHRI 920–2020 does not include any provisions for testing or calculating the defrost energy of DDX–DOAS air-source heat pumps. However, AHRI 920–2020 arguably addresses this issue in another fashion, namely by providing in section 5.5 that defrost control settings specified by the manufacturer in installation instructions may be set prior to heating mode tests in order to achieve steady-state conditions during the heating mode tests. As discussed in section III.B.3.d of this document, DOE is proposing to adopt the provisions of AHRI 920–2020 section 5.5, Defrost Controls for Air-Source Heat Pump during Heating Mode, as enumerated in section 2.2.1(b) of the proposed Appendix B. If these settings fail to prevent frost accumulation during the heating mode tests (resulting in unsteady conditions), then the manufacturer would need to seek a waiver from the test procedure to obtain an alternate method of test from DOE pursuant to 10 CFR 431.401. However, section 5.5 of AHRI 920–2020 also specifies that the Standard Rating Condition F heating mode test (which represents low temperature environmental conditions where frosting is likely) is optional to conduct, and if the Standard Rating Condition F test is not conducted, a default COP of 1.0 (corresponding to electric resistance heating) is assigned at this rating point instead. Therefore, the manufacturer may choose to not conduct a test at Standard Rating Condition F instead of seeking a waiver. DOE has tentatively concluded that the test method set forth in section 5.5 of AHRI 920–2020 for defrost controls for air-source heat pump DDX–DOASes during heating mode offers a reasonable and workable approach, so the Department proposes to adopt such approach into the Federal test procedure.

Due to the lack of sufficient information on how air-source heat pump DDX–DOAS units operate under frosting conditions, DOE is not proposing to include any provisions for including the defrost energy of DDX–DOAS air-source heat pumps.

g. General Control Setting Requirements

Requirements for adjustment of unit controls during set-up for testing of a DDX–DOAS are addressed in specific sections of AHRI 920–2020. Some examples include the following. Section 5.2, ''Equipment Installation,'' requires that units be installed per manufacturer's installation instructions (MII). Section 5.4.3, ''Deactivation of VERS,'' indicates that operation of the VERS may be deactivated for Standard Rating Conditions C or D if the VERS is capable of being deactivated. Section 5.5, ''Defrost Controls for Air-Source Heat Pump during Heating Mode,'' provides instructions for setting of defrost controls.

However, DOE notes that the test standard provides no general requirements indicating whether control settings can be adjusted as the test transitions through the four Standard Rating Conditions used for testing. Manual readjustment of control settings would not generally occur in field operation of DDX–DOASes as outdoor air conditions change (*i.e.,* in the field, controls are configured at the time of installation and would not be actively adjusted on an ongoing basis in response to changes in outdoor temperature or humidity). Hence, to further ensure the representativeness of the test procedure, DOE is proposing

[26] The T-test is a non-steady-state (transient) test that includes measurement of both the heating energy use as the outdoor coil accumulates frost and the defrost energy use as the unit undergoes multiple defrost cycles, as referenced in section 8.8.3 of ANSI/ASHRAE 37–2009.

inclusion of a general requirement that control settings remain fixed and that there be no further manual adjustment thereof, once set initially for the first of the Standard Rating Conditions (Standard Rating Condition A). Absent such instruction, the controls could be adjusted as the test transitions through the four Standard Rating Conditions used for testing, which as discussed, would not be representative of the operation of the unit in the field. As such, DOE has initially determined, supported by clear and convincing evidence, that absent instruction for the control settings to be fixed during testing, the industry test procedure would not meet the statutory requirements of 42 U.S.C. 6314(a)(2)–(3) and is, therefore, proposing such instruction.

Notwithstanding this proposal, DOE recognizes that some manual intervention, as permitted by AHRI 920–2020, and as specified in supplemental test instructions (STI),[27] may be necessary as the test transitions through Standard Rating Conditions. However, such manual interventions are only permitted in limited and specific instances as identified in the test standard or STI. An example of such an allowed intervention is the use of the manual setting of compressor capacity staging for tests using the ''Weighted average method,'' as described in section 6.9.1 of AHRI 920–2020. In field operation, a DDX–DOAS set per the manufacturer's installation instructions would attempt to achieve the target supply air dew point over the average of a time period with cycling (unsteady) operation between two compressor stages; to address this, the test standard calls for manual intervention, using two steady-state tests, one using each stage, and calculating a weighted average of the results. (This provision is discussed in depth in section III.B.3.d.v of this NOPR.)

Thus, DOE is proposing to require that all control settings are to remain unchanged for all Standard Rating Conditions once system set-up has been completed, and component operation shall be controlled by the unit under test once the provisions in section 6 of AHRI 920–2020 (Rating Requirements) are met, except as specifically allowed by the test standard or STI (*see* section 2.2.1(b)(i) of the proposed Appendix B).

Issue–7: DOE requests comment on the proposed general control setting requirement for DDX–DOASes.

h. Ventilation Energy Recovery Systems

As discussed in section III.A.1 of this NOPR, the industry definition of ''DX-Dedicated Outdoor Air System Units'' is inclusive of units that provide pre-conditioning of outdoor air by direct or indirect transfer with return/exhaust air using an enthalpy wheel, sensible wheel, desiccant wheel, plate heat exchanger, heat pipes, or other heat or mass transfer apparatus. These pre-conditioning features are broadly referred to as ventilation energy recovery systems (''VERS'', or ''energy recovery''). ASHRAE Standard 90.1–2016 defines separate equipment classes and efficiency levels for DDX–DOASes with VERS.

Section 5.4 of AHRI 920–2020 specifies testing requirements for DDX–DOASes equipped with VERS. Section 5.4.1 of AHRI 920–2020 specifies that units equipped with VERS can be tested using either one of two options: ''Option 1'' or ''Option 2''. Option 1 requires operating the DDX–DOAS unit with VERS as it would operate in the field, maintaining the appropriate return air and outdoor air conditions for airflows entering the unit, and operating the VERS to provide energy recovery during the test (*see* section 5.4.1.1 of AHRI 920–2020).[28] In addition to specifying the outdoor air dry-bulb temperature and humidity conditions, Table 4 and Table 5 of AHRI 920–2020 specify return air inlet conditions that are applicable to DDX–DOASes with VERS. Section C2.4 in Appendix C of AHRI 920–2020 also specifies that the return air be ducted into the unit from a separate test room maintaining the required return air inlet conditions.

Option 2 involves setting the conditions of the air entering the unit so as to simulate the conditions that would be provided by the VERS in operation (*see* section 5.4.1.2 of AHRI 920–2020). Option 2 uses energy recovery device performance ratings based on ANSI/AHRI 1060–2018 to calculate the air dry-bulb temperature and humidity conditions that would be provided by the energy recovery device. ANSI/AHRI 1060–2018 references ANSI/ASHRAE 84–2013, ''Method of Testing Air-to-Air Heat/Energy Exchangers,'' (ANSI/ASHRAE 84–2013) (approved by ASHRAE on January 26, 2013) for conducting the test. These industry test standards provide a method for rating the performance of VERS in terms of sensible and latent effectiveness. DOE also notes that the performance ratings for energy recovery devices certified using ANSI/AHRI 1060–2018 are listed in AHRI's directory of certified product performance.[29]

The operating conditions specified in ANSI/AHRI 1060–2018 may be different than the operating conditions specified for testing DDX–DOAS (*i.e.,* airflow rate, which subsequently affects factors such as transfer/leakage airflow [30]). Hence, section C4 of AHRI 920–2020 provides methods to adjust, for the DDX–DOAS operating conditions, the effectiveness values for sensible and latent transfer measured using ANSI/AHRI 1060–2018. Section C4 of AHRI 920–2020 also provides default values for sensible effectiveness and latent effectiveness. These can be used in cases where performance rating information based on ANSI/AHRI 1060–2018 is not available for a VERS, or the rotational speed for an energy recovery wheel has been changed from the speed used to determine performance ratings using ANSI/AHRI 1060–2018.

The Option 2 approach would reduce test burden for most test laboratories by reducing the number of test rooms required as compared to conducting tests using Option 1. Because the outdoor ventilation air and return air would be maintained at the same conditions, there would be no transfer of heat or moisture in the VERS, nor any change of VERS-outlet supply air conditions associated with transfer or leakage of return air to the supply air plenum. In addition, testing using Option 2 is conducted with all components operating (*e.g.,* with an energy recovery wheel rotating, or with the pump of a glycol-water runaround loop activated), such that all measurements would be representative

[27] ''STI'' is defined in AHRI 920–2020 as additional instructions provide by the manufacturer and certified to the U.S. DOE. As explained in section III.C.1 of this document, this NOPR does not propose certification requirements for DDX–DOAS—such requirements will instead be proposed in a separate Energy Conservation Standard rulemaking. Consistent with certification provisions for other commercial packaged air-conditioning and heating equipment, manufacturers include STI as part of the certification (*see* 10 CFR 429.43(b)(4)). DOE is proposing that manufacturers must adhere to the provisions of this test procedure starting on the compliance date for the related energy conservation standard rulemaking. Hence, this approach does not require that STI exist earlier than the date it must be certified to DOE.

[28] The Option 1 test method includes additional specificity to the test room configuration for testing DDX–DOAS with energy recovery by allowing use of the three-chamber approach in addition to the example configuration provided in the current industry consensus test standard, in which the outdoor room is conditioned to both the required outdoor dry-bulb and humidity conditions.

[29] AHRI's directory of certified product performance for air-to-air energy recovery ventilators can be found at *www.ahridirectory.org/ahridirectory/pages/erv/defaultSearch.aspx.*

[30] As discussed in section III.B.4.g.i of this NOPR, DDX–DOASes with energy recovery wheel VERS may experience air transfer and leakage from the outdoor air path to the exhaust air (outdoor air transfer and leakage) and return air to the supply air (return air transfer and leakage).

of the pressure drops and power consumption associated with the VERS. This approach avoids separate testing to measure power input of auxiliary components or of the exhaust air fan.

Option 2 is applicable for DDX–DOASes for which a VERS provides the initial outdoor ventilation air treatment. DDX–DOAS units with VERS that provide conditioning downstream of the conditioning coil could not be tested using Option 2, since this option addresses VERS pre-conditioning only upstream of the conditioning coil. Such units would need to be tested using Option 1.

In response to the July 2017 ASHRAE TP RFI, AHRI commented that testing of DDX–DOAS units with VERS would generally require a facility with three adjacent test chambers, which is not available in the known stock of existing laboratory spaces. (AHRI, No. 11 at p. 14) AHRI stated that the test facility arrangement for testing of DDX–DOASes with energy recovery presented in ANSI/ASHRAE 198–2013,[31] as referenced by AHRI 920–2020, is not adequate because laboratories cannot maintain both the required dry-bulb temperature and high humidity conditions in the outdoor room, since removing the high condenser heat load using a conventional conditioning system also excessively dehumidifies the chamber. The commenter also argued that capacity and stratification are significant issues with the existing test arrangement. AHRI surmised that a separate, third test room to provide conditioned outdoor air for the entering air to the energy recovery device would be required to provide adequate stability for testing. AHRI further asserted that because it is not feasible to adequately test units with VERS, DOE should limit the scope of the Federal test procedure at this time to DDX–DOAS units without VERS. (AHRI, No. 11 at p. 15)

Based on DOE's review of the test requirements and equipment available on the market, DOE is aware of test facilities capable of testing using Option 1 for smaller DDX–DOAS units. Test facilities with similar configurations used for testing variable refrigerant flow multi-split air-conditioning and heat pump equipment would be large enough and equipped with enough controlled test rooms to meet the DDX–DOAS test procedure requirements. DDX–DOAS units with physical dimensions under 10 feet by 10 feet (typically less than 100 lbs. per hour MRC at Standard Rating Condition A), which represent more than 50 percent of equipment models available on the market, could be tested in these existing test facilities.

Option 2 allows existing test facilities to test all DDX–DOAS units, including units larger than those that can be tested using Option 1. As discussed, Option 2 requires neither a separate third test room to condition the outdoor ventilation air to the required temperature and humidity conditions, nor that the outdoor room in which the unit is located be conditioned to both the required dry-bulb and humidity conditions, because it does not require use of an air stream at outdoor air conditions. Aside from the chamber in which the test unit is installed, it requires only a second chamber at the simulated conditions. The inclusion of Option 2 in AHRI 920–2020 reduces testing burden compared to the ANSI/AHRI 920–2015, which only provides test set-up and provisions that are mostly equivalent to the Option 1 method in AHRI 920–2020 discussed previously. For these reasons, DOE tentatively concludes that existing test facilities would be capable of using the proposed test procedure for testing DDX–DOASes both with and without VERS.

DOE is required under EPCA to adopt a Federal test procedure that is consistent with the applicable test procedure specified in the amended ASHRAE Standard 90.1 unless DOE determines, supported by clear and convincing evidence, that to do so would result in a test procedure that is not designed to produce test results which reflect the energy efficiency of DDX–DOASes in a representative average-use cycle or would be unduly burdensome to conduct. (42 U.S.C. 6314(a)(4)(B); 42 U.S.C. 6314(a)(2) and (3)) In this NOPR, DOE is proposing to adopt the two options (*i.e.,* Option 1 and Option 2) for testing DDX–DOASes with energy recovery, as provided in section 5.4.1 of AHRI 920–2020 (as enumerated in section 2.2.1(b) of the proposed Appendix B). As discussed further in section III.B.3.a of this NOPR, DOE is proposing to define a ''ventilation energy recovery system'' as a feature that provides pre-conditioning of outdoor ventilation air entering the equipment through direct or indirect thermal and/or moisture exchange with the exhaust air leaving the unit.

In addition, DOE notes that the relevant industry test standards (AHRI 920–2020 and ASHRAE 198–2013) in some cases use synonymous but different terms to denote VERS. DOE proposes to include a section 2.3(b) in its proposed Appendix B indicating that the different synonymous terms all refer to VERS as defined in 10 CFR 431.92.

The following subsections address specific aspects of the proposed test procedure pertaining to DDX–DOASes with VERS.

i. Exhaust Air Transfer and Leakage

DOE is aware that DDX–DOASes with energy recovery wheel VERS may experience air transfer and leakage from the outdoor air path to the exhaust air (outdoor air transfer and leakage) and return air to the supply air (return air transfer and leakage). Some of this air is leakage past the diametral seals that separate the outdoor and exhaust plenums on one side of the wheel and the return and supply plenums on the other side. Additional leakage from outdoor to exhaust or return to supply could be due to loose cabinet construction of the DDX–DOAS itself. Depending on the geometry of the energy recovery wheel media (*e.g.,* whether the sheets of media making up the energy recovery wheel core are oriented parallel to this leakage flow direction), the air may pass through a portion of the media near the diametral seal. In addition, as a portion of the wheel passes from one side of the seal to the other, the air within that portion reverses direction—this represents either return air transferred to the supply side or outdoor air transferred to the exhaust side. The exhaust air transfer ratio (EATR) is defined in section 3.8 of AHRI 920–2020 as the fraction of airflow leaving the VERS that transfers or leaks from the return air inlet rather than passing through the VERS from the outdoor air inlet.

The return air that transfers and leaks to the supply air side of an energy recovery wheel did not enter the DDX–DOAS as outdoor ventilation air. Therefore, the amount of fresh outdoor air delivered by the DDX–DOAS is less than the supply airflow and is equal to the supply airflow multiplied by the factor (1–EATR). In addition, the return air is already at neutral space conditions. Hence, the energy recovery wheel does not provide any meaningful conditioning for this air. When calculating MRC for a DDX–DOAS with an energy recovery wheel, section 10.5 of ANSI/ASHRAE 198–2013 indicates that the calculation is based on the full supply airflow. DOE notes that any transfer or leakage air would increase the apparent dehumidification provided by the DDX–DOAS unit, since this air is already at space-neutral conditions—thus, a high EATR would boost the efficiency rating without providing any real benefit (for VERS other than energy recovery wheels, the EATR is considered to be equal to 0, under the assumption that cabinet air leakage

[31] See section 6.1.1.2 and Figure 2 of ANSI/ASHRAE 198–2013.

through the VERS is negligible, so this issue would not affect these other VERS). ANSI/AHRI 920–2015 includes tracer gas tests for measuring EATR in its standard rating requirements (see section 5.1). As part of the July 2017 ASHRAE TP RFI, DOE raised this issue, while recognizing that such leakage may be low enough in most energy recovery wheels that the EATR measurement could represent an unnecessary addition to test burden. 82 FR 34427, 34437 (July 25 2017). DOE requested comment on whether EATR should be included in the test procedure for DDX–DOASes and, if so, how it should be used in determining DX–DOAS ratings. *Id.*

In response to the RFI, on this issue, AHRI commented that the intent of the DOE test procedure for DDX–DOASes should not be to quantify energy recovery performance. AHRI pointed out that the AHRI certification directory publishes EATR values based on AHRI 1060. (AHRI, No. 11 at p. 15) In addition, AHRI argued that test laboratories of sufficient size for testing DDX–DOASes are not currently equipped with tracer gas test equipment, as specified in ANSI/ASHRAE 84–2013. (AHRI, No. 11 at p. 14) No other comments were received on this issue.

Since the July 2017 ASHRAE TP RFI, further refinements were made to the industry consensus test standard which have bearing on this matter. Specifically, sections 6 and C4 of AHRI 920–2020 were revised to include methods to estimate EATR without requiring a tracer gas measurement, and to account for EATR's impact on DDX–DOAS performance, using calculations tailored for testing under either Option 1 or Option 2. These include using an EATR value that is based on testing in accordance with ANSI/AHRI 1060–2018 with zero purge angle,[32] zero return-to-supply pressure differential, and 100-percent of nominal energy recovery wheel supply airflow, and adjusting the EATR value for the DDX–DOAS supply airflow rate based on an assumption that the leakage/transfer flow is not affected by the supply and return air flow rates. The adjusted value of EATR is then used in the calculation of DDX–DOAS performance. Specifically, the MRC calculations in section 6.9 of AHRI 920–2020 take into account the conditioning of the air that leaked or transferred from the return plenum to the supply plenum (equal to adjusted EATR multiplied by supply airflow) only from return conditions to supply conditions to reflect the fact that this air did not enter the DDX–DOAS unit at outdoor air conditions. In cases where EATR rating information based on ANSI/AHRI 1060–2018 is not available, or if, for an energy recovery wheel, the rotational speed has been changed from the speed used to determine performance ratings using ANSI/AHRI 1060–2018, sections 6.5 and C4 of AHRI 920–2020 provide a default value of EATR that would be used to rate the DDX–DOAS.

DOE has tentatively determined that the use of default or certified values for EATR in AHRI 920–2020 (instead of tracer gas tests) has addressed AHRI's comments on quantifying energy recovery performance. Accordingly, DOE is proposing to adopt these changes made by AHRI 920–2020 (section 6.5 *Determination of EATR*), as enumerated in section 2.2.1(c) of the proposed Appendix B; and Appendix C of AHRI 920–2020 (which includes section C4 *Simulated Ventilation Air Conditions for Testing Under Option 2*), as enumerated in section 2.2.1(f) of the proposed Appendix B).

ii. Purge Angle Setting

Section 6.6 of ANSI/ASHRAE 198–2013 requires that for any DDX–DOAS equipped with an energy recovery wheel, the purge angle of such feature must be set to zero when testing the DDX–DOAS unit. As part of the July 2017 ASHRAE TP RFI, DOE requested comment on whether all purge devices are adjustable to zero purge and whether it is always clear how to set them to zero purge. 82 FR 34427, 34439 (July 25, 2017). DOE also requested comment on whether it is appropriate to set purge to zero or whether it would be more appropriate to set purge to its highest setting or to some other standard setting. *Id.*

None of the comments on the RFI indicated that there are purge devices that are not adjustable to zero angle, nor that it is unclear how to adjust purge angle to zero. Carrier commented that for the short period of time required for a performance test, it should not be a problem to set the purge angle to zero. (Carrier, No. 6 at p. 8) As discussed previously, AHRI stated that there are no independent laboratories capable of testing DDX–DOAS units with VERS. As a result, AHRI argued that this issue does not need to be addressed at this time. However, AHRI stated, if in the future laboratories are able to test DDX–DOASes equipped with VERS, then manufacturers should be allowed to specify the purge setting for testing, as is done in AHRI 1060. (AHRI, No. 11 at p. 20)

DOE has tentatively concluded that a zero purge angle aligns with the selection that manufacturers would generally make (*i.e.,* a zero purge angle), because non-zero purge prevents the purge portion of the wheel from contributing to energy recovery effectiveness (since outdoor ventilation air passing through it is ejected out of the unit to the exhaust rather than becoming part of the supply airflow). Also, the purge section restricts the flow area for the remaining outdoor air that becomes supply air, thus increasing pressure drop and fan power. For these reasons, energy recovery wheel performance (and likewise DDX–DOAS performance and efficiency) will be reduced when operating with a non-zero purge angle. Furthermore, basing DDX–DOAS performance ratings on a zero purge angle provides greater consistency in testing. DOE notes that section C4.1 of AHRI 920–2020—the industry consensus test standard—includes a requirement for testing DDX–DOAS units using zero purge angle, whether testing using Option 1 or Option 2 (through inclusion of $EATR_0$, which is defined in section 11 of AHRI 920–2020 as being determined using zero purge angle). For these reasons, DOE is proposing to adopt the requirement in AHRI 920–2020 to use a zero purge angle for testing DDX–DOAS with energy recovery wheels (section C4.1 of Appendix C of AHRI 920–2020), as enumerated in section 2.2.1(f) of the proposed Appendix B.

iii. Return Air External Static Pressure Requirements

ANSI/ASHRAE 198–2013 specifies testing DDX–DOASes with VERS with return air passing into the unit and exiting at the exhaust air connection. DOE noted in the July 2017 ASHRAE TP RFI that ANSI/AHRI 920–2015 does not address setting the external static pressure (ESP) for the return airflow. 82 FR 34427, 34437 (July 25, 2017). DDX–DOAS units are typically installed and operated in the field with return air ducting. Therefore, when in operation, the return air fans consume additional energy to overcome the static pressure imposed by the return air ducts. As part of the July 2017 ASHRAE TP RFI, DOE requested comment on the ESP levels that should be used for return airflow. *Id.*

In response, AHRI stated that Table 4 of ANSI/AHRI 920–2015 was intended to represent ESP of both supply and return airflow. AHRI also stated that

[32] A purge mechanism cleans the portion of the wheel that has had contact with return air before it is used to precondition outdoor air. The cleaning is provided by outdoor air that passes through this portion of the wheel and is diverted into the return plenum to be discharged through the exhaust blower. Most purge mechanisms allow adjustment of the angle of the wheel sector that is subject to this cleaning function. At zero purge angle, there is no purge cleaning provided.

revisions to ANSI/AHRI 920–2015 will refer to the same table for return airflow ESP. (AHRI, No. 11 at p. 15) DOE received no other comments on this issue.

Consistent with the AHRI comment, section 6.1.5.6 of AHRI 920–2020 does include different ESP requirements for supply and return airflow, thereby resolving the identified issue. Accordingly, DOE is proposing to adopt the ESP requirements set forth in AHRI 920–2020 (section 6.1.5 *Supply and Return Airflow Rates*), as enumerated in section 2.2.1(c) of the proposed Appendix B).

iv. Target Return Airflow Rate

In the July 2017 ASHRAE TP RFI, DOE noted that for testing DDX–DOAS units equipped with VERS, Tables 2 and 3 in ANSI/AHRI 920–2015 provide return airflow temperature conditions and indicate that the temperature conditions apply to units with energy recovery at balanced airflow. 82 FR 34427, 34437 (July 25, 2017). It is unclear from ANSI/AHRI 920–2015 what airflow streams should be balanced, how to determine if they are balanced, and within what tolerances they should be balanced. In the July 2017 ASHRAE TP RFI, DOE requested comments on which airflow streams should be balanced and whether balanced airflow is representative of field use. *Id.*

On this topic, AHRI raised a number of issues with testing DDX–DOAS equipped with VERS generally, as previously discussed. AHRI also stated that using balanced airflows is consistent with the test procedure for rating VERS described in ANSI/AHRI 1060–2018. AHRI further commented that in field operation, unbalanced flows may be needed to maintain positive building pressure; however, most equipment selection is done at or near balanced airflows. (AHRI, No. 11 at pp. 14–15)

Subsequent updates to the industry consensus test standard at AHRI 920–2020 shed further light on this issue. Specifically, section 6.1.5 of AHRI 920–2020 specifies the return airflow rate must be within 3 percent of the measured supply airflow rate. Based on DOE's review of DDX–DOAS product literature and consideration of the AHRI comment, it has become apparent that there is no clear optimal ratio of supply airflow to return airflow for DDX–DOAS testing to be representative of field use. Therefore, DOE has tentatively concluded that the provision in AHRI 920–2020 is appropriate.

i. Demand-Controlled Ventilation

DDX–DOAS units are often used in demand-controlled ventilation (DCV) operation, which regulates the building ventilation requirement based on parameters such as building occupancy. Typically, a DCV system monitors the concentration of carbon dioxide (CO_2) in the return air or in the building and regulates the supply airflow rate accordingly. During periods of non-occupancy, which could represent a significant portion of field-use, the DCV system controls the unit to operate at a low airflow rate, thereby reducing the unit's overall energy use. DDX–DOASes using DCV systems are typically equipped with variable-speed supply fans that can be adjusted to meet changing ventilation needs. In the July 2017 ASHRAE TP RFI, DOE sought comments on whether to include operation under DCV conditions (*i.e.,* low supply airflow conditions) to be included as part of DOE's test procedure. 82 FR 34427, 34437 (July 25, 2017).

In response to this issue, the Joint Advocates encouraged DOE to adopt an efficiency metric that captures the benefits of DCV. The Joint Advocates stated that adopting such a metric could provide more field-representative equipment ratings and better inform consumers when purchasing equipment. Further, the Joint Advocates argued that capturing the benefits of DCV would promote adoption of variable speed fans, provide more flexibility in building operation, and reduce energy use. (Joint Advocates, No. 9 at p. 2, 4) AHRI and Carrier commented that the performance of the DX–DOAS under DCV operation must be characterized prior to developing a test procedure and that adopting provisions to address DCV operation could significantly increase the cost and complexity of testing. AHRI further stated that DCV operation is primarily controlled by building operators. Carrier stated that performance would depend highly on the building type, occupancy, and site requirements for demand ventilation. (AHRI, No. 11 at p. 14; Carrier, No. 6 at p. 4)

DOE reviewed the comments and considered whether to adopt testing conditions to account for the energy use profiles of models with low supply airflow rates that are typically experienced by units with DCV. Incorporation of the airflow modulation that would be enabled by DCV might provide more representative efficiency ratings, help in consumer decision making, and potentially promote the market penetration of variable speed fans. However, DOE is not aware of representative field data regarding the typical DDX–DOAS duty cycle when operating with DCV and, thus, agrees with the comments of AHRI and Carrier that characterization of DCV performance would be an important first step in integrating this control feature into the test procedure. DOE further agrees that adopting additional testing requirements to capture the effect of DCV could significantly increase testing cost and complexity, as noted in comments provided by AHRI and Carrier. Given the lack of data on in-field performance and the anticipated additional testing burden of such a test, DOE has tentatively decided not to include performance under DCV operation in its proposed test procedure for DDX–DOASes at this time.

j. Tolerances for Supply and Return Airflow and External Static Pressure

DOE noted in the July 2017 ASHRAE TP RFI that Table 1 of ANSI/ASHRAE 198–2013 includes operating and condition tolerances of 5 percent for airflow rate. 82 FR 34427, 34439 (July 25, 2017). It includes a test operating tolerance for ESP equal to 0.05 in H_2O and a test condition tolerance for ESP of 0.02 in H_2O. As provided in section 5.2.2 of ANSI/AHRI 920–2015, the airflow rate and ESPs are set at Standard Rating Condition C dry-bulb temperatures without the refrigeration systems and energy recovery (if applicable) in operation. ANSI/AHRI 920–2015 states in section 5.2.2.4 that once the airflow rate is set, the fan speeds shall not be adjusted for the remaining tests. DDX–DOAS units that are for use with air ducting are required by the industry test standard to be set up with ESP requirements in Table 4 of ANSI/AHRI 920–2015, and units tested as if they would be installed without ducts are tested with 0 in H_2O ESP.

DOE notes that while operating in dehumidification mode, the airflow rates and ESPs may fluctuate more than for ''dry'' operation as condensate accumulates and then drains from the cooling coil. In addition, for dehumidification and heating tests, the density of supply air may be different, which may change fan performance, and, thus, the ESP. These factors could cause the supply air ESP to fluctuate more than the operating tolerances specified in Table 1 of ANSI/ASHRAE 198–2013, and/or to deviate from the specified ESP by more than the test condition tolerance. Likewise, the airflow rates could fluctuate more than the specified operating tolerances, and the average airflows could deviate by more than the test condition tolerances

from their target values. If this occurs, it is not clear how manufacturers would correct the issue without being able to adjust the fan speed and ESP, since such action is precluded by section 5.2.2.4 of ANSI/AHRI 920–2015.

In the July 2017 ASHRAE TP RFI, DOE noted that the 5-percent condition tolerance on airflow rate is less stringent than the 3-percent condition tolerance adopted in DOE's test procedure for more typical commercial package air equipment. 82 FR 344271, 34439 (July 25, 2017). On August 6, 2015, DOE published a test procedure NOPR that proposed to apply a ±5-percent condition tolerance on cooling full-load indoor airflow rate for more typical commercial package air conditioning equipment. 80 FR 46870, 46873. In response to the proposed tolerance for more typical commercial package air conditioning equipment, DOE received several comments suggesting that a 5-percent tolerance would result in too much variation in the measurement of energy efficiency ratio and cooling capacity. After considering stakeholder comments, DOE adopted a 3-percent tolerance in a final rule published on December 23, 2015. 80 FR 79655, 79659–79660. As part of the July 2017 ASHRAE TP RFI, DOE expressed concern that that the 5-percent condition tolerance on airflow in ANSI/ASHRAE 198–2013 may result in too much test variability for DDX–DOASes and requested comment on whether this airflow tolerance is acceptable. 82 FR 34427, 34439 (July 25, 2017).

AHRI commented in response to the July 2017 ASHRAE TP RFI that manufacturers who have performed testing have stated that meeting the tolerances specified in ANSI/AHRI 920–2015 and ASHRAE 198–2013 is not feasible due to how the testing is performed. Once the refrigeration system is engaged for determining ISMRE and ISCOP ratings, changes in moisture present on the cooling coil and air density affect the standard airflow and associated ESP. AHRI recommended that the ±0.05 in H_2O ESP tolerance and a 3-percent airflow tolerance be observed during the airflow and fan speed setting at Standard Rating Condition C without the refrigeration system operating. AHRI also stated that during the Standard Rating Condition tests, the DDX–DOAS fan speeds and airflow-measuring apparatus fan speeds shall not be adjusted, consistent with airflow setting and operation in the field. Nevertheless, AHRI stated that the average measured airflows should be required to be within 5 percent of the manufacturer's rated standard airflow during all rating tests and that the average measured ESPs should be within 15 percent of the required ESP to indicate a valid test, but the commenter did not indicate whether the fans of the test unit or the airflow-measuring apparatus should be adjusted to maintain these tolerances. (AHRI, No. 11 at p. 18)

DOE notes that AHRI 920–2020 revised the test condition and operating tolerances for airflow and ESP. Section 6.1.5 of AHRI 920–2020 specifies airflow test condition tolerances of ±3 percent of the manufacturer-provided airflow rate for all DDX–DOASes when setting the airflow, provided that this airflow rate meets the supply air dew point temperature requirement, as discussed in section III.B.4.d.i of this NOPR. For setting the return airflow rate, section 6.1.5 of AHRI 920–2020 specifies the same test condition tolerances as for supply airflow rate, except that for return airflow rate, the target is equal to the measured supply airflow rate. This specification ensures that supply and return airflows remain balanced, as discussed in section III.B.3.h.iv of this NOPR. These test condition tolerances for airflow and ESP are only required when setting the airflow. Once the airflow rate is set, the dehumidification and heating tests are then conducted without further adjustments to the supply fan, return fan, or airflow measuring apparatus. Section 6.1.5 and Table 9 of AHRI 920–2020 indicate that the supply and return airflow and ESP condition tolerances are not required to be maintained during the dehumidification and heating tests. While these provisions are contrary to AHRI's recommendation in response to the July 2017 ASHRAE TP RFI to impose a 5-percent airflow condition tolerance and a 15-percent ESP condition tolerance during dehumidification and heating tests, DOE believes these changes in AHRI 920–2020 address AHRI's concerns about testing problems associated with the tolerances in ANSI/AHRI 920–2015 and ASHRAE 198–2013.

AHRI 920–2020 additionally includes a list of test operating tolerances, including those for external static pressure and airflow nozzle differential pressure. AHRI 920–2020 does not include changes to the test operating tolerance for ESP (0.05 in H*2*O total observed range, specified in Table 9 of AHRI 920–2020). Whereas ANSI/ASHRAE 198–2013 provides a 5-percent operating tolerance directly on the airflow rate, Table 9 of AHRI 920–2020 provides a 5-percent operating tolerance for airflow rate in the form of airflow nozzle differential pressure. DOE has initially determined that the airflow operating tolerance approach in AHRI 920–2020 is preferable because the airflow nozzle differential pressure provides a more direct indication of the airflow variation, since airflow is calculated based on this value. Additionally, other industry test standards such as ANSI/ASHRAE 37–2009 include an operating tolerance on the nozzle pressure drop rather than directly on airflow. DOE believes that these operating tolerances, in addition to the condition tolerances for setting airflow, would maintain repeatable and reproducible results while ensuring that testing is representative of field use. Accordingly, DOE is proposing to adopt the test condition and operating tolerances for airflow and ESP specified in AHRI 920–2020 (section 6.1.5 *Supply and Return Airflow Rates* and section 6.6.2 *Test Measurement Tolerances*, which contains Table 9), as enumerated in section 2.2.1(c) of the proposed Appendix B).

k. Secondary Dehumidification and Heating Capacity Tests

Commercial package air-conditioners and heat pumps with cooling capacity less than 135,000 Btu/h are required to undergo a secondary test to verify the cooling or heating capacity and energy efficiency results (see, *e.g.,* ANSI/ASHRAE 37–2009 section 7.2.1, which is referenced by appendix A to subpart F of 10 CFR part 431). Neither ANSI/AHRI 920–2015 nor ANSI/ASHRAE 198–2013 specify a secondary test method for verifying the dehumidification and heating capacity of DDX–DOAS, but section 6.7 of AHRI 920–2020 does specify secondary tests. The measurement of dehumidification and heating performance of DDX–DOASes is based on measurements of airflow rate, temperature, and humidity, which have uncertainties associated with them. Thus, a secondary test method may be essential to confirm the accuracy of the primary test method.

As part of the July 2017 ASHRAE TP RFI, DOE requested comment on the need for a secondary test method requirement for DDX–DOAS testing. 82 FR 34427, 34439 (July 25, 2017). AHRI commented that condensate measurement would be appropriate as a secondary method, if energy recovery units are excluded from the test procedure. (AHRI, No. 11 at p. 19)

Section C5.1 of AHRI 920–2020 includes a condensate-based test method as a secondary measure of dehumidification capacity. The method measures the weight of the condensate (*i.e.,* water vapor in the outdoor ventilation air that condenses on the conditioning coil and is removed from

the air) collected during the dehumidification test and uses it to calculate a secondary measure of MRC. This secondary measure of MRC is then compared to the primary MRC measurement, which is based on supply and outdoor ventilation airflow and air condition measurements.

AHRI 920–2020 requires this secondary measure of MRC for all dehumidification tests, and comparison to the primary measure of MRC at Standard Rating Condition A. This requirement is for all DDX–DOAS units that: (a) Do not use condensate collected from the dehumidification coil to enhance condenser cooling or include a secondary dehumidification process for which the moisture removed from the supply air stream is not collectable in liquid form, and (b) either are not equipped with VERS or are equipped with VERS and tested using Option 2 (see section C5.1 of AHRI 920–2020). AHRI 920–2020 does not require a secondary dehumidification capacity measurement for DDX–DOAS units equipped with VERS that are tested using Option 1. DOE understands that this is because: (a) No viable method has been developed and validated that appropriately accounts for the water vapor that transfers between air streams of an energy recovery wheel, and (b) the test burden of accounting for moisture in the exhaust air stream would be excessive. DOE is proposing to adopt the secondary capacity test measurements specified in AHRI 920–2020 (section C5.1 *Dehumidification Capacity Verification*), as enumerated in section 2.2.1(f) of the proposed Appendix B), including the cooling condensate secondary test measurement discussed previously.

For DDX–DOAS units with energy recovery tested using Option 2, as discussed in section III.B.3.h of this NOPR, the test is conducted by setting the conditions of the air entering the unit (at both the outdoor air inlet and return air inlet) to simulate the conditions that would be provided by the energy recovery device in operation. As a result, the moisture removal (in dehumidification mode) or heating (in heating mode for heat pump DDX–DOAS) measured during the Option 2 primary and secondary capacity tests reflects only the moisture removed or heating by the conditioning coil. The MRC or qhp for the DDX–DOAS is calculated by adjusting the measured moisture removal or heating for the primary test to account for the total moisture removal or heating by the energy recovery device and the conditioning coil. Because the moisture removal or heating capacity measured for the primary and secondary tests are based on the simulated test conditions, sections 6.9 and 6.10 of AHRI 920–2020 use these measured values for the secondary capacity verification under Option 2. DOE is proposing to adopt these requirements specified in AHRI 920–2020 (section 6.9 *Moisture Removal Efficiency Ratings* and section 6.10 *Heating Capacity*), as enumerated in section 2.2.1(c) of the proposed Appendix B).

a. Corrections

In addition to substantive changes, AHRI 920–2020 also provides minor corrections to instructions in ANSI/AHRI 920–2015. However, in its review of AHRI 920–2020, DOE identified an error and an omission in the latest industry test procedure. Specifically, DOE notes that section 6.9.2 of AHRI 920–2020 provides erroneous instruction for the calculation of the degradation coefficient, and sections 6.1.5.2.3 and 6.1.5.2.4 of AHRI 920–2020 refer to the term ''non-standard low-static motor'' without providing a definition or explanation of this term. DOE proposes to correct the calculation instruction and define the term ''non-standard low-static motor,'' as discussed further in the following paragraphs. DOE also notes a correction made by AHRI 920–2020 to address an error in the calculation of supplementary heat penalty in ANSI/AHRI 920–2015.

i. Calculation of the Degradation Coefficient

As mentioned in section III.B.3.d.v of this NOPR, AHRI 920–2020 includes provisions for cases where the unit provides excess dehumidification or heating capacity when operating at its lowest-capacity compressor stage. A degradation coefficient is applied to the MRE and MRE_{70} when the supply air dew point temperature measured when operating the unit at its lowest-capacity compressor stage is lower than the target supply air dew point temperature in excess of the specified test condition tolerance. This degradation coefficient accounts for the re-evaporation of condensate which occurs during cycling operation (*i.e.,* when the compressor cycles on and off to achieve the target supply air dew point temperature). DOE understands that the degradation is more pronounced for DDX–DOASes equipped with VERS for latent energy recovery (or total energy recovery), and, thus, the degradation coefficient should be greater for DDX–DOASes operating total energy recovery VERS. Equation 20 in section 6.9.2 of AHRI 920–2020 appears to incorrectly attribute the lower degradation coefficient to DDX–DOASes operating with VERS. As such, DOE has initially determined, supported by clear and convincing evidence, that absent a correction, the degradation coefficient as applied in AHRI 920–2020 would not meet the statutory requirements of 42 U.S.C. 6314(a)(2)–(3) because it would not produce representative results. DOE proposes to correct Equation 20 by specifying that it is to be used for DDX–DOASes ''*without* VERS, with deactivated VERS (see section 5.4.3 of AHRI 920–2020), or with sensible-only VERS tested under Standard Rating Conditions other than D'' (emphasis added) because DDX–DOASes with total energy recovery VERS or with sensible-only VERS tested under Standard Rating Condition D are considered separately in Equation 21, which calculates a greater degradation coefficient. This correction would be implemented in section 2.2.1(c)(iii) of proposed Appendix B.

ii. Non-Standard Low-Static Motor

As mentioned in section III.B.3.d.i of this NOPR, section 6.1.5 of AHRI 920–2020 includes instructions for setting the supply airflow rate for testing. In particular, sections 6.1.5.2.1 through 6.1.5.2.5 of AHRI 920–2020 provide directions for adjusting the fans should an initial attempt at setting the airflow be unsuccessful.

Section 6.1.5.2.3 of AHRI 920–2020 specifies that if a fan's maximum speed is too low to satisfy the airflow and external static pressure requirements within tolerance (*i.e.,* the motor speed is at the highest setting, a larger compatible off-the-shelf sheave is not available, or increased speed would overload the motor or motor drive) and the motor is not a ''non-standard low-static motor,'' the tests are to be conducted at the fan's maximum speed with the external static pressure satisfying the requirements in Table 7. However, if the motor is a ''non-standard low-static motor,'' section 6.1.5.2.4 of AHRI 920–2020 specifies that the maximum available speed should be used but the supply and return airflow rates should satisfy aforementioned tolerance requirements (implying that the external static pressure requirements in Table 7 need not be met). AHRI 920–2020 does not define ''non-standard low-static motor'' in order to determine which of the two methods is appropriate. Without a definition of ''non-standard low-static motor,'' manufacturers may not apply the ''maximum speed'' provisions consistently, and the potential for variation risks results that do not reflect the equipment's representative average energy efficiency or energy use. As

such, DOE has initially determined, supported by clear and convincing evidence, that in the absence of a definition of ''non-standard low-static motor,'' the industry test procedure would not meet the statutory requirements of 42 U.S.C. 6314(a)(2)–(3).

DOE understands that a non-standard low-static fan motor may be used for DDX–DOASes where the application requires less ductwork, which results in a lower external static pressure when operating at the same nominal supply or return airflow rate. This motor would be distributed in commerce as part of an individual model within the same basic model of DDX–DOAS that is also distributed in commerce with a motor that can meet the external static pressure required by AHRI 920–2020. A parallel situation occurs for Commercial and Industrial Unitary Air-conditioning and Heat Pump Equipment, for which section D3 in Appendix D of AHRI Test Standard 340/360–2019, ''*Performance Rating of Commercial and Industrial Unitary Air-conditioning and Heat Pump Equipment*'' (AHRI 340/360–2019) defines ''non-standard motor'' as an indoor fan motor that is not the standard indoor fan motor and that is distributed in commerce as part of an individual model within the same Basic Model. The same section D3 defines ''standard indoor fan motor'' as the motor specified by the manufacturer for testing and shall be distributed in commerce as part of a particular model. In both cases, the non-standard motor has a horsepower level that is not compatible with the external static pressure rating condition—for DDX–DOAS, the issue arises when the non-standard motor does not have sufficient power to deliver the required external static pressure. Therefore, in the proposed Appendix B in section 2.2.1(a)(i), DOE is proposing to define ''non-standard low-static fan motor'' as a supply fan motor that cannot maintain external static pressure as high as specified in Table 7 of AHRI 920–2020 when operating at a manufacturer-specified airflow rate and that is distributed in commerce as part of an individual model within the same basic model of a DDX–DOAS that is distributed in commerce with a different motor specified for testing that can maintain the required external static pressure.

Issue–8: DOE is requesting comment on the proposed definition of ''non-standard low-static fan motor'' and whether the proposed definition reflects stakeholder understanding of the term.

iii. Calculation of Supplementary Heat Penalty

Section 6.1.3.1 of ANSI/AHRI 920–2015 includes a supplementary heat penalty for units that are unable to achieve the minimum supply air dry-bulb temperature of 70 °F while testing at each Standard Rating Condition specified in Table 2 and Table 3 of ANSI/AHRI 920–2015. The supplementary heat penalty calculates the difference in enthalpy from the delivered supply air and air at the minimum supply air temperature (70 °F). After reviewing the equations, DOE noted in the July 2017 ASHRAE TP RFI that the term for supply airflow rate is missing from the supplementary heat penalty equations. 82 FR 34427, 34436 (July 25, 2017).

In response to the July 2017 ASHRAE TP RFI, AHRI confirmed that the supplementary heat formula in ANSI/AHRI 920–2015 is missing the airflow term, QSA, in section 6.1.3.1, and the organization committed to include such term in the next revision of the test standard. (AHRI, No. 11 at p. 11) DOE notes that this change has been included in AHRI 920–2020, thereby resolving the problem. Accordingly, DOE proposes to adopt the revised supplementary heat penalty equation contained in AHRI 920–2020 that includes the supply airflow rate term (section 6.1.3.1 *Initial Standard Rating Condition A Dehumidification Test*), as enumerated in section 2.2.1(c) of the proposed Appendix B).

In the July 2017 ASHRAE TP RFI, DOE further noted that section 6.1.3.1 of ANSI/AHRI 920–2015 calls for a supplementary heat penalty if the supply air temperature is less than 70 °F, but the incorporation of this penalty into the MRE and COP equations is not clearly described. DOE also noted that it is not clear whether the ANSI/ASHRAE 198–2013 test method considers this penalty. 82 FR 34427, 34436–34437 (July 25, 2017).

AHRI commented that the supplementary heat penalty should be added if the minimum 70 °F temperature is not met, and that this value is added to the measured power input, which is represented as PT in section 10.6 of ANSI/ASHRAE 198–2013. (AHRI, No. 11 at p. 11) DOE notes that this clarification is included in section 6.9 of AHRI 920–2020 in the calculation of MRE_{70}, which incorporates the energy impact of heating the supply air to 70 °F. As discussed in section III.B.2 of this NOPR, DOE is proposing to adopt the ISMRE2 metric specified in section 6.13 of AHRI 920–2020 that does not include the supplementary heat penalty as the regulated metric for DDX–DOAS, while the MRE_{70} (and $ISMRE2_{70}$) metric that incorporates the supplementary heat penalty may be used for representations. As a result, the supplementary heat penalty would only be added to the total power input for the calculation of the optional MRE_{70} ratings.

With regards to the COP calculation, AHRI commented that the intent was that the supplementary heat penalty would be added to the numerator as additional heat capacity and the denominator as additional power consumed to calculate a COP indicative of running an electric heater to meet a supply air temperature of 70 °F. (AHRI, No. 11 at p. 13) DOE notes that this clarification was included in section 6.11.2 of AHRI 920–2020 in the renamed COPISCOP metric, and accordingly, DOE is proposing to adopt the revised COPISCOP calculation (section 6.11.2 of AHRI 920–2020), as enumerated in section 2.2.1(c) of the proposed Appendix B).

2. Determination of Represented Values

a. Basic Model

To determine the energy efficiency of a basic model, DOE's certification requirements generally require manufacturers to test a sample of units of that basic model to represent its performance. (10 CFR 429.11) The basic model may include multiple individual models having similar performance features and characteristics. Typically, DOE provides a definition of a basic model for each type of covered equipment. In this NOPR, DOE proposes a definition for DDX–DOAS basic model derived from the basic model definition for other commercial packaged air conditioning and heating equipment set forth at 10 CFR 431.92. Specifically, DOE replaced the criterion to have common nominal cooling capacity with common nominal MRC. DOE is also proposing to include the common nominal MRC in the definition of a basic model for small, large and very large air-cooled or water-cooled commercial package air conditioning and heating equipment, which includes DDX–DOASes. The proposed definition of basic model of a DDX–DOAS also specifies that a basic model must include units with similar VERS equipment. DOE is proposing in this specification to reflect that ASHRAE Standard 90.1 delineates DDX–DOAS equipment classes, in part, based on VERS, and the proposed test procedure considers the conditioning contribution of the VERS equipment.

DOE is proposing that a basic model for a DDX–DOAS means all units manufactured by one manufacturer within a single equipment class; with the same or comparably performing compressor(s), heat exchangers, ventilation energy recovery system(s) (if present), and air moving system(s), and with a common ''nominal'' moisture removal capacity. This proposed definition of a basic model of a DDX–DOAS would be included in the regulatory text in 10 CFR 431.92.

Issue–9: DOE seeks comment on the proposed definition of basic model of a DDX–DOAS.

b. Sampling Plan Requirements

DOE is proposing sampling requirements to determine the represented values for DDX–DOAS (*i.e.,* dehumidification and heating efficiencies and MRC). More specifically, by proposing to define (at 10 CFR 431.92) DDX–DOAS as a subset of DX–DOAS, and to define DX–DOAS as a category of small, large, or very large commercial package air conditioning and heating equipment, the proposal would apply the same sampling requirements to DDX–DOASes as applicable to other commercial package air conditioning and heating equipment under 10 CFR 429.43, *Commercial heating, ventilating, air conditioning (HVAC) equipment*.

In response to DOE's request for general comment on issues associated with adopting the industry test procedures for certain commercial package air conditioning and heat pump equipment in the July 2017 ASHRAE TP RFI (82 FR 34427, 34445 (July 25, 2017)), Lennox recommended that DOE harmonize the certification criteria for commercial HVAC equipment in 10 CFR 429.43 with those for central air conditioners, a consumer product, in 10 CFR 429.16. In particular, Lennox stated that commercial equipment currently has a more stringent confidence limit of 95 percent, but the commenter argued that current testing technology does not support this level of precision. (Lennox, No. 8 at p. 6) As DOE is proposing to apply the sampling requirements of 10 CFR 431.43 to DDX–DOASes, Lennox's comment regarding the confidence limit for represented values of energy efficiency, energy consumption, and capacity is relevant to DDX–DOASes.

Other manufacturers did not raise concerns regarding the confidence limit required for sampling more typical commercial package air conditioning and heat pump equipment, and Lennox has not provided data regarding variability of units in production and testing. Absent more specific information or data regarding the stringency of the confidence level, DOE is not proposing a change.[33]

Issue–10: DOE requests comment on the sampling plan proposed for DDX–DOASes. DOE specifically requests information and data regarding the proposed confidence level and whether variability of testing of DDX–DOASes would require a less stringent level, and if so, what that level should be.

c. Multiple Refrigerants

DOE recognizes that some commercial package air conditioning and heating equipment may be sold with more than one refrigerant option (*e.g.,* R–410A or R–407C). Typically, manufacturers specify a single refrigerant in their literature for each unique model, but in its review, DOE has identified at least one commercial package air conditioning and heating equipment manufacturer that provides two refrigerant options under the same model number. The refrigerant chosen by the customer in the field installation may impact the energy efficiency of a unit. For this reason, DOE is proposing representation requirements specific for models approved for use with multiple refrigerants.

Use of a refrigerant that requires different hardware (such as R–407C as compared to R–410A) would represent a different basic model, and according to the current CFR, separate representations of energy efficiency are required for each basic model. On the other hand, some refrigerants (such as R–422D and R–427A) would not require different hardware, and a manufacturer may consider them to be the same basic model. In the latter case of multiple refrigerant options, DOE proposes to add a new paragraph at 10 CFR 429.43(a)(3) specifying that a manufacturer must determine the represented values for that basic model based on the refrigerant(s)—among all refrigerants listed on the unit's nameplate—that result in the lowest ISMRE2 and ISCOP2 efficiencies, respectively. For example, the dehumidification performance metric ISMRE2 must be based on the refrigerant yielding the lowest ISMRE2, and the heating performance metric ISCOP2 (if the unit is a heat pump DDX–DOAS) must be based on the refrigerant yielding the lowest ISCOP2. These represented values would apply to the basic model for all refrigerants specified by the manufacturer as appropriate for use, regardless of which one may actually be used in the field, where only one set of values is reported.

DOE notes that this proposal reflects the proposed definition of basic model for DDX–DOASes as discussed in section III.B.4.a of this NOPR. Units within a basic model of DDX–DOAS must have the same or comparably performing compressor(s), heat exchangers, ventilation energy recovery system(s) (if present), and air moving system(s), and with a common ''nominal'' moisture removal capacity.

Issue–11: DOE requests comment on its proposal regarding representations for models approved for use with multiple refrigerants.

d. Alternative Energy-Efficiency Determination Methods

DOE proposes to allow DDX–DOAS manufacturers to use alternative energy-efficiency determination methods (AEDMs) for determining the ISMRE2 and ISCOP2 (if applicable) in accordance with 10 CFR 429.70. By proposing to define (at 10 CFR 431.92) DDX–DOAS as a subset of DX–DOAS, and to define DX–DOAS as a category of small, large, or very large commercial package air conditioning and heating equipment, the provisions of 10 CFR 429.43 authorizing use of an AEDM for commercial HVAC equipment would apply to DDX–DOAS. DOE notes that the proposed requirements for use of AEDMs to determine DDX–DOAS represented values are consistent with AEDM requirements for all other categories of commercial package air-conditioning and heating equipment.

DOE proposes to create four validation classes of DDX–DOASes within the *Validation classes* table at 10 CFR 429.70(c)(2)(iv): Air-cooled/air-source and water-cooled/water-source, each with and without VERS. The separation into air-cooled/air-source and water-cooled/water source validation classes is the same approach used for other categories of commercial package air-conditioning and heating equipment. For DDX–DOASes, the additional class separation by presence of energy recovery reflects ASHRAE Standard 90.1 delineating equipment classes, in part, based on the presence of VERS and the significant differences in the test methods required with energy recovery. These differences in the test procedures include the potential need for a third test chamber for the Option 1 approach for testing DDX–DOASes with energy recovery, and the

[33] DOE notes that it has previously requested data regarding the variability of units of small, large, and very large air-cooled commercial package air conditioning and heating equipment in production and testing to enable DOE to review and make any necessary adjustments to the specified confidence levels. *See* 80 FR 79655, 79659 (Dec. 23, 2015). However, DOE did not receive any relevant data in response to that request.

requirement to account for the performance of the energy recovery device for the Option 2 approach (see section III.B.3.g of this NOPR).

DOE proposes to require testing of two basic models to validate the AEDMs for each validation class—this is identical to the requirements for other categories of commercial package air-conditioning and heating equipment. Finally, DOE proposes to specify in the table at 10 CFR 429.70(c)(5)(vi) a tolerance of 10 percent for DDX–DOAS verification tests for ISMRE2 and ISCOP2 when comparing test results with certified ratings. Again, this is identical to the tolerances for ''integrated'' ratings for other categories of commercial package air-conditioning and heating equipment.

Issue–12: DOE requests comment on its proposals for AEDM requirements for DDX–DOAS equipment. DOE requests comment specifically on whether the proposed 10-percent tolerance for comparison of test results with rated values is appropriate. If the 10-percent tolerance is not appropriate, DOE requests comment on why it is not appropriate, as well as comment indicating an appropriate tolerance.

e. Rounding

Sections 6.1.2.1 through 6.1.2.8 of AHRI 920–2020 specify rounding for DDX–DOAS performance metrics. DOE proposes to adopt these rounding requirements as part of the DOE test procedure, as enumerated in section 2.2.1(c)(iv) of the proposed Appendix B.

Issue–13: DOE requests comment on its proposal to adopt the rounding requirements for key metrics as specified in sections 6.1.2.1 through 6.1.2.8 of AHRI 920–2020.

3. Configuration of Unit Under Test

DOE recognizes that DDX–DOASes are distributed in commerce in a variety of configurations consisting of different combinations of components. DOE proposes in section 2.2.1(g) of Appendix B to adopt the requirements of appendix F to AHRI 920–2020, which includes a list of components that must be present for testing DDX–DOASes and a list of components that are optional for testing. Appendix F in AHRI 920–2020 also includes explicit instructions on how representations can be made for equipment that include these optional components. AHRI 920–2020 specifies the following list of components that must be present for testing:

- Supply air filter(s);
- Compressor(s);
- Outdoor coil(s) or heat exchanger(s);
- Outdoor coil fan(s)/motor(s) (for air-cooled and air-source systems only);
- Conditioning coil(s);
- Refrigerant expansion device(s);
- Supply/outdoor ventilation fan(s)/motor(s), and
- System controls.

AHRI 920–2020 also specifies that for supply air filters, the filter shall have a ''minimum efficiency reporting value'' (MERV) specification no less than MERV 8. For individual models that use filters with efficiency higher than MERV 8 (which generally have higher pressure drop and could reduce relative tested efficiency), section F2.4 of AHRI 920–2020 allows manufacturers the option of testing these individual models as a separate basic model or combined into a basic model with other individual models that meet the basic model definition and are tested with a MERV 8 filter. Adopting Appendix F of AHRI 920–2020 without changes would allow manufacturers to provide efficiency representations based on either testing option for individual models that use filters with efficiency higher than MERV 8.

DOE notes that the list of components that are optional for testing specified in section F2.4 of AHRI 920–2020 includes features that may reduce tested efficiency but may also in certain applications: (a) Maintain or improve field efficiency or (b) be required for safety. Given the potential benefits, DOE does not want to penalize equipment with such components, because that might disincentivize their adoption. By proposing to adopt Appendix F of AHRI 920–2020 without changes, the following instructions from AHRI 920–2020 would specify how to make representations for individual models of equipment that include these optional features:

- Individual models with features designated as ''optional'' may be represented separately as a unique basic model or certified within the same basic model as otherwise identical individual models without the feature pursuant to the definition of ''basic model'' in § 431.92.
- If an otherwise identical model (within the same basic model) without the feature is distributed in commerce, test the otherwise identical model.
- If an otherwise identical model (within the same basic model) without the feature is not distributed in commerce, conduct tests with the feature present but configured and de-activated so as to minimize (partially or totally) the impact on the results of the test. Alternatively, the manufacturer may indicate in the supplemental testing instructions that the test shall be conducted using a specially-built otherwise identical unit that is not distributed in commerce and does not have the feature.

This approach ensures that equipment distributed in commerce with additional components outside the list of required components are still within the scope of the test procedure. The proposed approach also provides instruction on how to make representations for all component combinations (including those with optional components). In addition, this approach allows manufacturers the flexibility to make representations of equipment with components designated as ''optional'' based on testing otherwise identical individual models without the feature.

C. Other Comments

In response to the July 2017 ASHRAE TP RFI, DOE received several general comments not specific to any one equipment category or test procedure. This section addresses those comments.

NCI recommended that DOE follow the development of ASHRAE 221P, ''Test Method to Measure and Score the Operating Performance of an Installed Constant Volume Unitary HVAC System,'' and consider where it may be appropriately applied within EPCA test procedures. (NCI, No. 4 at pp. 1–2) NCI stated that it has collected data indicating that typical split systems and packaged units serving residential and small commercial buildings typically deliver 50 percent to 60 percent of the rated capacity to the occupied zone, thereby making laboratory tests unrepresentative of field performance. (*Id.*)

As noted in section I.A of this document, EPCA prescribes that the test procedures for commercial package air conditioning and heating equipment must be those generally accepted industry testing procedures or rating procedures developed or recognized by industry as referenced in ASHRAE Standard 90.1. (42 U.S.C. 6314(a)(4)(A)) DOE notes that ASHRAE Standard 90.1 does not reference ANSI/ASHRAE Standard 221–2020, ''Test Method to Field-Measure and Score the Cooling and Heating Performance of an Installed Unitary HVAC System'' [34] (ASHRAE 221–2020) as the applicable test procedure corresponding to industry standards. NCI also did not provide data on field performance or any correlations between field performance and laboratory test performance for DX–DOASes or DDX–DOASes for DOE to

[34] Available at: *webstore.ansi.org/tandards/ASHRAE/ANSIASHRAEStandard2212020* (Last accessed April 19, 2021).

consider. Furthermore, ASHRAE 221–2020 does not provide a method to determine the dehumidification efficiency and heating efficiency of DDX–DOASes, as AHRI 920–2020 does. As discussed in section II of this document, DOE is proposing to incorporate by reference AHRI 920–2020 (*i.e.,* the test procedure recognized by ASHRAE Standard 90.1 for DDX–DOASes) and the relevant industry standards referenced therein, consistent with EPCA requirements.

The CA IOUs commented that while the July 2017 ASHRAE TP RFI expressed interest in reducing burden to manufacturers, DOE already took steps to reduce burden by allowing alternative energy efficiency or energy use determination methods (AEDMs). (CA IOUs, No. 7 at pp. 1–2) The CA IOUs stated that there are no further opportunities to streamline test procedures to limit testing burden. (*Id.*) Additionally, the CA IOUs emphasized the importance of accurate efficiency ratings for its incentive programs and customer knowledge, pointing to the statutory provision that test procedures must produce results that are representative of the product's energy efficiency. (*Id.*)

Lennox stated that it generally supports DOE meeting the statutory requirements to design test procedures to measure energy efficiency during an average use cycle but requested that DOE also consider overall impacts to consumers and manufacturers. (Lennox, No. 8 at pp. 1–2) The commenter stated that in commercial applications, predicting actual energy use from a single metric is difficult and that a metric better serves as a point of comparison. (*Id.*) Lennox suggested that DOE strike a balance between evaluating equipment in a meaningful way without introducing regulatory burden from overly complex test procedures or calculations that provide little value to consumers. (*Id.*)

In response to the CA IOUs and Lennox, DOE notes that its approach to test procedures is largely dictated by the requirements of EPCA. As discussed, EPCA prescribes that the test procedures for commercial package air conditioning and heating equipment must be those generally accepted industry testing procedures or rating procedures developed or recognized by industry as referenced in ASHRAE Standard 90.1. (42 U.S.C. 6314(a)(4)(A)) If such relevant industry test procedure is amended, DOE must update its test procedure to be consistent with the amended industry consensus test procedure, unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that the amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3) related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B) and (C)) In establishing or amending its test procedures, DOE must develop test procedures that are reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs of a type of industrial equipment during a representative average use cycle and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) DOE's considerations of these requirements in relation to individual test method issues are discussed within the relevant sections of this NOPR.

The Joint Advocates stated that there are a number of ambiguities in industry test procedures and that DOE should address these ambiguities in order to provide a level playing field for manufacturers and to ensure that any verification or enforcement testing is consistent with manufacturers' own testing. (Joint Advocates, No. 9 at p. 2) In the context of a test procedure for DDX–DOASes, DOE addresses the potential for ambiguity as applicable, in the previous sections of this document.

D. Test Procedure Costs, Harmonization, and Other Topics

1. Test Procedure Costs and Impact

EPCA requires DOE to adopt test procedures for small, large and very large commercial package air conditioning and heating equipment consistent with the amended industry test procedures developed or recognized AHRI as referenced in ASHRAE Standard 90.1, unless the Secretary determines that, supported by clear and convincing evidence, to do so would not meet the requirements for test procedures to be reasonably designed to produce results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle and not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(4)(B)) In this NOPR, DOE proposes to establish a test procedure for DDX–DOASes, which belong to a category of small, large, and very large commercial package air conditioning and heating equipment. DOE is proposing to establish a test procedure that incorporates by reference the applicable industry consensus test methods (including the energy efficiency descriptors) and that establishes representation requirements. DOE has tentatively determined that these proposed new test procedures would be representative of an average use cycle and would not be unduly burdensome for manufacturers to conduct. To the extent that DOE is proposing modifications to the industry consensus test procedure, DOE has tentatively determined that the proposed modifications are consistent with the industry consensus standard, and as explained in the prior sections, they are supported by clear and convincing evidence, because absent such modifications, the industry test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3) related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B) and (C)). Further, DOE has tentatively determined that the proposed modifications would be unlikely to significantly increase burden, given that DOE is referencing the prevailing industry test procedure. So, presuming widespread usage of that test standard, its adoption as part of the Federal test procedure would be expected to result in little additional cost, even with the minor modifications proposed here. DOE has tentatively determined that the test procedure, if finalized as proposed, would not require manufacturers to redesign any of the covered equipment, would not require changes to how the equipment is manufactured, and would not impact the utility of the equipment.

When the industry test procedure or rating procedure for a category of small, large, and very large commercial package air conditioning and heating equipment recognized in ASHRAE Standard 90.1 is amended, DOE is required to amend the Federal test procedure for the relevant category of small, large, and very large commercial package air conditioning and heating equipment consistent with the industry update, unless DOE determines by clear and convincing evidence that to do so would result in a test procedure that does not meet the EPCA requirements regarding representativeness and testing burden. (42 U.S.C. 6314(a)(4)(B)) As discussed, ASHRAE Standard 90.1–2016 established energy efficiency levels for DDX–DOASes (but written as ''DX–DOASes'' in ASHRAE Standard 90.1) as a category of commercial package air conditioning and heating equipment and recognized ANSI/AHRI 920–2015 as the industry test procedure for these equipment. Subsequent to the establishment of standards and a test procedure for DDX–DOASes in ASHRAE Standard 90.1–2016, ANSI/AHRI 920–2015 was updated. The 2020 version of AHRI 920 (*i.e.,* AHRI 920–2020) is the most recent version of the industry test procedure for DDX–

DOASes (still referred to in AHRI 920–2020 as simply ''DX–DOASes'').

DOE is proposing to incorporate by reference the revised industry test standard, AHRI 920–2020, with certain modifications that are consistent with the industry test standard. DOE has tentatively concluded that the proposed test procedure in this NOPR would not add undue industry test burden, and that the proposed test procedure for this equipment is consistent with the industry test procedure update. Further discussion of the cost impacts of the proposed test procedure are presented in the following paragraphs.

As noted previously, currently DOE does not prescribe test procedures for DDX–DOASes, and AHRI 920–2020 is the most recent version of the industry test procedure applicable to DDX–DOASes. DOE has tentatively determined that the proposal to incorporate by reference AHRI 920–2020 is consistent with current industry practice, and, therefore, manufacturers would not be expected to incur any additional costs if the proposal were finalized. Importantly, the proposals in this NOPR, if finalized, would not require manufacturers to certify ratings to DOE. DOE would address certification as part of any rulemaking to address energy conservation standards for DDX–DOASes.

With that said, DOE is proposing to define ''dehumidifying direct expansion-dedicated outdoor air system'' (DDX–DOAS) based on the definition provided in AHRI 920–2020. The differences in the proposed definition as compared to the definition in AHRI 920–2020 are to provide clarity and use terminology consistent with DOE's test procedures for other categories of commercial package air conditioning and heating equipment.

DOE is proposing to limit the applicability of the proposed test procedure to DDX–DOASes with any MRC less than 324 lbs. of moisture per hour, whereas the scope of AHRI 920–2020 is not limited based on MRC. In a comment provided in response to the July 2017 ASHRAE TP RFI, AHRI stated that laboratory limitations may limit testing using ANSI/AHRI 920–2015 to 300 lbs. of moisture per hour at Standard Rating Condition A and to units not physically larger than more typical commercial package air conditioning equipment with a capacity of 760,000 Btu per hour. (AHRI, No. 11 at p. 20) As discussed in section III.A.3 of this document, DOE's proposal to limit the coverage of DDX–DOASes to 324 lbs. of moisture per hour in the DDX–DOAS definition is a direct conversion from the maximum cooling capacity limit of 760,000 Btu per hour (which AHRI notes would be the upper limit for laboratory capabilities), and it is similar to the suggestion made by AHRI. Hence the definitional modifications to the industry standard will not change the scope of coverage of the proposed test procedure as compared to the industry standard, and if made final, would not result in any increase in test burden as compared to AHRI 920–2020.

AHRI 920–2020 does not explicitly state the amount of external head pressure to use when testing water-cooled and water-source DDX–DOASes with integral pumps. As noted, there are a very limited number of DDX–DOAS models with integral pumps on the market. DOE is proposing to require such units be tested with an external head pressure equal to 20 $-0/+1$ feet of water column, which is the same level of external head pressure used in the calculation of the pump effect for DDX–DOASes without integral pumps. As such, DOE considers this proposal to be consistent with industry test procedure because it ensures that integral pumps are treated in the same way as non-integral pumps, and as such would not increase testing burden as compared to current industry practice.

AHRI 920–2020 also does not explicitly provide directions for setting up the unit's control settings at each Standard Rating Condition. As discussed in section III.B.3.g of this document, DOE is proposing a general requirement for all control settings to remain unchanged for all Standard Rating Conditions once system set up has been completed, and that component operation shall be controlled by the unit under test once the provisions for rating requirements are met. This is likely how DDX–DOASes would be tested as per the existing instructions in AHRI 920–2020, but DOE is providing the additional specificity in order to ensure that the results of the testing are representative, repeatable, and reproducible, and as such would not increase testing burden as compared to current industry practice.

AHRI 920–2020 incorrectly indicates that Equation 20 should be used to calculate the degradation coefficient for DDX–DOASes with VERS (because Equation 21 is indicated to apply for DDX–DOASes with VERS). This is discussed in further detail in section III.B.3.l.ii of this document. DOE is proposing to correct this statement to instead use this equation for DDX–DOASes without VERS, with deactivated VERS, or with sensible-only VERS tested under Standard Rating Conditions other than D. DOE considers this proposal to be consistent with the intent of the industry test procedure and would not increase testing burden as compared to AHRI 920–2020.

DOE's proposal to provide a definition for ''non-standard low-static fan motor'' also serves to provide clarity to the instructions present in AHRI 920–2020 without affecting the scope of coverage or testing burden. Absent this definition, as discussed in section III.B.3.l.iii of this document, it is not possible to determine the appropriate airflow setting procedure in section 6.1.5.2 of AHRI 920–2020.

AHRI 920–2020 does not provide instruction for testing a DDX–DOAS for which a manufacturer recommends more than one refrigerant option. DOE is proposing to require testing of such a unit with each recommended refrigerant if the different refrigerants require different hardware. This proposal is consistent with the treatment of basic models of commercial packaged air conditioners and heating equipment under 10 CFR 430.92, and, as such, it would be reflective of industry practice for commercial packaged air conditioner and heating equipment generally. Therefore, this proposed addition to the procedure laid out by AHRI 920–2020 would not increase testing burden as compared current industry practice.

DOE is also proposing sampling requirements for making representations of ISMRE2 and ISCOP2, as applicable. AHRI 920–2020 does not contain comparable provisions. The sampling requirements proposed are consistent with the DOE sampling requirements generally for commercial packaged air conditioners and heating equipment, and, if made final, would be reflective of industry practice. Therefore, the proposed sampling requirements, if made final, would not increase testing burden as compared to the current industry practice.

Issue–14: DOE requests comment on its understanding of the impact of the test procedure proposals in this NOPR, specifically DOE's initial conclusion that manufacturers would not incur any additional costs due to this proposal, if finalized, compared to current industry practice, as indicated by AHRI 920–2020.

4. Harmonization With Industry Standards

DOE proposes to incorporate by reference the provisions in AHRI 920–2020, including definitions, test methods, and rating requirements, with certain modifications previously discussed. Throughout this NOPR, DOE discusses adopting this most recent

relevant industry consensus testing standard for DDX–DOAS equipment, as required in 42 U.S.C. 6314 and discussed in section III.B of this NOPR.

Issue–15: DOE seeks comment on the degree to which the DOE test procedure should consider and be harmonized further with the most recent relevant industry consensus testing standards for DDX–DOASes and whether there could be modifications to the industry test method that would provide additional benefits to the public. DOE also requests comment on the benefits and burdens of adopting any industry/voluntary consensus-based or other appropriate test procedure, without modification.

5. Other Test Procedure Topics

In addition to the issues identified earlier in this document, DOE welcomes comment on any other aspect of the proposed test procedures for DDX–DOASes not already addressed by the specific areas identified in this document. DOE particularly seeks information that would ensure that the test procedure measures energy efficiency during a representative average use cycle, as well as information that would help DOE create a procedure that is not unduly burdensome to conduct.

E. Compliance Date

EPCA prescribes that, if DOE amends a test procedure, all representations of energy efficiency and energy use, including those made in the context of certification and on marketing materials and product labels, must be made in accordance with that amended test procedure, beginning 360 days after publication of such a test procedure final rule in the **Federal Register**. (42 U.S.C. 6314(d)(1))

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that this test procedure rulemaking does not constitute a ''significant regulatory actions'' under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website at: *energy.gov/gc/office-general-counsel*. DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003.

The following sections detail DOE's IRFA for this test procedure rulemaking.

1. Description of Reasons Why Action Is Being Considered

DOE is undertaking this test procedure rulemaking to establish a DOE test procedure for DDX–DOASes in response to updates to the relevant industry consensus standard, American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 90.1, *Energy Standard for Buildings Except Low-Rise Residential Buildings*, which, with its 2016 publication, both added efficiency standards and specified a test procedure for this equipment (*i.e.,* AHRI 920–2015). Subsequently, the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) updated its test procedure with the publication of AHRI 920–2020. The Energy Policy and Conservation Act (EPCA) [35] requires that each time the test procedure referenced by ASHRAE Standard 90.1 is updated, DOE must update the Federal test procedure consistent with the industry update, unless there is clear and convincing evidence that the update would not be representative of an average use cycle or would be unduly burdensome to conduct.

2. Objectives of, and Legal Basis for, Rule

EPCA, as amended, among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part C [36] of EPCA, Public Law 94–163 (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, Title IV, § 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This covered equipment includes small, large, and very large commercial package air conditioning and heating equipment. (42 U.S.C. 6311(1)(B)–(D)) DOE has initially determined that commercial package air conditioning and heating equipment includes DX–DOASes. As discussed in section I.B of the NOPR document, DX–DOASes had not previously been addressed in DOE rulemakings and are not currently subject to Federal test procedures or energy conservation standards.

Under EPCA, DOE's energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) Certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(b); 42 U.S.C. 6296), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA.

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption in limited circumstances for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6316(b)(2)(D))

Under 42 U.S.C. 6314, the statute also sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered equipment. Specifically, EPCA requires that any test procedure prescribed or amended shall be reasonably designed to produce test results which measure energy

[35] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

[36] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

efficiency, energy use, or estimated annual operating cost of covered equipment during a representative average use cycle and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

EPCA requires that the test procedures for commercial package air conditioning and heating equipment be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), as referenced in ASHRAE Standard 90.1, ''Energy Standard for Buildings Except Low-Rise Residential Buildings'' (ASHRAE Standard 90.1). (42 U.S.C. 6314(a)(4)(A)) Further, if such an industry test procedure is amended, DOE must update its test procedure to be consistent with the amended industry test procedure, unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that such amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3), related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B))

EPCA also requires that, at least once every seven years, DOE evaluate test procedures for each type of covered equipment, including commercial package air conditioning and heating equipment to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures not to be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1)–(3)) In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures in the **Federal Register** and afford interested persons an opportunity (of not less than 45 days duration) to present oral and written data, views, and arguments on the proposed test procedures. (42 U.S.C. 6314(b)) If DOE determines that test procedure revisions are not appropriate, DOE must publish in the **Federal Register** its determination not to amend the test procedures. (42 U.S.C. 6314(a)(1)(A)(ii))

A test procedure for a subset of DX–DOASes (*i.e.,* DDX–DOASes), was first specified by ASHRAE Standard 90.1 in the 2016 edition (ASHRAE Standard 90.1–2016). Pursuant to 42 U.S.C. 6314(a)(4)(B), and following updates to the relevant test procedures which were referenced in ASHRAE Standard 90.1, DOE is publishing this NOPR proposing to establish a test procedure for DDX–DOASes in satisfaction of its aforementioned obligations under EPCA.

3. Description and Estimate of Small Entities Regulated

For manufacturers of small, large, and very large air-conditioning and heating equipment (including DDX–DOASes), commercial warm-air furnaces, and commercial water heaters, the Small Business Administration (SBA) has set a size threshold which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of this rule. *See* 13 CFR part 121. The equipment covered by this rule are classified under North American Industry Classification System (''NAICS'') code 333415,[37] ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' In 13 CFR 121.201, the SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category.

In reviewing the DDX–DOAS market, DOE used company websites, marketing research tools, product catalogues, and other public information to identify companies that manufacture DDX–DOASes. DOE identified 16 manufacturers of DDX–DOASes affected by this rulemaking. Out of these 16 manufacturers, DOE determined that three are domestic small businesses. DOE used subscription-based business information tools to determine headcount and revenue of the small businesses.

Issue–16: DOE invites comment on the number of domestic small businesses producing DDX–DOASes for the U.S. market.

4. Description and Estimate of Compliance Requirements

EPCA requires DOE to adopt test procedures for small, large, and very large commercial package air conditioning and heating equipment consistent with the amended industry test procedures developed or recognized by AHRI as referenced in ASHRAE Standard 90.1, unless the Secretary determines that, supported by clear and convincing evidence, to do so would not meet the requirements for test procedures to be reasonably designed to produce results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle and not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(4)(B)) In this NOPR, DOE proposes to establish a test procedure for DDX–DOASes, which belong to a category of small, large, and very large commercial package air conditioning and heating equipment. DOE is proposing to establish a test procedure that incorporates by reference the applicable industry consensus test methods (including the energy efficiency descriptors) and that establishes representation requirements. Although AHRI 920–2020 is not yet referenced as the applicable test procedure in ASHRAE Standard 90.1, it provides revised test methods that update ANSI/AHRI 920–2015, which is the referenced industry test standard. For these reasons, DOE has tentatively concluded that the methods in AHRI 920–2020 reflect the intention for prevalent industry practice: It is likely that manufacturers will use AHRI 920–2020 in the future.

In its review of AHRI 920–2020, DOE estimated the cost for third-party lab testing of basic models to range from $10,000 to $23,500 depending on validation class, equipment capacity, and equipment configuration. However, manufactures are not required to perform laboratory testing on all basic models. DOE proposes to allow DDX–DOAS manufacturers to use alternative energy-efficiency determination methods (AEDMs) for determining the ISMRE2 and ISCOP2 (if applicable) in accordance with 10 CFR 429.70. An AEDM is a computer modeling or mathematical tool that predicts the performance of non-tested basic models. These computer modeling and mathematical tools, when properly developed, can provide a relatively straight-forward and reasonably accurate means to predict the energy usage or efficiency characteristics of a basic model of a given covered product or equipment and reduce the burden and cost associated with testing.

DOE researched manufacturer DDX–DOAS offerings and estimated the cost to rate basic models according to the proposed DOE test procedure (which is not expected to have any additional cost over AHRI 920–2020[38]). Using

[37] The size standards are listed by NAICS code and industry description and are available at *www.sba.gov/document/support--table-size-standards* (Last accessed on April 20, 2021).

[38] DOE has tentatively determined that the proposed modifications to AHRI 920–2020 would be unlikely to significantly increase burden, given that DOE is referencing the prevailing industry test procedure. So, presuming widespread usage of AHRI 920–2020, its adoption as part of the Federal

Continued

information collected on small business equipment offerings and the upper threshold of third-party testing costs, DOE estimates an average expense of approximately $200,000 per small manufacturer. These testing expenses would be less than 1% of revenue for each small business. DOE tentatively concludes that the estimate costs would not present a significant burden to small manufacturers.

The testing of DDX–DOASes would not be required until such time as DOE establishes DDX–DOAS energy conservation standards and manufacturers are required to comply with those energy conservation standards. As such, small manufacturers will have a substantial timeframe to prepare for the testing detailed in this NOPR. Additionally, small manufacturers already testing to AHRI 920–2020 would incur no additional costs as a result of this proposed test procedure.

Issue–17: DOE invites comment on the testing costs and timing of testing costs described in this IRFA.

5. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the proposed rule being considered in this action.

6. Significant Alternatives to the Rule

DOE proposes to reduce burden on manufacturers, including small businesses, by allowing alternative energy efficiency or energy use determination methods (AEDMs) in lieu of physical testing all basic models. An AEDM is a computer modeling or mathematical tool that predicts the performance of non-tested basic models. The use of computer modeling is more time-efficient than physical testing. Without AEDMs, the average cost to rate all basic models would exceed $29 million per small manufacturer, as compared to the $200,000 per small manufacturer in the current proposal.

Additionally, DOE considered alternative test methods and modifications to the test procedure for DDX–DOASes, and the Department has tentatively determined that there are no better alternatives than the modifications and test procedures proposed in this NOPR, in terms of both meeting the agency's objectives and reducing burden. DOE examined relevant industry test standards, and the Department incorporated these standards in the proposed test procedures whenever appropriate to reduce test burden to manufacturers. Specifically, this NOPR proposes that DOE establish a test procedure for DDX–DOASes through incorporation by reference of AHRI 920–2020 with modifications that are not expected to increase test burden.

In addition, individual manufacturers may petition for a waiver of the applicable test procedure. (*See* 10 CFR 431.401.) Also, Section 504 of the Department of Energy Organization Act, 42 U.S.C. 7194, provides authority for the Secretary to adjust a rule issued under EPCA in order to prevent ''special hardship, inequity, or unfair distribution of burdens'' that may be imposed on that manufacturer as a result of such rule. Manufacturers should refer to 10 CFR part 1003 for additional details.

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of certain commercial package air condition and heating equipment must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial/industrial equipment, including commercial package air condition and heating equipment. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

DOE is analyzing this proposed regulation in accordance with the National Environmental Policy Act of 1969 (NEPA) and DOE's NEPA implementing regulations (10 CFR part 1021). DOE anticipates that this rulemaking qualifies for categorical exclusion A6 because it is a procedural rulemaking and meets the requirements for application of a categorical exclusion. 10 CFR part 1021, subpart D, Appendix A, section A6; *See* 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final rule.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following

test procedure would be expected to result in little additional cost, even with the minor modifications proposed by DOE.

requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *energy.gov/gc/office-general-counsel*. DOE examined this proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this proposed regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

The proposed regulatory action to adopt a test procedure for measuring the energy efficiency of DDX–DOASes is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The proposed test procedure for DDX–DOASes incorporate the following applicable industry consensus standards: AHRI 920–2020, ANSI/AHRI 1060–2018, ANSI/ASHRAE 37–2009, ANSI/ASHRAE 41.1–2013, ANSI/ASHRAE 41.6–2014, and ANSI/ASHRAE 198–2013. DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.,* whether they were developed in a manner that fully provides for public participation, comment, and review). DOE will consult with both the Attorney General

and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

M. Description of Materials Incorporated by Reference

In this NOPR, DOE proposes to incorporate by reference the following test standards:

(1) The test standard published by AHRI, titled ''2020 Standard for Performance Rating of DX-Dedicated Outdoor Air System Units,'' AHRI Standard 920–2020 (I–P). AHRI Standard 920–2020 (I–P) is an industry-accepted test procedure for measuring the performance of DX-dedicated outdoor air system units. AHRI Standard 920–2020 (I–P) is available on AHRI's website at: *www.ahrinet.org/App_Content/ahri/files/STANDARDS/AHRI/AHRI_Standard_920_I-P_2020.pdf.*

(2) The test standard published by AHRI, titled ''2018 Standard for Performance Rating of Air-to-Air Exchangers for Energy Recovery Ventilation Equipment,'' ANSI/AHRI Standard 1060–2018. ANSI/AHRI Standard 1060–2018 is an industry-accepted test procedure for measuring the performance of air-to-air exchangers for energy recovery ventilation equipment. ANSI/AHRI Standard 1060–2018 is available on AHRI's website at: *www.ahrinet.org/App_Content/ahri/files/STANDARDS/AHRI/AHRI_Standard_1060_I-P_2018.pdf.*

(3) The test standard test standard published by ASHRAE, titled ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,'' ANSI/ASHRAE Standard 37–2009. ANSI/ASHRAE Standard 37–2009 is an industry-accepted test procedure for measuring the performance of electrically driven unitary air-conditioning and heat pump equipment. ANSI/ASHRAE Standard 37–2009 is available on ASHRAE's website (in partnership with Techstreet) at: *www.techstreet.com/ashrae/standards/ashrae-37-2009?product_id=1650947.*

(4) The test standard published by ASHRAE, titled ''Standard Method for Temperature Measurement,'' ANSI/ASHRAE Standard 41.1–2013. ANSI/AHRAE Standard 41.1–2013 is an industry-accepted test procedure for measuring temperature. ANSI/ASHRAE Standard 41.1–2013 is available on ASHRAE's website (in partnership with Techstreet) at: *www.techstreet.com/ashrae/standards/ashrae-41-1-2013?product_id=1853241.*

(5) The test standard published by ASHRAE, titled ''Standard Method for Humidity Measurement,'' ANSI/ASHRAE Standard 41.6–2014. ANSI/AHRAE Standard 41.6–2014 is an industry-accepted test procedure for measuring humidity. ANSI/ASHRAE Standard 41.6–2014 is available on ASHRAE's website (in partnership with Techstreet) at: *www.techstreet.com/ashrae/standards/ashrae-41-6-2014?product_id=1881840.*

(6) The test standard published by ASHRAE, titled ''Method for Test for Rating DX-Dedicated Outdoor Air Systems for Moisture Removal Capacity and Moisture Removal Efficiency,'' ANSI/ASHRAE Standard 198–2013. ANSI/ASHRAE Standard 198–2013 is an industry-accepted test procedure for measuring the performance of DX-dedicated outdoor air system units. ANSI/ASHRAE Standard 198–2013 is available on ASHRAE's website (in partnership with Techstreet) at: *www.techstreet.com/ashrae/standards/ashrae-198-2013?product_id=1852612.*

V. Public Participation

A. Participation in the Webinar

The time and date of the webinar are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *www.energy.gov/eere/buildings/public-meetings-and-comment-deadlines.* Participants are responsible for ensuring their systems are compatible with the webinar software. Additionally, you may request an in-person meeting to be held prior to the close of the request period provided in the **DATES** section of this document. Requests for an in-person meeting may be made by contacting Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *Appliance_Standards_Public_Meetings@ee.doe.gov.*

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this notice, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar/public meeting. Such persons may submit requests to speak via email to the Appliance and Equipment Standards Program at: *ApplianceStandardsQuestions@ee.doe.gov.* Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the webinar/public meeting. At its discretion, DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar/public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar/public meeting and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar/public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the webinar/public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues.

DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the webinar/public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar/public meeting.

A transcript of the webinar/public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this NOPR. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule.[39] Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted via email also will be posted to *www.regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and free of any defects or viruses. Documents should not contain special characters or any form of encryption, and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

Issue–1: DOE requests comment on the proposed definition for ''direct expansion-dedicated outdoor air system.'' DOE also requests comment on any additional characteristics not yet considered that could help to distinguish DX–DOASes from other commercial package air conditioning and heating equipment.

Issue–2: DOE requests comment on the proposed definition for ''dehumidifying direct expansion-dedicated outdoor air system.'' Specifically, DOE requests comment on the proposed criteria for distinguishing a ''dehumidifying direct expansion-dedicated outdoor air system'' from a ''direct expansion-dedicated outdoor air system'' more generally. DOE also requests comment on any additional characteristics not yet considered that could help to distinguish DDX–DOASes from DX–DOASes more generally.

Issue–3: DOE seeks comment on its translation of Btu per hour to MRC and specifically its proposal to translate the upper capacity limit for DDX–DOASes such that a model would be considered

[39] DOE has historically provided a 75-day comment period for test procedure NOPRs pursuant to the North American Free Trade Agreement, U.S.-Canada-Mexico (''NAFTA''), Dec. 17, 1992, 32 I.L.M. 289 (1993); the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057 (1993) (codified as amended at 10 U.S.C.A. 2576) (1993) (''NAFTA Implementation Act''); and Executive Order 12889, ''Implementation of the North American Free Trade Agreement,'' 58 FR 69681 (Dec. 30, 1993). However, on July 1, 2020, the Agreement between the United States of America, the United Mexican States, and the United Canadian States (''USMCA''), Nov. 30, 2018, 134 Stat. 11 (*i.e.,* the successor to NAFTA), went into effect, and Congress's action in replacing NAFTA through the USMCA Implementation Act, 19 U.S.C. 4501 *et seq.* (2020), implies the repeal of E.O. 12889 and its 75-day comment period requirement for technical regulations. Thus, the controlling laws are EPCA and the USMCA Implementation Act. Consistent with EPCA's public comment period requirements for consumer products, the USMCA only requires a minimum comment period of 60 days. Consequently, DOE now provides a 60-day public comment period for test procedure NOPRs.

in scope if it has an MRC less than 324 lbs. per hour.

Issue–4: DOE requests comment on its proposal to clarify what terms are synonymous with DDX–DOAS.

Issue–5: DOE requests comment and data on the development of a crosswalk from the efficiency levels in ASHRAE Standard 90.1 based on ANSI/AHRI 920–2015 to efficiency levels based on AHRI 920–2020. DOE is specifically seeking data on how dehumidification and heating efficiency ratings for a given DDX–DOAS model are impacted when measured using AHRI 920–2020 as compared to ANSI/AHRI 920–2015.

Issue–6: DOE requests comment on the terminology DOE proposes to use for DDX–DOASes, including ''integrated seasonal coefficient of performance 2, or ISCOP2;'' ''integrated seasonal moisture removal efficiency 2, or ISMRE2;'' and ''ventilation energy recovery system, or VERS.''

Issue–7: DOE requests comment on the proposal to require that water-cooled and water-source DDX–DOASes with integral pumps be set up with an external pressure rise equal to 20 feet of water column with a condition tolerance of −0/+1 foot and an operating tolerance of 1 foot.

Issue–8: DOE requests comment on the proposed general control setting requirement for DDX–DOASes.

Issue–9: DOE is requesting comment on the proposed definition of ''non-standard low-static fan motor'' and whether the proposed definition reflects stakeholder understanding of the term.

Issue–10: DOE seeks comment on the proposed definition of basic model of a DDX–DOAS.

Issue–11: DOE requests comment on the sampling plan proposed for DDX–DOASes. DOE specifically requests information and data regarding the proposed confidence level and whether variability of testing of DDX–DOASes would require a less stringent level, and if so, what that level should be.

Issue–12: DOE requests comment on its proposal regarding representations for models approved for use with multiple refrigerants.

Issue–13: DOE requests comment on its proposals for AEDM requirements for DDX–DOAS equipment. DOE requests comment specifically on whether the proposed 10-percent tolerance for comparison of test results with rated values is appropriate. If the 10-percent tolerance is not appropriate, DOE requests comment on why it is not appropriate, as well as comment indicating an appropriate tolerance.

Issue–14: DOE requests comment on its proposal to adopt the rounding requirements for key metrics as specified in sections 6.1.2.1 through 6.1.2.8 of AHRI 920–2020.

Issue–15: DOE requests comment on its understanding of the impact of the test procedure proposals in this NOPR, specifically DOE's initial conclusion that manufacturers would not incur any additional costs due to this proposal, if finalized, compared to current industry practice, as indicated by AHRI 920–2020.

Issue–16: DOE seeks comment on the degree to which the DOE test procedure should consider and be harmonized further with the most recent relevant industry consensus testing standards for DDX–DOASes and whether there could be modifications to the industry test method that would provide additional benefits to the public. DOE also requests comment on the benefits and burdens of adopting any industry/voluntary consensus-based or other appropriate test procedure, without modification.

Issue–17: DOE invites comment on the number of domestic small businesses producing DDX–DOASes for the U.S. market.

Issue–18: DOE invites comment on the testing costs and timing of testing costs described in this IRFA.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Incorporation by reference, Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on June 23, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on June 23, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE is proposing to amend parts 429 and 431 of chapter II of title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Amend § 429.43 by adding paragraph (a)(3) to read as follows:

§ 429.43 Commercial heating, ventilating, air conditioning (HVAC) equipment.

(a) * * *

(3) *Refrigerants:* For dehumidifying direct expansion-dedicated outdoor air systems (DDX–DOASes), if a basic model is distributed in commerce for which the manufacturer specifies the use of more than one refrigerant option, the ISMRE2 and ISCOP2, as applicable, are determined for that basic model using the refrigerant that results in the lowest ISMRE2 and the refrigerant that results in the lowest ISCOP2, as applicable. For example, the dehumidification performance metric ISMRE2 must be based on the refrigerant yielding the lowest ISMRE2, and the heating performance metric ISCOP2 (if the unit is a heat pump DDX–DOAS) must be based on the refrigerant yielding the lowest ISCOP2. A refrigerant is considered approved for use if it is listed on the nameplate of the single package unit or outdoor unit. Pursuant to the definition of ''basic model'' in § 431.92 of this chapter, specification of an additional refrigerant option that requires use of different hardware (*i.e.,* compressors, heat exchangers, or air moving systems that are not the same or comparably performing), results in a different basic model.

* * * * *

■ 3. Amend § 429.70 by revising the tables in paragraphs (c)(2)(iv) and (c)(5)(vi)(B) to read as follows:

§ 429.70 Alternative methods for determining energy efficiency and energy use.

* * * * *

(c) * * *

(2) * * *

(iv) * * *

Validation class	Minimum number of distinct models that must be tested per AEDM
Air-Cooled, Split and Packaged Air Conditioners (ACs) and Heat Pumps (HPs) less than 65,000 Btu/h Cooling Capacity (3-Phase).	2 Basic Models.
(A) Commercial HVAC Validation Classes	
Air-Cooled, Split and Packaged ACs and HPs greater than or equal to 65,000 Btu/h Cooling Capacity and Less than 760,000 Btu/h Cooling Capacity.	2 Basic Models.
Water-Cooled, Split and Packaged ACs and HPs, All Cooling Capacities	2 Basic Models.
Evaporatively-Cooled, Split and Packaged ACs and HPs, All Capacities	2 Basic Models.
Water-Source HPs, All Capacities	2 Basic Models.
Single Package Vertical ACs and HPs	2 Basic Models.
Packaged Terminal ACs and HPs	2 Basic Models.
Air-Cooled, Variable Refrigerant Flow ACs and HPs	2 Basic Models.
Water-Cooled, Variable Refrigerant Flow ACs and HPs	2 Basic Models.
Computer Room Air Conditioners, Air Cooled	2 Basic Models.
Computer Room Air Conditioners, Water-Cooled	2 Basic Models.
Dehumidifying Direct Expansion-Dedicated Outdoor Air Systems, Air-cooled or Air-source Heat Pump, Without Ventilation Energy Recovery Systems.	2 Basic Models.
Dehumidifying Direct Expansion-Dedicated Outdoor Air Systems, Air-cooled or Air-source Heat Pump, With Ventilation Energy Recovery Systems.	2 Basic Models.
Dehumidifying Direct Expansion-Dedicated Outdoor Air Systems, Water-cooled, Water-source Heat Pump, or Ground Source Closed-loop Heat Pump, Without Ventilation Energy Recovery Systems.	2 Basic Models.
Dehumidifying Direct Expansion-Dedicated Outdoor Air Systems, Water-cooled, Water-source Heat Pump, or Ground Source Closed-loop Heat Pump, With Ventilation Energy Recovery Systems.	2 Basic Models.
(B) Commercial Water Heater Validation Classes	
Gas-fired Water Heaters and Hot Water Supply Boilers Less than 10 Gallons	2 Basic Models.
Gas-fired Water Heaters and Hot Water Supply Boilers Greater than or Equal to 10 Gallons	2 Basic Models.
Oil-fired Water Heaters and Hot Water Supply Boilers Less than 10 Gallons	2 Basic Models.
Oil-fired Water Heaters and Hot Water Supply Boilers Greater than or Equal to 10 Gallons	2 Basic Models.
Electric Water Heaters	2 Basic Models.
Heat Pump Water Heaters	2 Basic Models.
Unfired Hot Water Storage Tanks	2 Basic Models.
(C) Commercial Packaged Boilers Validation Classes	
Gas-fired, Hot Water Only Commercial Packaged Boilers	2 Basic Models.
Gas-fired, Steam Only Commercial Packaged Boilers	2 Basic Models.
Gas-fired Hot Water/Steam Commercial Packaged Boilers	2 Basic Models.
Oil-fired, Hot Water Only Commercial Packaged Boilers	2 Basic Models.
Oil-fired, Steam Only Commercial Packaged Boilers	2 Basic Models.
Oil-fired Hot Water/Steam Commercial Packaged Boilers	2 Basic Models.
(D) Commercial Furnace Validation Classes	
Gas-fired Furnaces	2 Basic Models.
Oil-fired Furnaces	2 Basic Models.
(E) Commercial Refrigeration Equipment Validation Classes [1]	
Self-Contained Open Refrigerators	2 Basic Models.
Self-Contained Open Freezers	2 Basic Models.
Remote Condensing Open Refrigerators	2 Basic Models.
Remote Condensing Open Freezers	2 Basic Models.
Self-Contained Closed Refrigerators	2 Basic Models.
Self-Contained Closed Freezers	2 Basic Models.
Remote Condensing Closed Refrigerators	2 Basic Models.
Remote Condensing Closed Freezers	2 Basic Models.

[1] The minimum number of tests indicated above must be comprised of a transparent model, a solid model, a vertical model, a semi-vertical model, a horizontal model, and a service-over-the counter model, as applicable based on the equipment offering. However, manufacturers do not need to include all types of these models if it will increase the minimum number of tests that need to be conducted.

* * * * * (5) * * * (vi) * * *

(B) * * *

Equipment	Metric	Applicable tolerance
Commercial Packaged Boilers	Combustion Efficiency	5% (0.05)
	Thermal Efficiency	5% (0.05)
Commercial Water Heaters or Hot Water Supply Boilers	Thermal Efficiency	5% (0.05)
	Standby Loss	10% (0.1)
Unfired Storage Tanks	R-Value	10% (0.1)
Air-Cooled, Split and Packaged ACs and HPs less than 65,000 Btu/h Cooling Capacity (3-Phase).	Seasonal Energy-Efficiency Ratio	5% (0.05)
	Heating Season Performance Factor	5% (0.05)
	Energy Efficiency Ratio	10% (0.1)
Air-Cooled, Split and Packaged ACs and HPs greater than or equal to 65,000 Btu/h Cooling Capacity and Less than 760,000 Btu/h Cooling Capacity.	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5%
	Integrated Energy Efficiency Ratio	10% (0.1)
Water-Cooled, Split and Packaged ACs and HPs, All Cooling Capacities	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
	Integrated Energy Efficiency Ratio	10% (0.1)
Evaporatively-Cooled, Split and Packaged ACs and HPs, All Capacities	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
	Integrated Energy Efficiency Ratio	10% (0.1)
Water-Source HPs, All Capacities	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
	Integrated Energy Efficiency Ratio	10% (0.1)
Single Package Vertical ACs and HPs	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
Packaged Terminal ACs and HPs	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
Variable Refrigerant Flow ACs and HPs	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
	Integrated Energy Efficiency Ratio	10% (0.1)
Computer Room Air Conditioners	Net Sensible Coefficient of Performance	5% (0.05)
Dehumidifying Direct Expansion-Dedicated Outdoor Air Systems	Integrated Seasonal Coefficient of Performance 2.	10% (0.1)
	Integrated Seasonal Moisture Removal Efficiency 2.	10% (0.1)
Commercial Warm-Air Furnaces	Thermal Efficiency	5% (0.05)
Commercial Refrigeration Equipment	Daily Energy Consumption	5% (0.05)

* * * * *

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 4. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 5. Amend § 431.2 by revising the definition of ''Commercial HVAC & WH product'' to read as follows:

§ 431.2 Definitions.

* * * * *

Commercial HVAC & WH product means any small, large, or very large commercial package air-conditioning and heating equipment (as defined in § 431.92), packaged terminal air conditioner (as defined in § 431.92), packaged terminal heat pump (as defined in § 431.92), single package vertical air conditioner (as defined in § 431.92), single package vertical heat pump (as defined in § 431.92), computer room air conditioner (as defined in § 431.92), variable refrigerant flow multi-split air conditioner (as defined in § 431.92), variable refrigerant flow multi-split heat pump (as defined in § 431.92), direct expansion-dedicated outdoor air system (as defined in § 431.92), commercial packaged boiler (as defined in § 431.82), hot water supply boiler (as defined in § 431.102), commercial warm air furnace (as defined in § 431.72), instantaneous water heater (as defined in § 431.102), storage water heater (as defined in § 431.102), or unfired hot water storage tank (as defined in § 431.102).

* * * * *

■ 6. Amend § 431.92 by:

■ a. Revising the definition of ''Basic model''; and

■ b. Adding, in alphabetical order, the definitions for ''Dehumidifying direct expansion-dedicated outdoor air system, or DDX–DOAS,'' ''Direct expansion-dedicated outdoor air system, or DX–DOAS,'' ''Integrated seasonal coefficient of performance 2, or ISCOP2,'' ''Integrated seasonal moisture removal efficiency 2, or ISMRE2,'' and ''Ventilation energy recovery system, or VERS''.

The revision and additions read as follows:

§ 431.92 Definitions concerning commercial air conditioners and heat pumps.

* * * * *

Basic model includes:

(1) *Computer room air conditioners* means all units manufactured by one manufacturer within a single equipment class, having the same primary energy source (*e.g.,* electric or gas), and which have the same or comparably performing compressor(s), heat exchangers, and air moving system(s) that have a common ''nominal'' cooling capacity.

(2) *Dehumidifying direct expansion-dedicated outdoor air system* means all units manufactured by one manufacturer, having the same primary energy source (*e.g.,* electric or gas), within a single equipment class; with the same or comparably performing compressor(s), heat exchangers, ventilation energy recovery system(s) (if

present), and air moving system(s) that have a common ''nominal'' moisture removal capacity.

(3) *Packaged terminal air conditioner (PTAC) or packaged terminal heat pump (PTHP)* means all units manufactured by one manufacturer within a single equipment class, having the same primary energy source (*e.g.,* electric or gas), and which have the same or comparable compressors, same or comparable heat exchangers, and same or comparable air moving systems that have a cooling capacity within 300 Btu/h of one another.

(4) *Single package vertical units* means all units manufactured by one manufacturer within a single equipment class, having the same primary energy source (*e.g.,* electric or gas), and which have the same or comparably performing compressor(s), heat exchangers, and air moving system(s) that have a rated cooling capacity within 1500 Btu/h of one another.

(5) *Small, large, and very large air-cooled or water-cooled commercial package air conditioning and heating equipment* means all units manufactured by one manufacturer within a single equipment class, having the same or comparably performing compressor(s), heat exchangers, and air moving system(s) that have a common ''nominal'' cooling capacity.

(6) *Small, large, and very large water source heat pump* means all units manufactured by one manufacturer within a single equipment class, having the same primary energy source (*e.g.,* electric or gas), and which have the same or comparable compressors, same or comparable heat exchangers, and same or comparable ''nominal'' capacity.

(7) *Variable refrigerant flow systems* means all units manufactured by one manufacturer within a single equipment class, having the same primary energy source (*e.g.,* electric or gas), and which have the same or comparably performing compressor(s) that have a common ''nominal'' cooling capacity and the same heat rejection medium (*e.g.,* air or water) (includes VRF water source heat pumps).

* * * * *

Dehumidifying direct expansion-dedicated outdoor air system, or DDX–DOAS, means a direct expansion-dedicated outdoor air system that is capable of dehumidifying air to a 55 °F dew point—when operating under Standard Rating Condition A as specified in Table 4 or Table 5 of AHRI 920–2020 (incorporated by reference, see § 431.95) with a barometric pressure of 29.92 in Hg—for any part of the range of airflow rates advertised in manufacturer materials, and has a moisture removal capacity of less than 324 lb/h.

Direct expansion-dedicated outdoor air system, or *DX–DOAS,* means a category of small, large, or very large commercial package air-conditioning and heating equipment which is capable of providing ventilation and conditioning of 100-percent outdoor air or marketed in materials (including but not limited to, specification sheets, insert sheets, and online materials) as having such capability.

* * * * *

Integrated seasonal coefficient of performance 2, or *ISCOP2,* means a seasonal weighted-average heating efficiency for heat pump dedicated outdoor air systems, expressed in W/W, as measured according to appendix B of this subpart.

Integrated seasonal moisture removal efficiency 2, or *ISMRE2,* means a seasonal weighted average dehumidification efficiency for dedicated outdoor air systems, expressed in lbs. of moisture/kWh, as measured according to appendix B of this subpart.

* * * * *

Ventilation energy recovery system, or *VERS,* means a system that pre-conditions outdoor ventilation air entering the equipment through direct or indirect thermal and/or moisture exchange with the exhaust air, which is defined as the building air being exhausted to the outside from the equipment.

* * * * *

■ 7. Section 431.95 is amended by:
■ a. Revising paragraph (a) and the introductory text to paragraph (b);
■ b. Redesignating paragraphs (b)(6) and (7) as (b)(8) and (9);
■ c. Adding new paragraphs (b)(6) and (7);
■ d. Revising the introductory text to paragraph (c) and paragraph (c)(2);
■ e. Redesignating paragraphs (c)(3) and (4) as (c)(5) and (6); and
■ f. Adding new paragraphs (c)(3) and (4), and paragraph (c)(7).

The revisions and additions read as follows:

§ 431.95 Materials incorporated by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, DOE must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza SW, Washington, DC 20024, (202) 586–1445, or go to: *www.energy.gov/eere/buildings/appliance-and-equipment-standards-program,* and may be obtained from the other sources 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,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

(b) *AHRI.* Air-Conditioning, Heating, and Refrigeration Institute, 2311 Wilson Blvd., Suite 400, Arlington, VA 22201, (703) 524–8800, or go to: *www.ahrinet.org.*

* * * * *

(6) AHRI Standard 920–2020 (I–P), (''AHRI 920–2020''), ''2020 Standard for Performance Rating of *DX-Dedicated Outdoor Air System Units,*'' approved February 4, 2020, IBR approved for appendix B to this subpart.

(7) AHRI Standard 1060–2018, (''ANSI/AHRI 1060–2018''), ''2018 Standard for *Performance Rating of Air-to-Air Exchangers for Energy Recovery Ventilation Equipment,*'' approved 2018, (ANSI/AHRI 1060–2018), IBR approved for appendix B to this subpart.

(c) *ASHRAE.* American Society of Heating, Refrigerating and Air-Conditioning Engineers, 180 Technology Parkway, Peachtree Corners, Georgia 30092, (404) 636–8400, or go to: *www.ashrae.org.*

* * * * *

(2) ANSI/ASHRAE Standard 37–2009, (''ANSI/ASHRAE 37'' or ''ANSI/ASHRAE 37–2009''), ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,'' ASHRAE approved June 24, 2009, IBR approved for § 431.96 and appendices A and B to this subpart.

(3) ANSI/ASHRAE Standard 41.1–2013, (''ANSI/ASHRAE 41.1–2013''), ''Standard Method for Temperature Measurement,'' ANSI approved January 30, 2013, IBR approved for appendix B to this subpart.

(4) ANSI/ASHRAE Standard 41.6–2014, (''ANSI/ASHRAE 41.6–2014''), ''Standard Method for Humidity Measurement,'' ANSI approved July 3, 2014, IBR approved for appendix B to this subpart.

* * * * *

(7) ANSI/ASHRAE Standard 198–2013, (''ANSI/ASHRAE 198–2013''),

''Method of Test for Rating DX-Dedicated Outdoor Air Systems for Moisture Removal Capacity and Moisture Removal Efficiency,'' approved by ANSI on January 30, 2013, IBR approved for appendix B to this subpart.

* * * * *

■ 8. Amend § 431.96 by:

■ a. Revising paragraph (a) and Table 1 in paragraph (b)(2); and

■ b. Designating the table in paragraph (d) as Table 2 to paragraph (d).

The revisions read as follows:

§ 431.96 Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps.

(a) *Scope.* This section contains test procedures for measuring, pursuant to EPCA, the energy efficiency of any small, large, or very large commercial package air-conditioning and heating equipment, packaged terminal air conditioners and packaged terminal heat pumps, computer room air conditioners, variable refrigerant flow systems, single package vertical air conditioners and single package vertical heat pumps, and dehumidifying direct expansion-dedicated outdoor air systems.

(b) * * *

(2) * * *

TABLE 1 TO PARAGRAPH (b)—TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS

Equipment type	Category	Cooling capacity or moisture removal capacity	Energy efficiency descriptor	Use tests, conditions, and procedures [1] in	Additional test procedure provisions as indicated in the listed paragraphs of this section
Small Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled, 3-Phase, AC and HP.	<65,000 Btu/h	SEER and HSPF	AHRI 210/240–2008 (omit section 6.5).	Paragraphs (c) and (e).
	Air-Cooled AC and HP.	≥65,000 Btu/h and <135,000 Btu/h.	EER, IEER, and COP	Appendix A to this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	<65,000 Btu/h	EER	AHRI 210/240–2008 (omit section 6.5).	Paragraphs (c) and (e).
		≥65,000 Btu/h and <135,000 Btu/h.	EER	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
	Water-Source HP	<135,000 Btu/h	EER and COP	ISO Standard 13256–1 (1998).	Paragraph (e).
Large Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled AC and HP.	≥135,000 Btu/h and <240,000 Btu/h.	EER, IEER and COP	Appendix A to this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	≥135,000 Btu/h and <240,000 Btu/h.	EER	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
Very Large Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled AC and HP.	≥240,000 Btu/h and <760,000 Btu/h.	EER, IEER and COP	Appendix A to this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	≥240,000 Btu/h and <760,000 Btu/h.	EER	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
Packaged Terminal Air Conditioners and Heat Pumps.	AC and HP	<760,000 Btu/h	EER and COP	Paragraph (g) of this section.	Paragraphs (c), (e), and (g).
Computer Room Air Conditioners.	AC	<65,000 Btu/h	SCOP	ASHRAE 127–2007 (omit section 5.11).	Paragraphs (c) and (e).
		≥65,000 Btu/h and <760,000 Btu/h.	SCOP	ASHRAE 127–2007 (omit section 5.11).	Paragraphs (c) and (e).
Variable Refrigerant Flow Multi-split Systems.	AC	<65,000 Btu/h (3-phase).	SEER	AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
		≥65,000 Btu/h and <760,000 Btu/h.	EER	AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
Variable Refrigerant Flow Multi-split Systems, Air-cooled.	HP	<65,000 Btu/h (3-phase).	SEER and HSPF	AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
		≥65,000 Btu/h and <760,000 Btu/h.	EER and COP	AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
Variable Refrigerant Flow Multi-split Systems, Water-source.	HP	<760,000 Btu/h	EER and COP	AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps.	AC and HP	<760,000 Btu/h	EER and COP	AHRI 390–2003 (omit section 6.4).	Paragraphs (c) and (e).

TABLE 1 TO PARAGRAPH (b)—TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS—Continued

Equipment type	Category	Cooling capacity or moisture removal capacity	Energy efficiency descriptor	Use tests, conditions, and procedures [1] in	Additional test procedure provisions as indicated in the listed paragraphs of this section
Dehumidifying Direct Expansion-Dedicated Outdoor Air Systems.	All	<324 lbs. of moisture removal/hr.	ISMRE2 and ISCOP2	Appendix B of this subpart.	None.

[1] Incorporated by reference; see § 431.95.
[2] Moisture removal capacity is determined according to appendix B of this subpart.

* * * * *

■ 9. Add Appendix B to subpart F of part 431 to read as follows:

Appendix B to Subpart F of Part 431—Uniform Test Method for Measuring the Energy Consumption of Dehumidifying Direct Expansion-Dedicated Outdoor Air Systems

Note: Beginning [date 360 days after publication of a test procedure final rule], representations with respect to energy use or efficiency of dehumidifying direct expansion-dedicated outdoor air systems must be based on testing conducted in accordance with this appendix. Manufacturers may elect to use this appendix early.

1. Referenced materials.

1.1. Incorporation by reference.

DOE incorporated by reference in § 431.95, the entire standard for AHRI 920–2020, ANSI/AHRI 1060–2018; ANSI/ASHRAE 37–2009, ANSI/ASHRAE 41.1–2013, ANSI/ASHRAE 41.6–2014, and ANSI/ASHRAE 198–2013. However, only enumerated provisions of AHRI 920–2020, ANSI/ASHRAE 37–2009, ANSI/ASHRAE 41.6–2014, and ANSI/ASHRAE 198–2013, as set forth in paragraphs (a) through (d) of this section are applicable. To the extent there is a conflict between the terms or provisions of a referenced industry standard and the CFR, the CFR provisions control.

(a) AHRI 920–2020:

(i) Section 3—Definitions, as specified in section 2.2.1(a) of this appendix;

(ii) Section 5—Test Requirements, as specified in section 2.2.1(b) of this appendix;

(iii) Section 6—Rating Requirements, as specified in section 2.2.1(c) of this appendix, omitting section 6.1.2 (but retaining sections 6.1.2.1–6.1.2.8) and 6.6.1;

(iv) Section 11—Symbols and Subscripts, as specified in section 2.2.1(d) of this appendix;

(v) Appendix A—References—Normative, as specified in section 2.2.1(e) of this appendix;

(vi) Appendix C—ANSI/ASHRAE Standard 198 and ANSI/ASHRAE Standard 37 Additions, Clarifications and Exceptions—Normative, as specified in section 2.2.1(f) of this appendix, and

(vii) Appendix F—Unit Configuration for Standard Efficiency Determination—Normative, as specified in section 2.2.1(g) of this appendix.

(b) ANSI/ASHRAE 37–2009:

(i) Section 5.1—Temperature Measuring Instruments (excluding sections 5.1.1 and 5.1.2), as specified in sections 2.2.1(b) and (f) of this appendix;

(ii) Section 5.2—Refrigerant, Liquid, and Barometric Pressure Measuring Instruments, as specified in section 2.2.1(b) of this appendix;

(iii) Sections 5.3—Air Differential Pressure and Airflow Measurements, as specified in section 2.2.1(b) of this appendix;

(iv) Sections 5.5(b)—Volatile Refrigerant Measurement, as specified in section 2.2.1(b) of this appendix;

(v) Section 6.1—Enthalpy Apparatus (excluding 6.1.1 and 6.1.3 through 6.1.6), as specified in section 2.2.1(b) of this appendix;

(vi) Section 6.2—Nozzle Airflow Measuring Apparatus, as specified in section 2.2.1(b) of this appendix;

(vii) Section 6.3—Nozzles, as specified in section 2.2.1(b) of this appendix;

(viii) Section 6.4—External Static Pressure Measurements, as specified in section 2.2.1(b) of this appendix;

(ix) Section 6.5—Recommended Practices for Static Pressure Measurements, as specified in section 2.2.1(f) of this appendix;

(x) Section 7.3—Indoor and Outdoor Air Enthalpy Methods, as specified in section 2.2.1(f) of this appendix;

(xi) Section 7.4—Compressor Calibration Method, as specified in section 2.2.1(f) of this appendix;

(xii) Section 7.5—Refrigerant Enthalpy Method, as specified in section 2.2.1(f) of this appendix;

(xiii) Section 7.6—Outdoor Liquid Coil Method, as specified in section 2.2.1(f) of this appendix;

(xiv) Section 7.7—Airflow Rate Measurement (excluding sections 7.7.1.2, 7.7.3, and 7.7.4), as specified in section 2.2.1(b) of this appendix;

(xv) Table 1—Applicable Test Methods, as specified in section 2.2.1(f) of this appendix;

(xvi) Section 8.6—Additional Requirements for the Outdoor Air Enthalpy Method, as specified in section 2.2.1(f) of this appendix;

(xvii) Table 2b—Test Tolerances (I–P Units), as specified in sections 2.2.1(c) and 2.2(f) of this appendix; and

(xviii) Errata sheet issued on October 3, 2016, as specified in section 2.2.1(f) of this appendix.

(c) ANSI/ASHRAE 41.6–2014:

(i) Section 4—Classifications, as specified in section 2.2.1(f) of this appendix;

(ii) Section 5—Requirements, as specified in section 2.2.1(f) of this appendix;

(iii) Section 6—Instruments and Calibration, as specified in section 2.2.1(f) of this appendix;

(iv) Section 7.1—Standard Method Using the Cooled-Surface Condensation Hygrometer as specified in section 2.2.1(f) of this appendix; and

(v) Section 7.4—Electronic and Other Humidity Instruments. as specified in section 2.2.1(f) of this appendix.

(d) ANSI/ASHRAE 198–2013:

(i) Section 4.4—Temperature Measuring Instrument, as specified in section 2.2.1(b) of this appendix;

(ii) Section 4.5—Electrical Instruments, as specified in section 2.2.1(b) of this appendix;

(iii) Section 4.6—Liquid Flow Measurement, as specified in section 2.2.1(b) of this appendix;

(iv) Section 4.7—Time and Mass Measurements, as specified in section 2.2.1(b) of this appendix;

(v) Section 6.1—Test Room Requirements, as specified in section 2.2.1(b) of this appendix;

(vi) Section 6.6—Unit Preparation, as specified in section 2.2.1(b) of this appendix;

(vii) Section 7.1—Preparation of the Test Room(s), as specified in section 2.2.1(b) of this appendix;

(viii) Section 7.2—Equipment Installation, as specified in section 2.2.1(b) of this appendix;

(ix) Section 8.2—Equilibrium, as specified in section 2.2.1(b) of this appendix, and

(x) Section 8.4—Test Duration and Measurement Frequency, as specified in section 2.2.1(b) of this appendix.

1.2. Informational materials.

DOE refers to the following provision of AHRI 920–2020, for informational purposes only:

(a) Appendix E—Typical Test Unit Installations—Informative, as specified in section 2.2.1(g) of this appendix.

(b) Reserved.

2. Test Method.

2.1. Capacity.

Moisture removal capacity (in pounds per hour) and supply airflow rate (in standard cubic feet per minute) are determined according to AHRI 920–2020 (incorporated by reference; see § 431.95) as specified in section 2.2 of this appendix.

2.2. Efficiency.

2.2.1. Determine the ISMRE2 for all DDX–DOASes and the ISCOP2 for all heat pump

DDX–DOASes in accordance with the following sections of AHRI 920–2020.

(a) Section 3—Definitions, including the references to ANSI/AHRI 1060–2018 (incorporated by reference; see § 431.95);

(i) *Non-standard Low-static Fan Motor.* A supply fan motor that cannot maintain external static pressure as high as specified in Table 7 of AHRI 920–2020 when operating at a manufacturer-specified airflow rate and that is distributed in commerce as part of an individual model within the same basic model of a DDX–DOAS that is distributed in commerce with a different motor specified for testing that can maintain the required external static pressure.

(b) Section 5—Test Requirements, including the references to sections 5.1, 5.2, 5.3, 5.5, 6.1, 6.2, 6.3, 6.4, and 7.7 (not including sections 7.7.1.2, 7.7.3, and 7.7.4) of ANSI/ASHRAE 37–2009 (incorporated by reference; see § 431.95), and sections 4.4, 4.5, 4.6, 4.7, 5.1, 6.1, 6.6, 7.1, 7.2, 8.2, and 8.4 of ANSI/ASHRAE 198–2013 (incorporated by reference; see § 431.95);

(i) All control settings are to remain unchanged for all Standard Rating Conditions once system set up has been completed, except as explicitly allowed or required by AHRI 920–2020 or as indicated in the supplementary test instructions (STI). Component operation shall be controlled by the unit under test once the provisions in section 2.2.1(c) of this appendix are met.

(c) Section 6—Rating Requirements (omitting sections 6.1.2 and 6.6.1), including the references to Table 2b of ANSI/ASHRAE 37–2009, and ANSI/ASHRAE 198–2013.

(i) For water-cooled DDX–DOASes, the ''Condenser Water Entering Temperature, Cooling Tower Water'' conditions specified in Table 4 of AHRI 920–2020 shall be used. For water-source heat pump DDX–DOASes, the ''Water-Source Heat Pumps'' conditions specified in Table 5 of AHRI 920–2020 shall be used.

(ii) For water-cooled or water-source DDX–DOASes with integral pumps, set the external head pressure to 20 ft. of water column, with a $-0/+1$ ft. condition tolerance and a 1 ft. operating tolerance.

(iii) When using the degradation coefficient method as specified in section 6.9.2 of AHRI 920–2020, Equation 20 applies to DDX–DOAS without VERS, with deactivated VERS (see section 5.4.3 of AHRI 920–2020), or sensible-only VERS tested under Standard Rating Conditions other than D.

(iv) Rounding requirements for representations are to be followed as stated in sections 6.1.2.1 through 6.1.2.8 of AHRI 920–2020;

(d) Section 11—Symbols and Subscripts, including references to ANSI/ASHRAE 1060–2018;

(e) Appendix A—References—Normative;

(f) Appendix C—ANSI/ASHRAE 198–2013 and ANSI/ASHRAE 37 Additions, Clarifications and Exceptions—Normative, including references to sections 5.1, 6.5, 7.3, 7.4, 7.5, 7.6, 8.6, Table 1, Table 2b, and the errata sheet of ANSI/ASHRAE 37–2009, ANSI/ASHRAE 41.1–2013 (incorporated by reference; see § 431.95), sections 4, 5, 6, 7.1, and 7.4 of ANSI/ASHRAE 41.6–2014 (incorporated by reference; see § 431.95), and ANSI/ASHRAE 1060–2018;

(g) Appendix E—Typical Test Unit Installations—Informative, for information only;

(h) Appendix F—Unit Configuration for Standard Efficiency Determination—Normative.

2.2.2. *Optional Representations.* Test provisions for the determination of the metrics indicated in paragraphs (a) through (d) of this section are optional and are determined according to the applicable provisions in section 2.2.1 of this appendix. For water-cooled DDX–DOASes, these optional representations may be determined using either the ''Condenser Water Entering Temperature, Cooling Tower'' or the ''Condenser Water Entering Temperature, Chilled Water'' conditions specified in Table 4 of AHRI 920–2020. For water-source heat pump DDX–DOASes, these optional representations may be determined using either the ''Water-Source Heat Pumps'' or ''Water-Source Heat Pump, Ground-Source Closed Loop'' conditions specified in Table 5 of AHRI 920–2020. The following metrics in AHRI 920–2020 are optional:

(a) $ISMRE_{70}$;

(b) $COP_{Full,x}$:

(c) $COP_{DOAS,x}$: and

(d) ISMRE2 and ISCOP2 for water-cooled DDX–DOASes using the ''Condenser Water Entering Temperature, Chilled Water'' conditions specified in Table 4 of AHRI 920–2020 and for water-source heat pump DDX–DOASes using the ''Water-Source Heat Pump, Ground-Source Closed Loop'' conditions specified in Table 5 of AHRI 920–2020.

2.3. Synonymous terms.

(a) Any references to Dedicated Outdoor Air System Unit (DOAS Unit), Dedicated Outdoor Air System (DOAS), and Direct Expansion Dedicated Outdoor Air System (DX–DOAS) in AHRI 920–2020 and ANSI/ASHRAE 198–2013 shall be considered synonymous with Dehumidifying Direct Expansion-Dedicated Outdoor Air System (DDX–DOAS) as defined in § 431.92.

(b) Any references to energy recovery or energy recovery ventilator (ERV) in AHRI 920–2020 and ANSI/ASHRAE 198–2013 shall be considered synonymous with ventilation energy recovery system (VERS) as defined in § 431.92.

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