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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 352

[Docket No. FSIS–2019–0028]

RIN 0583–AD80

Inspection of Yak and Other Bovidae, Cervidae, and Camelidae Species; Correction

AGENCY: Food Safety and Inspection Service, U.S. Department of Agriculture (USDA).

ACTION: Final rule; correction.

SUMMARY: This document corrects the Regulation Identifier Number that appeared in a final rule published in the **Federal Register** on July 15, 2021, regarding the inspection of yak and other bovidae, cervidae, and camelidae species.

DATES: This final rule correction is effective July 28, 2021.

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development by telephone at (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Correction

In final rule FR Doc. 2021–15062, beginning on page 37216 in the issue of July 15, 2021, make the following correction: On page 37216, in the second column, the Regulation Identifier Number is corrected to read ''RIN 0583–AD80''.

Done at Washington, DC.

Paul Kiecker,

Administrator.

[FR Doc. 2021–16059 Filed 7–27–21; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0442; Project Identifier AD–2020–00260–E; Amendment 39–21640; AD 2021–14–13]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Pratt & Whitney (PW) PW2037, PW2037M, PW2040, and F117–PW–100 model turbofan engines. This AD was prompted by a report of an uncontained engine failure resulting from cracks in the knife edge of the high-pressure turbine (HPT) 2nd-stage air seal assembly. This AD requires fluorescent penetrant inspections (FPIs) and visual inspections of the HPT 2nd-stage air seal assembly and, depending on the results of the inspections, replacement of the HPT 2nd-stage air seal assembly with a part eligible for installation. This AD also requires replacement of the affected HPT 2nd-stage air seal assembly, depending on the engine model, at either the next engine shop visit or the next piece-part opportunity. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 1, 2021.

ADDRESSES: For service information identified in this final rule, contact Pratt & Whitney, 400 Main Street, East Hartford, CT 06118; phone: (800) 565–0140; fax: (860) 565–5442; email: *help24@pw.utc.com;* website: *https://fleetcare.pw.utc.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7759. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0442.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0442; 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: Carol Nguyen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7655; fax: (781) 238–7199; email: *carol.nguyen@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all PW PW2037, PW2037M, PW2040, and F117–PW–100 model turbofan engines. The NPRM published in the **Federal Register** on June 1, 2020 (85 FR 33043). The NPRM was prompted by a report of an uncontained engine failure resulting from cracks in the knife edge of the HPT 2nd-stage air seal assembly. After further analysis, it was determined that the knife-edge crack was due to seal rubbing that elevated the HPT 2nd-stage air seal assembly temperature and induced fatigue. In the NPRM, the FAA proposed to require initial and repetitive borescope inspections (BSIs), FPIs, and visual inspections of the HPT 2nd-stage air seal assembly and, depending on the results of the inspections, replacement of the HPT 2nd-stage air seal assembly with a part eligible for installation. The NPRM also proposed to require replacement of the affected HPT 2nd-stage air seal assembly, depending on the engine model, at either the next engine shop visit or the next piece-part opportunity. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from six commenters. The commenters were the Air Line Pilots Association, International (ALPA); Delta Air Lines, Inc. (Delta); FedEx Express (FedEx); MTU Maintenance Hannover GmbH (MTU); The Boeing Company (Boeing); and United Airlines (UAL).

The following presents the comments received on the NPRM and the FAA's response to each comment.

Requests To Revise Proposed BSI Requirement

Delta, MTU, and FedEx requested revisions to the BSI proposed in the NPRM. The FAA details the comments to the BSI in the following paragraphs but is not providing an individual response to each comment given that the FAA removed the proposal for BSI from this AD.

Request To Increase the Compliance Time for Initial BSI To Allow Sufficient Time To Complete Inspector Training

Delta requested that the compliance time of 500 FCs after the effective date of this AD for the initial BSI proposed by paragraph (g)(1)(i) of the NPRM be extended to account for the difference in predicted flight utilization versus actual utilization as a result of the COVID–19 pandemic. Delta cited concerns that the 500 FC compliance time will not allow sufficient time for training inspectors to obtain qualifications to perform the BSI proposed by paragraph (g)(1)(i) of the NPRM. Delta noted that government restrictions and recommendations on travel and class size for in-person on-site training plus the lack of remote training opportunities represent obstacles to adequately training inspectors.

Request To Update Repetitive BSI Language

Delta requested that the FAA update paragraph (g)(1)(ii) of the NPRM from ''. . . perform the BSI required by paragraph (g)(1)(i) of this AD within every 500 FCs since performance of the last BSI'' to ''. . . perform the BSI required by paragraph (g)(1)(i) of this AD within every 500 FCs since performance of the last BSI that was done per paragraph (g)(1)(i) or (g)(1)(ii) of this AD.'' Delta reasoned that the phrase ''last BSI'' of paragraph (g)(1)(ii) of the NPRM could cause confusion since the ''last BSI'' is the ''initial BSI.''

Request To Clarify ''Before Further Flight''

Delta requested that the FAA update paragraph (g)(1)(iii) of the NPRM to clarify the phrase ''before further flight.'' Delta asked whether the action is to remove the engine before the flight of the aircraft, or remove the HPT 2nd-stage air seal assembly and perform the inspections proposed by paragraph (g)(2) of the NPRM before flight of the engine. Delta stated there could be confusion that the aircraft is prohibited from further flight until the HPT 2nd-stage air seal assembly is removed from the engine.

Request To Include a Scenario When To Perform the BSI

Delta and MTU requested confirmation that the FAA included all the non-modulated turbine cooling air (TCA) system engines population into the proposed BSI requirement. MTU requested that the FAA update paragraph (g)(1) of the NPRM to include engines that have deactivated/mechanically disconnected the TCA system.

Request To Update the Costs of Compliance and Work Hours

FedEx requested that the hours to perform the BSI of the HPT 2nd-stage air seal assembly be changed to 4.8 hours. FedEx cited PW Service Bulletin (SB) PW2000 72–773, dated March 11, 2020 (PW SB PW2000 72–773), that indicates that the on-wing inspection takes 4.8 hours and not 2 work hours as indicated in the NPRM.

Request To Update the Terminating Action

FedEx requested that the FAA revise paragraph (h), Terminating Action, of the NPRM from ''. . . terminating action for the repetitive BSI requirements in paragraph (g)(1)(ii) of this AD'' to ''. . . terminating action for the initial BSI requirement in paragraph (g)(1)(i) and the repetitive BSI requirements in paragraph (g)(1)(ii) of this AD.'' FedEx reasoned that an HPT 2nd-stage air seal assembly could be removed for a reason unrelated to this AD and inducted for an engine shop visit before the HPT 2nd-stage air seal assembly is subject to the initial BSI proposed by paragraph (g)(1)(i) of the NPRM. As written in the NPRM, FedEx suggested it could be interpreted that the HPT 2nd-stage air seal assembly would still need an initial inspection within 2,500 FCs after this unrelated engine shop visit.

Request To Clarify Revision of NDIP–1217

Delta requested clarification if this AD allows for any revision level of Non-Destructive Inspection Procedure, Technique Sheet for Detection of Cracking in the PW2000 HPT 2nd Stage Airseal by Borescope Inspection Method (NDIP–1217). Delta cited paragraph (g)(1)(i) of the NPRM that proposed to require PW SB PW2000 72–773, which references NDIP–1217.

Request To Clarify Reporting

Delta requested clarification if paragraph (g)(1)(i) of the NPRM proposed to require reporting of the inspection results to PW Materials & Processes Engineering/Non-Destructive Evaluation Engineer. Delta noted that paragraph (g)(1)(i) of the NPRM references paragraph 6 of PW SB PW2000 72–773, which references NDIP–1217, which specifies reporting of the inspection results.

Request To Approve Tooling Equivalent

Delta requested that their rotator be approved as a tooling equivalent for performing the BSI proposed by paragraph (g)(1) of the NPRM. Delta reasoned that they worked in conjunction with PW to approve a tooling equivalent and requested confirmation that PW has the authority to approve tooling equivalents and that an alternative method of compliance request would not be required.

Delta also requested approval to deviate from paragraph 6.1.2 of NDIP–1217 to remove the starter rather than the crank pad to use their rotator.

Request To Allow HPT Rotating by Hand for BSI

Delta requested that the FAA allow the performance of the BSI of the HPT 2nd-stage air seal assembly proposed by paragraph (g)(1) of the NPRM to be rotated by hand rather than by a motor-driven unit per paragraph 6 of NDIP–1217. Delta reasoned the motor-driven unit may not be available at all stations and a second maintenance technician can rotate the HPT rotor manually, which allows the inspector to use two hands for the BSI.

Request To Confirm Affected Engine Serial Numbers

Delta commented that ''EagleNet case (CAS–83493–C0M6W0)'' was submitted to P&W to confirm RTC engines cannot be converted to CET/pre-CET engines or vice versa. Delta requested that the FAA confirm that the list of affected engine serial numbers in the proposed AD is an adequate method for controlling risk of affected population.

Comment on Operational and Economic Costs

FedEx commented that the proposed rule would impact approximately half of its fleet of PW2000 model turbofan engines. The inspection program itself will have a minor operational impact as it can be incorporated into an existing hot section inspection program, but unplanned engine changes will result in local operational impact. FedEx noted that the cost of the on-wing inspection program [BSI] would be minimal but the cost of engines that need to be removed immediately will have a fairly significant impact. FedEx noted that these operational and economic impacts are acceptable when weighed against the impact of an in-service event.

FAA Response to Comments To Revise the BSI Inspection

The FAA determined the need to remove the proposed BSI requirement from this AD based on comments regarding accessibility of inspector training. The FAA may consider additional rulemaking and will consider these comments in the development of any additional requirements.

Request That Individual Part Serviceability Not Depend on the Inspection Results of Other Parts

Delta commented that individual part serviceability should not depend on the inspection results of other parts. Delta also commented that if inspections are not possible which would allow the mating HPT 1st-stage disk or the HPT 2nd-stage hub to be deemed serviceable, independent from inspection status of the HPT 2nd-stage air seal assembly, then the manufacturer should revise the engine manuals to clarify that the mating HPT 1st-stage disk or HPT 2nd-stage hub cannot be made serviceable unless an inspection of the HPT 2nd-stage air seal assembly indicates it is free of cracks. Delta stated that this would remove the possibility that the mating HPT 1st-stage disk or HPT 2nd-stage hub would be made serviceable and then installed in an engine before the HPT 2nd-stage air seal assembly is inspected.

The FAA did not revise this AD in response to this comment. A crack, as identified in the shaded regions of Figure 1 to paragraph (g)(1)(iii) of this AD (Figure 1), which extends towards the knife-edge region of the HPT 2nd-stage air seal assembly, impacts the serviceability of the mating HPT 1st-stage disk and the HPT 2nd-stage hub. A crack identified in the shaded region of Figure 1 of this AD of the HPT 2nd-stage air seal assembly results in the requirement to remove the HPT 2nd-stage air seal assembly, mating HPT 1st-stage disk, and HPT 2nd-stage hub.

Request To Remove Inspections for Parts Being Scrapped

Delta requested that the FAA update paragraph (g)(2)(i) of the NPRM (paragraph (g)(1)(i) of this AD) to remove the visual inspection, knife-edge coating strip, and FPI of the HPT 2nd-stage air seal assembly if the HPT 2nd-stage air seal assembly, mating HPT 1st-stage disk, and HPT 2nd-stage hub are being scrapped. Further, Delta requested if the HPT 2nd-stage air seal assembly is planned to be scrapped, then the mating HPT 1st-stage disk and HPT 2nd-stage hub be allowed to be made serviceable without FPI of the HPT 2nd-stage air seal assembly.

The FAA disagrees with the need to change the AD based on this comment. If the HPT 2nd-stage air seal assembly, HPT 1st-stage disk, and HPT 2nd-stage hub are removed from service, then the inspections required by paragraph (g)(1)(i) of this AD are not applicable. The inspections are required only if the operator returns the parts to service.

FPI is the only way to ensure the HPT 2nd-stage air seal assembly is free from cracks because an FPI will reveal cracks not detected by a visual inspection. The serviceability of the both the HPT 1st-stage disk and HPT 2nd-stage hub is directly dependent on the HPT 2nd-stage air seal assembly. If an operator does not FPI the HPT 2nd-stage air seal assembly, then neither the HPT 1st-stage disk nor HPT 2nd-stage disk can be returned to service. The FAA did not change this AD.

Request To Reference Engine Manual for Inspection Instructions

FedEx requested that the FAA update paragraph (g)(2)(i) of the NPRM (paragraph (g)(1)(i) of this AD) to reference Chapter 72–52–60, Inspection/Check-01, of the PW2000 Series Engine Manual for instructions to perform the visual inspection, knife-edge coating removal, and FPI of the HPT 2nd-stage air seal assembly.

The FAA determined it is not necessary to require use of specific service information as the visual inspection and FPI required by paragraph (g)(1)(i) of this AD are routine inspections that may vary between operators. The FAA, however, revised paragraph (g)(1)(i) of this AD to refer to Chapter 72–52–60, Repair-01, of the PW2000 Series Engine Manual for guidance on striping the knife edge coating from the HPT 2nd-stage air seal assembly.

Request To Remove FPI

Delta requested that paragraph (g)(2)(ii) of the NPRM (paragraph (g)(1)(ii) of this AD) remove the proposed requirement to perform an FPI and require only visual inspections of the HPT 2nd-stage air seal assembly. Delta reasoned that based on NDIP–1217, cracks are detectable by visual inspection, thereby making FPI unnecessary. Delta concluded that performing only the visual inspection enables the HPT 2nd-stage air seal assembly to be inspected at initial disassembly while still in the presence of the mating HPT 1st-stage disk and HPT 2nd-stage hub, which simplifies determining if parts need to be scrapped if a crack is found. Otherwise, Delta stated that paragraph (g)(1)(iii) of the NPRM creates a logistical challenge for performing inspections as the HPT 2nd-stage air seal assembly, mating HPT 1st-stage disk, and HPT 2nd-stage hub could be routed to different locations with different lead times.

The FAA disagrees. While cracks may be detected by visual inspection, an FPI will reveal cracks not detected by visual inspection. Additionally, the FPI is required to confirm that the HPT 2nd-stage air seal assembly is free of cracks. The FAA did not change this AD.

Request To Allow Repair of the HPT 2nd-Stage Air Seal Assembly

Delta and MTU requested that paragraph (g)(2)(ii) of the NPRM (paragraph (g)(1)(ii) of this AD) be updated to allow repair of the HPT 2nd-stage air seal assembly if a crack is found. The commenters reasoned that Chapter 72–52–60, Inspection/Check-01 and Repair-02, of the PW2000 Series Engine Manual provides information for repairing a cracked HPT 2nd-stage air seal assembly. The commenters concluded that this AD should allow repair; otherwise, Chapter 72–52–60 of the PW2000 Series Engine Manual should be deleted or updated.

The FAA disagrees that the crack repairs identified in the engine manual should be incorporated in this AD. If a crack is found during the inspections required by this AD for the HPT 2nd-stage air seal assembly, the part must be removed from service and cannot be repaired. The FAA disagrees that Chapter 72–52–60 of the PW2000 Series Engine Manual should be deleted or updated. This repair is specifically for mechanical damage such as handling damage and foreign object damage in the knife edge area. This repair is not applicable to cracks identified by this AD. The damage addressed is unrelated and the repair does not need to be

prohibited. The requirements contained in this AD take precedence over any contrary provisions in the manufacturer's instructions for continued airworthiness. The FAA did not update this AD.

Request To Clarify Removal From Service

Delta requested that the FAA clarify paragraph (g)(2)(ii) of the NPRM (paragraph (g)(1)(ii) of this AD) that states the HPT 2nd-stage air seal assembly must be removed from service if a crack is found. Delta asked if the HPT 2nd-stage air seal assembly must be scrapped, or if the HPT 2nd-stage air seal assembly can be repaired and returned to service after re-identifying it with a new P/N. Delta added that the engine manual provides a repair option of knife-edge cracks caused by mechanical damage.

The FAA notes that ''remove from service'' in this AD indicates that the HPT 2nd-stage air seal assembly should be permanently removed from service if a crack is found. Any cracked HPT 2nd-stage air seal assembly cannot be repaired and returned to service per the requirements of this AD.

Request To Remove ''Before Further Flight''

FedEx requested that the FAA remove the phrase ''before further flight'' from paragraphs (g)(2)(ii) and (iii) of the NPRM (paragraphs (g)(1)(ii) and (iii) of this AD). FedEx reasoned that since the visual inspection, knife edge coating removal, and FPI are performed at every piece-part opportunity of the mating HPT 1st-stage disk, HPT 2nd-stage disk, or the HPT 2nd-stage air seal assembly, ''before further flight'' is redundant. Additionally, FedEx stated that the overhaul facility must comply with the engine manual inspection criteria and would have no other option but to make the HPT 2nd-stage air seal assembly permanently unserviceable.

The FAA agrees and removed ''before further flight'' from paragraphs (g)(1)(ii) and (iii) of this AD.

Request To Clarify Part Replacement After Crack Is Found

MTU requested clarification regarding whether the mating HPT 1st-stage disk or HPT 2nd-stage hub needs to be replaced if a crack is found after performing the inspections proposed by paragraph (g)(2)(iii) of the NPRM (paragraph (g)(1)(iii) of this AD), or if both the mating HPT 1st-stage disk and HPT 2nd-stage hub need to be replaced.

If a crack is found as identified in the shaded region of Figure 1 to paragraph (g)(1)(iii) of this AD (Figure 1) that extends toward the knife-edge region of the HPT 2nd-stage air seal assembly, this AD requires replacement of the HPT 2nd-stage air seal assembly, mating HPT 1st-stage disk, and HPT 2nd-stage hub.

Request To Clarify Terminating Action

UAL requested clarification if paragraph (h), Terminating Action, of the NPRM applies to the visual inspection and FPI of the HPT 2nd-stage air seal assembly proposed by paragraph (g)(2) of the NPRM (paragraph (g)(1) of this AD).

The FAA notes that there is no terminating action to the visual inspection and FPI of the HPT 2nd-stage air seal assembly required by paragraph (g)(1) of this AD. The visual inspection and FPI required by paragraph (g)(1) of this AD are required for all HPT 2nd-stage air seal assemblies, including P/Ns others than 1A8209 or 1A8209–001. As stated in an earlier response, with the removal of the BSI requirements from this AD, the FAA removed the terminating action from this AD.

Request To Clarify Applicability for Visual Inspection and FPI

UAL requested clarification of whether paragraph (g)(1) of this AD applies if an HPT 2nd-stage air seal assembly, with a P/N other than P/N 1A8209 or 1A8209–001, is installed.

Delta requested that an applicability statement referencing P/Ns for affected HPT 2nd-stage air seal assemblies be added to paragraph (g)(2) of the NPRM. Paragraph (g)(2) of the NPRM proposed to require a visual inspection of the HPT 2nd-stage air seal assembly, stripping the knife edge coating from the HPT 2nd-stage air seal assembly, and then performing an FPI of the HPT 2nd-stage air seal assembly. Delta noted that if an HPT 2nd-stage air seal assembly has been modified and re-identified with a new P/N using PW SB PW2000 72–754, Revision No. 2, dated April 30, 2019, then it should not be subject to the same inspections as HPT 2nd-stage air seal assembly, P/N 1A8209 or 1A8209–001.

The FAA disagrees and notes that the visual inspection and the FPI required by paragraph (g)(1)(i) of this AD are required for all HPT 2nd-stage air seal assemblies, regardless of the P/N. The FAA did not update this AD.

Request To Allow Installation of Mating Parts Without Past HPT 2nd-Stage Air Seal Assembly Inspection Verification

Delta requested that a mating HPT 1st-stage disk and HPT 2nd-stage hub made serviceable before the effective date of this AD be eligible for installation without verification that all past HPT 2nd-stage air seal assemblies had visual inspections and FPI to verify no cracks were found. Delta reasoned that the inspections were not previously required and adequate records may not exist. Additionally, Delta stated it might not be possible to re-inspect all previous HPT 2nd-stage air seal assemblies for cracks as some may have been scrapped before the inspection.

The FAA notes that an HPT 1st-stage disk and HPT 2nd-stage hub made serviceable before the effective date of this AD are not subject to the requirements of (g)(1)(iii) of the AD until their next piece part exposure. The FAA did not update this AD.

Request To Clarify the Location of the Forward and Aft Edges

Delta and MTU requested that the FAA clarify the location of the forward and aft edges of the HPT 2nd-stage air seal assembly. Delta asked if the forward edge is the barrel section forward of the #1 knife-edge or any part that extends beyond the barrel section.

The FAA removed references to ''forward edge'' and ''aft edge'' of the HPT 2nd-stage air seal assembly from this AD. In their place, the FAA added Figure 1 to paragraph (g)(1)(iii) of this AD to specify the locations of the HPT 2nd-stage air seal assembly that require inspection for cracks.

Request To Clarify the Definition of Through-Crack

Delta and FedEx requested that the FAA clarify the definition of ''through-crack.'' Delta asked if a ''through-crack'' is a crack going through the axial direction or radial direction of the HPT 2nd-stage air seal assembly. Delta referenced Figure 5 of NDIP–1217 that appears to show a through-crack in the axial direction. Delta inferred from paragraph (i)(4) of the NPRM that a through-crack is in the radial direction. Delta requested a diagram to help illustrate what constitutes a through-crack.

FedEx stated that a lenticular seal is a two-piece component that becomes an inseparable assembly during manufacturing. As a result, it would be impossible to distinguish a through-crack from a surface crack over a large area of the HPT 2nd-stage air seal assembly's exterior since its interior surfaces are inaccessible. FedEx cited Chapter 72–52–60, Inspection/Check–01, Figures 801 and 801A, of the PW2000 Series Engine Manual, which highlights areas where through-thickness cracks are critical. According to FedEx, however, these images fail to address the ability to determine whether a surface crack is a ''through-crack.'' Additionally, the PW2000 Series Engine

Manual does not provide dimensions that bound the areas making HPT disk replacement subjective.

The FAA agrees that it is difficult to differentiate between a surface crack and through-crack; therefore, the FAA removed references to ''through-crack'' from this AD. The FAA notes that any crack, in any direction, found in the HPT 2nd-stage air seal assembly, requires removal of the HPT 2nd-stage air seal assembly from service. As stated in an earlier response, the FAA added Figure 1 to show the locations of the HPT 2nd-stage air seal assembly that require inspection for cracks. However, the FAA is not providing dimensions that bind the areas. If the inspections of the HPT 2nd-stage air seal assembly reveal a crack in the shaded regions of Figure 1, which extends towards the knife-edge region, the HPT 2nd-stage air seal assembly must be removed from service.

Request To Clarify Engine Shop Visit

Delta requested that the FAA clarify the definition of ''engine shop visit'' related to which engine flanges the FAA considers ''major mating engine flanges.'' Delta requested that the FAA exclude the low-pressure compressor (LPC) module flange as a major mating engine flange because LPC module life limited parts (LLPs) can be swapped while the engine is installed on the aircraft. Delta reasoned that the separation of the LPC module flange should not require replacement of the HPT 2nd-stage air seal assembly. These LPC swaps may extend time between engine shop visits if the LLPs are located in the LPC.

The FAA determined the need to revise the definition of ''engine shop visit'' by replacing separation of ''major mating engine flanges'' with separation of the ''N or M engine flange.'' If the LPC swap does not involve separating the N or M engine flange, then the compliance time for replacing the HPT 2nd-stage air seal assembly has not occurred as required by this AD.

Request To Update the Definition of Piece-Part Opportunity

Delta requested that the FAA update the definition of ''piece-part opportunity'' from ''when the part is completely disassembled'' to ''any time the seal is removed from the HPT module.'' Delta reasoned that while the HPT 2nd-stage air seal assembly is referred to as an ''assembly,'' the HPT 2nd-stage air seal assembly cannot be dissembled.

The FAA partially agrees and updated the definition to clarify what constitutes ''piece-part opportunity'' for the HPT 1st-stage disk, HPT 2nd-stage hub, and HPT 2nd-stage air seal assembly.

Request To Update the Definition of Part Eligible for Installation

Delta requested that the FAA update the definition of ''part eligible for installation'' to remove paragraph (i)(3)(ii) and to refer only to ''An HPT 2nd-stage air seal assembly that is not P/N 1A8209 or 1A8209–001.'' Delta reasoned that paragraph (i)(3)(ii) of the NPRM, which states that an HPT 2nd-stage air seal assembly that has been modified using the service information is eligible for installation, is unnecessary because the HPT 2nd-stage air seal assembly receives a new P/N, which is not P/N 1A8209 or 1A8209–001, after repair.

The FAA agrees and revised the definition of an HPT 2nd-stage air seal assembly that is eligible for installation, now in paragraph (h)(3) of this AD, to refer to an HPT 2nd-stage air seal assembly with a P/N other than 1A8209 or 1A8209–001.

Request To Update Service Information Revision

MTU requested that the FAA reference PW SB PW2000 72–754, Revision No. 3, dated August 14, 2019, in this AD instead of Revision No. 2, dated April 30, 2019.

The FAA agrees. The FAA updated PW SB PW2000 72–754 to Revision No. 3, dated August 14, 2019, throughout this AD.

Request To Update the Service Information Description

MTU requested that the FAA update the service information description in the Other Related Service Information paragraph of the NPRM (Related Service Information of this AD) to include the replacement and modification of the HPT 2nd-stage air seal assembly.

The FAA agrees. The FAA updated the service information description in the Related Service Information paragraph in this AD.

Request To Update the Costs of Compliance

UAL requested that the Costs of Compliance include additional costs such as delays in engine builds and modifications. UAL reasoned that piece-part modification of the HPT 2nd-stage air seal assembly, mating HPT 1st-stage disk, and HPT 2nd-stage hub are independent of each other. Scraping all parts proposed by paragraph (g)(2)(iii) of the NPRM (paragraph (g)(1)(iii) of this AD) will force engine centers to delay routing the mating HPT 1st-stage disk and HPT 2nd-stage hub for modification until the HPT 2nd-stage air seal assembly is inspected, thus delaying an engine build or incurring costs while the mating HPT 1st-stage disk and HPT 2nd-stage hub are partially or fully scrapped.

The FAA disagrees with updating the costs of compliance. The cost analysis in AD rulemaking actions typically includes only the costs associated with complying with the AD and does not include secondary costs. The FAA's cost estimate includes the work hours and parts costs to perform the required actions.

No Comments on This AD

ALPA supported the AD and appreciated the opportunity to comment. Boeing had no comments.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information

The FAA reviewed PW SB PW2000 72–754, Revision No. 3, dated August 14, 2019, and PW SB PWF117 72–402, Revision No. 2, dated May 3, 2019. The SBs describe procedures for replacing or modifying the HPT 2nd-stage air seal assembly.

Interim Action

The FAA considers this AD to be an interim action. The FAA may consider additional rulemaking based on further investigation of the unsafe condition.

Costs of Compliance

The FAA estimates that this AD affects 445 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Visually inspect, strip the knife edge coating, and FPI the HPT 2nd-stage air seal assembly.	10 work-hours × $85 per hour = $850.	$0	$850	$378,250

The FAA estimates the following costs to do any necessary replacements. The FAA has no way of determining how many replacements of the HPT 2nd-stage air seal assembly will be done with a modified HPT 2nd-stage air seal assembly and how many will be done with a new HPT 2nd-stage air seal assembly. The FAA also has no way of determining the number of engines that might need replacement of the HPT 2nd-stage air seal assembly, HPT 1st-stage disk, and HPT 2nd-stage hub.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace the HPT 2nd-stage air seal assembly with modified HPT 2nd-stage air seal assembly.	10 work-hours × $85 per hour = $850.	$5,000	$5,850
Replace the HPT 2nd-stage air seal assembly with new seal assembly	0.25 work-hours × $85 per hour = $21.25.	355,000	355,021.25
Replace the HPT 2nd-stage air seal assembly, HPT 1st-stage disk, and HPT 2nd-stage hub (based on FPI results).	0.25 work-hours × $85 per hour = $21.25.	970,000	970,021.25

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:

2021–14–13 Pratt & Whitney: Amendment 39–21640; Docket No. FAA–2020–0442; Project Identifier AD–2020–00260–E.

(a) Effective Date

This airworthiness directive (AD) is effective September 1, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Pratt & Whitney (PW) PW2037, PW2037M, PW2040, and F117–PW–100 model turbofan engines.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report of an uncontained engine failure resulting from cracks originating in the knife edge of the high-pressure turbine (HPT) 2nd-stage air seal assembly. The FAA is issuing this AD to prevent failure of the HPT 2nd-stage air seal assembly. The unsafe condition, if not addressed, could result in uncontained HPT 2nd-stage air seal assembly release, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) Visual Inspection and Fluorescent Penetrant Inspection (FPI) of HPT 2nd-Stage Air Seal Assembly

After the effective date of this AD, at every piece-part opportunity of the HPT 1st-stage disk, HPT 2nd-stage hub, or the HPT 2nd-stage air seal assembly:

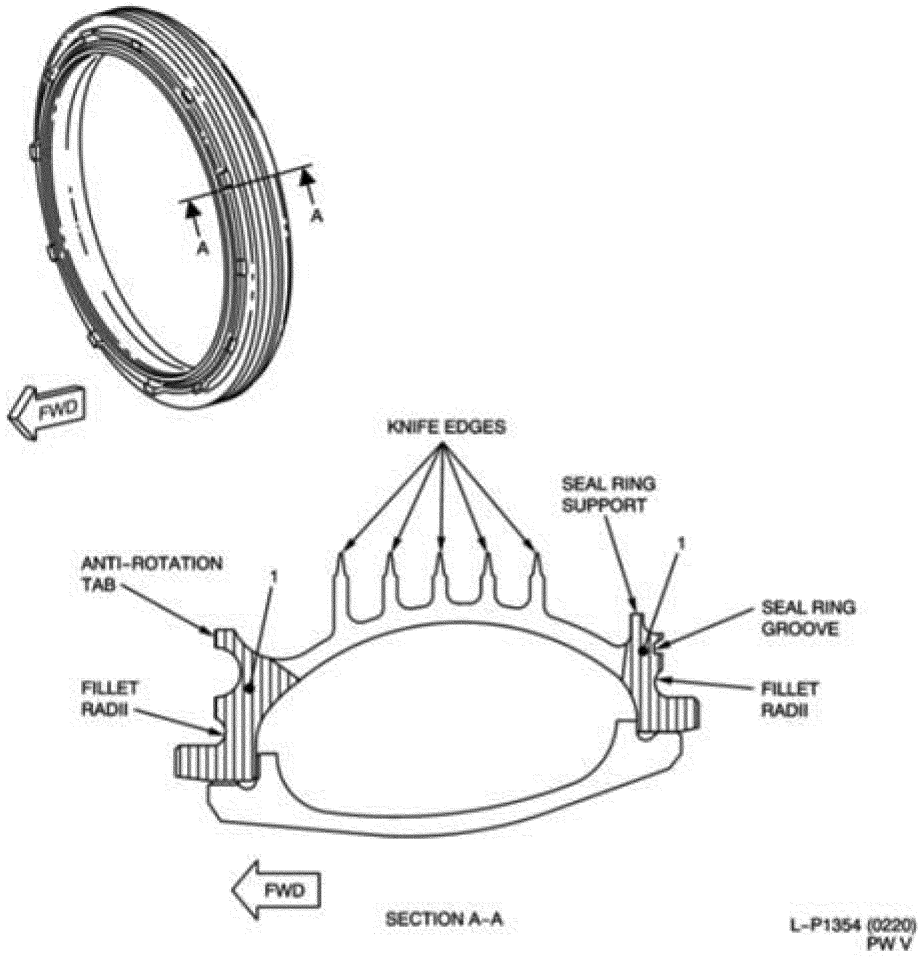
(i) Perform a visual inspection of the HPT 2nd-stage air seal assembly, strip the knife edge coating from the HPT 2nd-stage air seal assembly, and then perform an FPI of the HPT 2nd-stage air seal assembly.

Note 1 to paragraph (g)(1)(i): Guidance on striping the knife edge coating from the HPT 2nd-stage air seal assembly required by paragraph (g)(1)(i) of this AD can be found Chapter 72–52–60, Repair-01, of the PW2000 Series Engine Manual.

(ii) If a crack is found in the HPT 2nd-stage air seal assembly during the visual inspection or FPI required by paragraph (g)(1)(i) of this AD, remove the HPT 2nd-stage air seal assembly from service and replace it with a part eligible for installation.

(iii) During the visual inspection or FPI required by paragraph (g)(1)(i) of this AD, if a crack is found in the shaded regions of the HPT 2nd-stage air seal assembly identified in Figure 1 to paragraph (g)(1)(iii) of this AD (Figure 1), which extends towards the knife-edge region of the HPT 2nd-stage air seal assembly, remove the HPT 2nd-stage air seal assembly, mating HPT 1st-stage disk, and HPT 2nd-stage hub from service, and replace the parts with parts eligible for installation. In order to return the mating HPT 1st-stage disk and HPT 2nd-stage hub to service, the inspections of the HPT 2nd-stage air seal assembly cannot reveal a crack identified in the shaded regions of Figure 1, which extends towards the knife-edge region.

Figure 1 to Paragraph (g)(1)(iii) – *Crack Inspection Critical Areas*



(2) Replacement of HPT 2nd-Stage Air Seal Assembly

(i) For PW PW2037, PW2037M, and PW2040 model turbofan engines, at the next engine shop visit after the effective date of this AD, remove the HPT 2nd-stage air seal assembly, part number (P/N) 1A8209 or 1A8209–001, and replace it with a part eligible for installation.

(ii) For PW F117–PW–100 model turbofan engines, at the next piece part opportunity after the effective date of this AD, remove the HPT 2nd-stage air seal assembly, P/N 1A8209 or 1A8209–001, and replace it with a part eligible for installation.

(h) Definitions

(1) For the purpose of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of the N or M engine flange. The separation of engine flanges solely for the purposes of transportation of the engine without subsequent engine maintenance does not constitute an engine shop visit.

(2) For the purpose of this AD, a ''piece-part opportunity'' is:

(i) For the HPT 1st-stage disk, when the disk is removed from the engine and all the blades are removed;

(ii) For the HPT 2nd-stage hub, when the hub is removed from the engine and all the blades are removed; or

(iii) For the HPT 2nd-stage air seal assembly, when the assembly is removed from either the HPT 1st-stage disk or the HPT 2nd-stage hub.

(3) For the purpose of this AD, a ''part eligible for installation'' is an HPT 2nd-stage air seal assembly with a P/N other than 1A8209 or 1A8209–001.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in Related Information. You may email your request to: *ANE-AD-AMOC@faa.gov.*

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

(j) Related Information

For more information about this AD, contact Carol Nguyen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7655; fax: (781) 238–7199; email: *carol.nguyen@faa.gov.*

(k) Material Incorporated by Reference

None.

Issued on June 30, 2021.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–15947 Filed 7–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0295; Airspace Docket No. 21–ANE–2]

RIN 2120–AA66

Amendment and Establishment of Class E Airspace; Bar Harbor, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E surface area and Class E airspace extending upward from 700 feet above the surface at Hancock County-Bar Harbor Airport, Bar Harbor, ME. This action would also update the geographic coordinates of the airport to coincide with the FAA's database. In addition, this action also establishes Class E airspace extending upward from 700 feet above the surface for Bar Harbor Heliport, Bar Harbor, ME. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

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

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337; Telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 24562, May 7, 2021) for Docket No. FAA–2021–0295 to amend Class E surface airspace and Class E airspace extending up from 700 feet above the surface for Hancock County-Bar Harbor Airport, Bar Harbor, ME. In addition, the geographical coordinates of Hancock County-Bar Harbor Airport would be updated. This action also proposed to establish Class E airspace extending upward from 700 feet above the surface for Bar Harbor Heliport.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in Paragraphs 6002 and 6005, respectively, of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic routes, and reporting points.

The Rule

The FAA is amending 14 CFR part 71 by amending Class E surface airspace for Hancock County-Bar Harbor Airport, Bar Harbor, ME, by increasing the radius from 4.2 miles to 5.5 miles and eliminating the extensions off the 204° and 024° bearings, respectively. The Class E airspace extending up from 700 feet above the surface for Hancock County-Bar Harbor is amended by increasing the radius from 7.4 miles to 8.0 miles and adding an extension 3.7 miles each side of the Hancock County-Bar Harbor Airport 025° bearing extending from the 8.0-mile radius to 11.4 miles northeast of the airport. In addition, the geographical coordinates of Hancock County-Bar Harbor Airport are updated to coincide with the FAA's database. This action also establishes Class E airspace extending upward from 700 feet above the surface for Bar Harbor Heliport. These changes are necessary for continued safety and management of IFR operations in the area.

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

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Surface Airspace.

* * * * *

ANE ME E2 Bar Harbor, ME [Amend]

Hancock County-Bar Harbor Airport, ME
(Lat. 44°26′59″ N, long. 68°21′41″ W)

That airspace extending upward from the surface within a 5.5-mile radius of Hancock County-Bar Harbor Airport.

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ANE ME E5 Bar Harbor, ME [Amend]

Hancock County-Bar Harbor Airport, ME
(Lat. 44°26′59″ N, long. 68°21′41″ W)
Bar Harbor Heliport
(Lat. 44°22′54″ N, long. 68°12′14″ W)

That airspace extending upward from 700 feet above the surface within an 8.0-mile radius of Hancock County-Bar Harbor Airport and 3.7 miles each side of the 025° bearing extending from the 8.0-mile radius to 11.4 miles northeast from the airport, and that airspace within a 6.0-mile radius of the Bar Harbor Heliport.

Issued in College Park, Georgia, on July 22, 2021.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization

[FR Doc. 2021–15999 Filed 7–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0274; Airspace Docket No. 20–ANM–58]

RIN 2120–AA66

Modification of Class E Airspace; Saratoga, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace extending upward from 700 feet above the surface at Shively Field Airport, Saratoga, WY. This action also removes the Class E airspace extending upward from 1,200 feet above the surface, and the Saratoga NDB and the Cherokee VOR/DME from the airspace's text header and description. This action also implements several updates to the airspace's legal description. The airspace is designed to support instrument flight rules (IFR) operations at the airport.

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

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 24805; May 10, 2021) for Docket No. FAA–2021–0274 to modify the Class E airspace at Dillon Airport, Dillon, MT. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace, extending upward from 700 feet above the surface, at Shively Field Airport, Saratoga, WY. This airspace is designed to contain IFR departures to 1,200 feet above the

surface and IFR arrivals descending below 1,500 feet above the surface. To properly contain arriving and departing IFR aircraft, the radius south of the airport is reduced from 6.9 miles to 5 miles. The radius north of the airport is increased from 6.9 miles to 7.3 miles. Also, the area extending north of the airport is increased to properly contain IFR aircraft performing a procedure turn maneuver for the NDB–A Approach.

This action also removes the Class E airspace extending upward from 1,200 feet above the surface. This airspace area is wholly contained within the Denver en route airspace and duplication is not necessary.

Further, this action removes the Saratoga NDB and the Cherokee VOR/DME from the Class E5's text header and airspace description. The navigational aids (NAVAIDs) are not needed to define the airspace and removal of the NAVAIDs simplifies the airspace description.

Lastly, the action implements several administrative updates to the airspace text header. The city name is removed from the second line of the text header, and the airport's geographic coordinates on the third line of the text header are updated to ''lat. 41°26′37″ N, long. 106°49′39″ W,'' to match the FAA database.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or more above the Surface of the Earth.

* * * * *

ANM WY E5 Saratoga, WY [Amended]

Shively Field Airport, WY
(Lat. 41°26′37″ N, long. 106°49′39″ W)

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the airport beginning at the 075° bearing from the airport clockwise to the 234° bearing from the airport, and within a 7.3-mile radius of the airport beginning at the 234° bearing from the airport clockwise to the 075° bearing from the airport, and within 4 miles east and 8 miles west of the 341° bearing from the airport, extending from the 7.3-miles radius to 16.1 miles north of the airport.

Issued in Des Moines, Washington, on July 22, 2021.

Maria A. Aviles,

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

[FR Doc. 2021–15988 Filed 7–27–21; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232

[Release Nos. 33–10948; 34–92216; 39–2539; IC–34304]

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the ''Commission'') is adopting amendments to Volumes I and II of the Electronic Data Gathering, Analysis, and Retrieval system (''EDGAR'') Filer Manual (''EDGAR Filer Manual'' or ''Filer Manual'') and related rules. The EDGAR system was upgraded on June 18, 2021.

DATES:

Effective date: July 28, 2021.

Incorporation by reference: The incorporation by reference of the EDGAR Filer Manual is approved by the Director as of July 28, 2021.

FOR FURTHER INFORMATION CONTACT: For questions regarding the amendments to Volumes I and II of the Filer Manual and related rules, please contact Rosemary Filou, Chief Counsel, or Jane Patterson, Senior Counsel, in the EDGAR Business Office at (202) 551–3900. For questions concerning Form N–CEN updates, please contact Heather Fernandez in the Division of Investment Management at (202) 551–6708. For questions concerning the changes to Forms S–1, S–3, F–1 and F–3, please contact Chris Windsor, Senior Special Counsel in the Division of Corporation Finance at (202) 551–3419. For questions concerning the XBRL submissions, please contact the Office of Structured Disclosure in the Division of Economic and Risk Analysis at (202) 551–5494.

SUPPLEMENTARY INFORMATION: We are adopting an updated EDGAR Filer Manual, Volume I: ''General Information,'' Version 38 (June 2021) and Volume II: ''EDGAR Filing,'' Version 58 (June 2021). The updated Filer Manual volumes are incorporated by reference into the Code of Federal Regulations.

I. Background

The Filer Manual contains technical specifications needed for filers to make submissions on EDGAR. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of

filings made in electronic format.[1] Filers should consult the Filer Manual in conjunction with our rules governing mandated electronic filings when preparing documents for electronic submission.

II. Amendments to Volumes I of the Filer Manual

The EDGAR System was updated in Release 21.2 and the following update is being made to Volume I of the EDGAR Filer Manual.

Volume I of the EDGAR Filer Manual sets forth the requirements, among other things, for securely maintaining EDGAR access codes, maintaining current company information in EDGAR, and obtaining a new passphrase—the access code that allows a filer to reset other codes—when the passphrase is lost or compromised. A filer who has lost their passphrase may reset it by requesting a security token be sent to the contact email address on record for the account. Individuals frequently contact the Commission, however, indicating they represent the filer but do not have EDGAR access codes, and the contact email on file is not current. Volume I allows these filers to regain access to their EDGAR account through a ''manual passphrase'' request. The Commission staff attempts to carefully screen these requests, and Volume I is being amended to add requirements to enable Commission staff to more effectively assess manual passphrase requests.

The amendments will require filers to upload specified supporting documentation to demonstrate the relationships between the entity requesting access and the existing EDGAR account, and the entity requesting access and the individual acting for that entity. Filers seeking access to an existing EDGAR account for which they have neither the access codes nor the current contact email address would be required to submit documents with the request for access, and additional documents as requested by SEC staff. The amendments will also provide that filers seeking access under this process must allow at least five (5) business days for processing of the request, and must respond to requests from SEC staff for additional information and documents.

III. Edgar System Changes and Associated Modifications to Volume II of the Edgar Filer Manual

EDGAR is being updated in Release 21.2, and was previously updated in 21.1.3, and corresponding amendments to Volume II of the Filer Manual are being made to reflect these changes, as described below.[2]

On April 8, 2020, the Commission amended Forms S–1, S–3, F–1 and F–3 to enable issuers of Exchange Traded Vehicle Securities to register an indeterminate number of shares and to pay fees annually based on net issuances, or to register a fixed amount of the securities and pay the associated fees.[3] EDGAR Release 21.2 updates submission form types S–1, S1/A, S–3, S–3/A, F–1, F–1/A, F–3 and F–3/A to include ''Exchange Traded Vehicle Securities'' as a new security type. See Chapter 7 (Preparing and Transmitting EDGARLink Online Submissions) of the EDGAR Filer Manual, Volume II: ''EDGAR Filing.''

On October 7, 2020, the Commission adopted new rules and amended existing rules and forms to create a comprehensive regulatory framework for fund of funds arrangements.[4] As part of the new rule, Release 21.2 updates submission form types N–CEN and N–CENA to include updated form content and adds two new questions on the form types related to unit investment trusts in Part F., and to management companies in Part C. See Chapter 8 (Preparing and Transmitting Online Submissions) of the EDGAR Filer Manual, Volume II: ''EDGAR Filing.''

Also, the following updates will be made to Volume II of EDGAR Filer Manual:

Updates to technical instructions will be added to support filers with constructing attached documents and document types and interactive data. See Chapter 5 (Constructing Attached Documents and Document Types) and Chapter 6 (Interactive Data) of the EDGAR Filer Manual, Volume II: ''EDGAR Filing.''

The EDGAR Frequently Asked Questions (FAQ) screens of the EDGAR Filing website and the EDGAR Filer Management website will be updated to remove the ''EDGAR Quick Reference Guides'' hyperlink.[5] See Appendix B (Frequently Asked Questions) of the EDGAR Filer Manual, Volume II: ''EDGAR Filing.''

EDGAR Release 21.1.3 also introduced the following software changes and the Filer Manual is being revised accordingly:

- In accordance with Release 33–10884,[6] submission form types C, C/A, and C–U were updated to increase the offering limit from $1,070,000 to $5,000,000. Filers can specify up to $5,000,000 for the Target Offering Amount and Maximum Offering Amount. See Chapter 8 (Preparing and Transmitting Online Submissions) of the EDGAR Filer Manual, Volume II: ''EDGAR Filing.''
- In Release 33–10231,[7] the Commission rescinded Forms N–Q and N–SAR. Accordingly, effective May 10, 2021, Release 21.1.3 modified EDGAR to no longer accept the following form types: N–Q, N–Q/A, NSAR–A, NSAR–A/A, NSAR–AT, NSAR–AT/A, NSAR–B, NSAR–B/A, NSAR–BT, NSAR–BT/A, NSAR–U, NSAR–U/A, NT–NSAR, and NT–NSAR/A. See Chapter 3 (Index to Forms), Chapter 7 (Preparing and Transmitting EDGARLink Online Submissions), Appendix C (EDGAR Submission Types), and Appendix E (Automated Conformance Rules for EDGAR Data Fields) of the EDGAR Filer Manual, Volume II: ''EDGAR Filing.''

Additional update and minor corrections made to the EDGAR Filer Manual, Volume II: ''EDGAR Filing'' include:

- Updates to instructions for filing Form X–17A–5 Part III noting the staff of the Division of Trading and Markets' temporary conditional no-action position for broker-dealers that are unable to obtain notarization services due to difficulties arising from COVID–19. See Section 8.2.20 of Chapter 8 (Preparing and Transmitting Online Submissions).
- Correction of the title ''EDGAR TA XML Technical Specification.'' See Chapter 3 (Index to Forms).
- Replacement of Figure 8–188: ''Signature Screen for submission form type X–17A–5.''
- Updates to references to ''Convert Paper Only Filer to Electronic Filer'' to ''Apply for EDGAR Access: Applicants With a CIK but Without EDGAR Access Codes.'' [8]

[1] *See* Rule 301.

[2] EDGAR Release 21.2 will be deployed on or about June 21, 2021. EDGAR Release 21.1.3 was deployed on May 7, 2021.

[3] *See* Securities Offering Reform for Closed End Investment Companies, Release 33–10771 (Apr. 8, 2020) [85 FR 33290 (June 1, 2020)].

[4] *See* Fund of Fund Arrangements, Release No. 33–10871 (Oct. 7, 2020) [85 FR 73924 (Nov. 19, 2020)].

[5] The ''EDGAR Quick Reference Guide'' was removed from Volume I of the EDGAR Filer Manual in Release 20.4.

[6] *See* Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets, Release 33–10884 (Nov. 2, 2020) [86 FR 3496 (Jan. 14, 2021)].

[7] *See* Investment Company Reporting Modernization, Release 33–10231 (Oct. 13, 2016) [81 FR 81870 (Nov. 18, 2016)].

[8] Starting June 25, 2021, applicants for EDGAR access who previously used the ''Convert Paper Only Filer to Electronic Filer'' process would now be required to submit the Form ID and an authenticating document to apply for access to file on EDGAR. *See* Adoption of Updated EDGAR Filer Manual, Form ID Amendments, Release No. 33–10935 [86 FR 25803].

EDGAR Release 21.2 also introduces additional changes in EDGAR that do not require corresponding amendments to the Filer Manual. See the ''Updates'' section of Volume II of the EDGAR Filer Manual, Volume II: ''EDGAR Filing.''

IV. Amendments to Rule 301 of Regulation S–T

Along with the adoption of the updated Filer Manual, we are amending Rule 301 of Regulation S–T to provide for the incorporation by reference into the Code of Federal Regulations of the current revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

The updated EDGAR Filer Manual is available at *https://www.sec.gov/edgar/filer-information/current-edgar-filer-manual.* Typically, the EDGAR Filer Manual is also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Due to pandemic conditions, however, access to the Commission's Public Reference Room is not permitted at this time.

V. Administrative Law Matters

Because the Filer Manual, and form and rule amendments, relate solely to agency procedures or practice and do not substantially alter the rights and obligations of non-agency parties, publication for notice and comment is not required under the Administrative Procedure Act (''APA'').[9] It follows that the amendments do not require analysis under requirements of the Regulatory Flexibility Act[10] or a report to Congress under the Small Business Regulatory Fairness Act.[11]

The effective date for the updated Filer Manual and related rule amendments is July 28, 2021. In accordance with the APA,[12] we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The Commission believes that establishing an effective date less than 30 days after publication of these rules is necessary to coordinate the effectiveness of the updated Filer Manual with the related system upgrades.

VI. Statutory Basis

We are adopting the amendments to Regulation S–T under the authority in Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[13] Sections 3, 12, 13, 14, 15, 15B, 23, and 35A of the Securities Exchange Act of 1934,[14] Section 319 of the Trust Indenture Act of 1939,[15] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[16]

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

Text of the Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 232 REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for part 232 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

■ 2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets forth the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the updated EDGAR Filer Manual, Volume I: ''General Information,'' Version 38 (June 2021). The requirements for filing on EDGAR are set forth in the updated EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 58 (June 2021). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You must comply with these requirements in order for documents to be timely received and accepted. The EDGAR Filer Manual is available at *https://www.sec.gov/edgar/filer-information/current-edgar-filer-manual.* Typically, the EDGAR Filer Manual is also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Due to pandemic conditions, however, access to the Commission's Public Reference Room is not permitted at this time. You can also inspect the document 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.*

By the Commission.

Dated: June 21, 2021.

J. Matthew DeLesDernier,

Assistant Secretary.

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[9] 5 U.S.C. 553(b)(A).

[10] 5 U.S.C. 601–612.

[11] 5 U.S.C. 804(3)(C).

[12] 5 U.S.C. 553(d)(3).

[13] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[14] 15 U.S.C. 78c, 78*l,* 78m, 78n, 78*o,* 78o–4, 78w, and 78*ll.*

[15] 15 U.S.C. 77 sss.

[16] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 589

Publication of Ukraine-Related Web General License 15 and Subsequent Iterations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing 11 Ukraine-related web general licenses (GLs) in the **Federal Register***:* GL 15, GL 15A, GL 15B, GL 15C, GL 15D, GL 15E, GL 15F, GL 15G, GL 15H, and GL 15I, each of which is now expired and was previously issued on OFAC's website, as well as GL 15J, which was also previously issued on OFAC's website and expires on January 26, 2022.

DATES: GL 15J was issued on December 23, 2020 and expires on January 26, 2022. See **SUPPLEMENTARY INFORMATION** of this rule for additional relevant dates.

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 March 6, 2014, 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.) 13660, ''Blocking Property of Certain Persons Contributing to the Situation in Ukraine'' (79 FR 13493, March 10, 2014). In E.O. 13660, the President determined that the actions and policies of persons including persons who have asserted governmental authority in the Crimean region without the authorization of the Government of Ukraine that undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets, constitute an unusual and extraordinary threat to the national security and foreign policy of the United States, and declared a national emergency to deal with that threat.

The President subsequently issued E.O. 13661 of March 16, 2014, ''Blocking Property of Additional Persons Contributing to the Situation in Ukraine'' (79 FR 15535, March 19, 2014), and E.O. 13662 of March 20, 2014, ''Blocking Property of Additional Persons Contributing to the Situation in Ukraine'' (79 FR 16169, March 20, 2014), pursuant to the national emergency declared in E.O. 13660. E.O. 13661 and E.O. 13662 expanded the scope of the national emergency declared in E.O. 13660. On May 8, 2014, OFAC published the Ukraine Related Sanctions Regulations, 31 CFR part 589 (the ''Regulations''), to implement E.O. 13660, E.O. 13661, and E.O. 13662 (79 FR 26365, May 8, 2014). The President has issued additional Executive orders pursuant to the national emergency declared in E.O. 13660, and expanded in E.O. 13661 and E.O. 13662, which are not discussed in this publication as they are not relevant to the web GLs being published.

OFAC, in consultation with the Department of State, issued GL 15 on May 22, 2018, pursuant to the Regulations, to authorize certain transactions and activities with GAZ Group, or entities in which GAZ Group owned, directly or indirectly, a 50 percent or greater interest, that were otherwise prohibited by the Regulations. Subject to certain conditions, GL 15 authorized certain transactions and activities that were ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements, including the importation of goods, services, or technology into the United States, involving GAZ Group or any other entity in which GAZ Group owned, directly or indirectly, a 50 percent or greater interest and that were in effect prior to April 6, 2018. Subsequently, OFAC issued 10 further iterations of GL 15, which extended the authorization, and in later iterations, broadened the scope of the GL.

On October 19, 2018, OFAC issued GL 15A, which replaced and superseded GL 15; on November 9, 2018, OFAC issued GL 15B, which replaced and superseded GL 15A; on December 7, 2018, OFAC issued GL 15C, which replaced and superseded GL 15B; on December 20, 2018, OFAC issued GL 15D, which replaced and superseded GL 15C; on March 6, 2019, OFAC issued GL 15E, which replaced and superseded GL 15D; on June 26, 2019, OFAC issued GL 15F, which replaced and superseded GL 15E; on November 1, 2019, OFAC issued GL 15G, which replaced and superseded GL 15F; on March 20, 2020, OFAC issued GL 15H, which replaced and superseded GL 15G; on July 16, 2020, OFAC issued GL 15I, which replaced and superseded 15H; and on December 23, 2020, OFAC issued GL 15J, which replaced and superseded GL 15I. GL 15J expires on January 26, 2022. The texts of following 11 Ukraine-related GLs are provided below: GLs 15, 15A, 15B, 15C, 15D, 15E, 15F, 15G, 15H, 15I, and 15J.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

General License No. 15

Authorizing Certain Activities Necessary To Maintenance or Wind Down of Operations or Existing Contracts With GAZ Group

(a) Except as provided in paragraphs (b) and (c) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements, including the importation of goods, services, or technology into the United States, involving GAZ Group or any other entity in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest and that were in effect prior to April 6, 2018, are authorized through 12:01 a.m. eastern daylight time, October 23, 2018.

(b) All funds in accounts of blocked persons identified in paragraph (a) that were blocked as of 12:01 a.m. eastern daylight time, May 22, 2018, remain blocked, except that such funds may be used for maintenance or wind-down activities authorized by this general license.

(c) This general license does not authorize:

(1) The divestiture or transfer of debt, equity, or other holdings in, to, or for the benefit of the blocked persons described above;

(2) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the blocked persons described in paragraph (a) of this general license; or

(3) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraphs (a) or (b).

(d) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

Andrea Gacki,

Acting Director, Office of Foreign Assets Control.

Dated: May 22, 2018.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

General License No. 15A

Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts With GAZ Group

(a) Except as provided in paragraphs (b) and (c) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements, including the importation of goods, services, or technology into the United States, involving GAZ Group or any other entity in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest and that were in effect prior to April 6, 2018, are authorized through 12:01 a.m. eastern standard time, December 12, 2018.

(b) All funds in accounts of blocked persons identified in paragraph (a) that were blocked as of 12:01 a.m. eastern daylight time, May 22, 2018, remain blocked, except that such funds may be used for maintenance or wind-down activities authorized by this general license.

(c) This general license does not authorize:

(1) The divestiture or transfer of debt, equity, or other holdings in, to, or for the benefit of the blocked persons described above;

(2) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the blocked persons described in paragraph (a) of this general license; or

(3) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraphs (a) or (b).

(d) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

(e) Effective October 19, 2018, General License No. 15, dated May 22, 2018, is replaced and superseded in its entirety by this General License No. 15A.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: October 19, 2018.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

General License No. 15B

Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts With GAZ Group

(a) Except as provided in paragraphs (b) and (c) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements, including the importation of goods, services, or technology into the United States, involving GAZ Group or any other entity in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest and that were in effect prior to April 6, 2018, are authorized through 12:01 a.m. eastern standard time, January 7, 2019.

(b) All funds in accounts of blocked persons identified in paragraph (a) that were blocked as of 12:01 a.m. eastern daylight time, May 22, 2018, remain blocked, except that such funds may be used for maintenance or wind-down activities authorized by this general license.

(c) This general license does not authorize:

(1) The divestiture or transfer of debt, equity, or other holdings in, to, or for the benefit of the blocked persons described above;

(2) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the blocked persons described in paragraph (a) of this general license; or

(3) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraphs (a) or (b).

(d) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

(e) Effective November 9, 2018, General License No. 15A, dated October 19, 2018, is replaced and superseded in its entirety by this General License No. 15B.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: November 9, 2018.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

General License No. 15C

Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts With GAZ Group

(a) Except as provided in paragraphs (b) and (c) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements, including the importation of goods, services, or technology into the United States, involving GAZ Group or any other entity in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest and that were in effect prior to April 6, 2018, are authorized through 12:01 a.m. eastern standard time, January 21, 2019.

(b) All funds in accounts of blocked persons identified in paragraph (a) that were blocked as of 12:01 a.m. eastern daylight time, May 22, 2018, remain blocked, except that such funds may be used for maintenance or wind-down activities authorized by this general license.

(c) This general license does not authorize:

(1) The divestiture or transfer of debt, equity, or other holdings in, to, or for the benefit of the blocked persons described above;

(2) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the blocked persons described in paragraph (a) of this general license; or

(3) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraphs (a) or (b).

(d) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220,

or via email to *OFACReport@treasury.gov.*

(e) Effective December 7, 2018, General License No. 15B, dated November 9, 2018, is replaced and superseded in its entirety by this General License No. 15C.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: December 7, 2018.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

General License No. 15D

Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts With GAZ Group

(a) Except as provided in paragraphs (b) and (c) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements, including the importation of goods, services, or technology into the United States, involving GAZ Group or any other entity in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest and that were in effect prior to April 6, 2018, are authorized through 12:01 a.m. eastern standard time, March 7, 2019.

(b) All funds in accounts of blocked persons identified in paragraph (a) that were blocked as of 12:01 a.m. eastern daylight time, May 22, 2018, remain blocked, except that such funds may be used for maintenance or wind-down activities authorized by this general license.

(c) This general license does not authorize:

(1) The divestiture or transfer of debt, equity, or other holdings in, to, or for the benefit of the blocked persons described above;

(2) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the blocked persons described in paragraph (a) of this general license; or

(3) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraphs (a) or (b).

(d) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

(e) Effective December 20, 2018, General License No. 15C, dated December 7, 2018, is replaced and superseded in its entirety by this General License No. 15D.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: December 20, 2018.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

General License No. 15E

Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts With GAZ Group

(a) Except as provided in paragraphs (b) and (c) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements, including the importation of goods, services, or technology into the United States, involving GAZ Group or any other entity in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest and that were in effect prior to April 6, 2018, are authorized through 12:01 a.m. eastern daylight time, July 6, 2019.

(b) All funds in accounts of blocked persons identified in paragraph (a) that were blocked as of 12:01 a.m. eastern daylight time, May 22, 2018, remain blocked, except that such funds may be used for maintenance or wind-down activities authorized by this general license.

(c) This general license does not authorize:

(1) The divestiture or transfer of debt, equity, or other holdings in, to, or for the benefit of the blocked persons described above;

(2) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the blocked persons described in paragraph (a) of this general license; or

(3) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraphs (a) or (b).

(d) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

(e) Effective March 6, 2019, General License No. 15D, dated December 20, 2018, is replaced and superseded in its entirety by this General License No. 15E.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: March 6, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

General License No. 15F

Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts With GAZ Group, or Certain Automotive Safety Activities

(a) Except as provided in paragraphs (b) and (c) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary to (1) the maintenance or wind down of operations, contracts, or other agreements, including the importation of goods, services, or technology into the United States, involving GAZ Group or any other entity in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest and that were in effect prior to April 6, 2018, or (2) the installation of Electronic Stability Program systems consistent with applicable automotive safety regulatory requirements in vehicles produced by GAZ Group or any other entity in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest, are authorized through 12:01 a.m. eastern standard time, November 8, 2019.

(b) All funds in accounts of blocked persons identified in paragraph (a) that were blocked as of 12:01 a.m. eastern daylight time, May 22, 2018, remain blocked, except that such funds may be used for the activities authorized by this general license.

(c) This general license does not authorize:

(1) The divestiture or transfer of debt, equity, or other holdings in, to, or for the benefit of the blocked persons described above;

(2) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the blocked persons described in paragraph (a) of this general license; or

(3) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraphs (a) or (b).

(d) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

(e) Effective June 26, 2019, General License No. 15E, dated March 6, 2019, is replaced and superseded in its entirety by this General License No. 15F.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: June 26, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

General License No. 15G

Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts With GAZ Group, and Certain Automotive Safety and Environmental Activities

(a) Except as provided in paragraphs (b) and (c) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary to (1) the maintenance or wind down of operations, contracts, or other agreements, including the importation of goods, services, or technology into the United States, involving GAZ Group or any other entity in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest and that were in effect prior to April 6, 2018, (2) research and development regarding, and the related purchase, manufacture, and installation of, Electronic Stability Program systems and other advanced driver-assistance systems, or components thereof, consistent with applicable automotive safety regulatory requirements, in vehicles produced by GAZ Group or any other entity in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest, or (3) research and development regarding, and the related purchase, manufacture, and installation of, components necessary to implement Euro 5/6 emissions standards in vehicles produced by GAZ Group or any other entity in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest, are authorized through 12:01 a.m. eastern daylight time, March 31, 2020.

(b) All funds in accounts of blocked persons identified in paragraph (a) that were blocked as of 12:01 a.m. eastern daylight time, May 22, 2018, remain blocked, except that such funds may be used for the activities authorized by this general license.

(c) This general license does not authorize:

(1) The divestiture or transfer of debt, equity, or other holdings in, to, or for the benefit of the blocked persons described above;

(2) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the blocked persons described in paragraph (a) of this general license; or

(3) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraphs (a) or (b).

(d) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

(e) Effective November 1, 2019, General License No. 15F, dated June 26, 2019, is replaced and superseded in its entirety by this General License No. 15G.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: November 1, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

General License No. 15H

Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts With GAZ Group, and Certain Automotive Safety and Environmental Activities

(a) Except as provided in paragraphs (b) and (c) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary to (1) the maintenance or wind down of operations, contracts, or other agreements, including the importation of goods, services, or technology into the United States, involving GAZ Group or any other entity in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest and that were in effect prior to April 6, 2018, (2) research and development regarding, and the related purchase, manufacture, and installation of, Electronic Stability Program systems and other advanced driver-assistance systems, or components thereof, consistent with applicable automotive safety regulatory requirements, in vehicles produced by GAZ Group or any other entity in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest, (3) research and development regarding, and the related purchase, manufacture, and installation of, components necessary to implement Euro 5/6 emissions standards in vehicles produced by GAZ Group or any other entity in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest, or (4) the installation of occupant safety systems (including steering wheels, airbags, and seat belts) consistent with applicable automotive safety regulatory requirements in vehicles produced by GAZ Group or any other entity in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest, are authorized through

12:01 a.m. eastern daylight time, July 22, 2020.

(b) All funds in accounts of blocked persons identified in paragraph (a) that were blocked as of 12:01 a.m. eastern daylight time, May 22, 2018, remain blocked, except that such funds may be used for the activities authorized by this general license.

(c) This general license does not authorize:

(1) The divestiture or transfer of debt, equity, or other holdings in, to, or for the benefit of the blocked persons described above;

(2) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the blocked persons described in paragraph (a) of this general license; or

(3) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraphs (a) or (b).

(d) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

(e) Effective March 20, 2020, General License No. 15G, dated November 1, 2019, is replaced and superseded in its entirety by this General License No. 15H.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: March 20, 2020.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

General License No. 15I

Authorizing Certain Activities Involving GAZ Group

(a) Except as provided in paragraphs (c) and (d) of this general license, transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589 (URSR), that are ordinarily incident and necessary to the manufacture and sale of existing and new models of vehicles, components, and spare parts, including automobiles, light commercial vehicles, trucks, buses, engines/powertrains, produced by GAZ Group, or any entity in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest, are authorized through 12:01 a.m. eastern standard time, January 22, 2021, including:

- Research, design, development, production, modification, upgrade, certification, distribution, and marketing;
- Provision or receipt of services, including warranty, maintenance, logistics, storage, shipping, insurance, security, brokerage, legal, banking and financial (including financing and renegotiation of debt), technical and engineering, advertising, and customer services;
- Entry into joint ventures, contract manufacturing agreements, supplier contracts, and other new contracts associated with activities authorized by paragraph (a);
- Payment and receipt of dividends and other funds owed by or to GAZ Group relating to activities authorized by paragraph (a);
- The conduct of financial transactions associated with activities authorized by paragraph (a); and
- Activities necessary for compliance with paragraph (f)(1)(i), including financial auditing services.

(b) Except as provided in paragraphs (c) and (d) of this general license, all transactions and activities otherwise prohibited by the URSR that are ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements involving GAZ Group, or any other entity in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest, and that were in effect prior to April 6, 2018, including the importation of goods, services, or technology into the United States, are authorized through 12:01 a.m. eastern standard time, January 22, 2021.

(c) All funds in accounts of blocked persons identified in paragraphs (a) and (b) that were blocked as of 12:01 a.m. eastern daylight time, May 22, 2018, remain blocked, except that such funds may be used for the activities authorized by this general license.

(d) This general license does not authorize:

(1) The divestiture or transfer of debt, equity, or other holdings in, to, or for the benefit of the blocked persons described above;

(2) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the blocked persons described in paragraphs (a) and (b) of this general license; or

(3) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraphs (a) or (b).

(e) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, via email to *OFACReport@treasury.gov* (preferred) or mail to Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220.

(f)(1) GAZ Group is required to provide the following information to OFAC:

(i) Audited financial statements and board meeting minutes for GAZ Group, reports of composition and changes to GAZ Group's Board of Directors, lists of any new joint ventures entered into by GAZ Group and any joint ventures under development by GAZ Group in which GAZ Group is a participant, and financing agreements entered into by GAZ Group valued at or exceeding $5 million U.S. dollars. This information must be reported within five days of the close of each calendar quarter.

(ii) Certification that GAZ Group is not acting for or on behalf of Mr. Oleg Deripaska or any other person included on OFAC's list of Specially Designated Nationals and Blocked Persons, and that control over the actions, policies, and decisions of the company rests with GAZ Group's Board of Directors and shareholders. This information must be reported within five days of the close of each calendar month.

(2) Information reported under paragraph (f)(1) of this general license must reference General License 15I and be sent via email to *OFACReport@treasury.gov* (preferred) or mail to Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220.

(g) Effective July 16, 2020, General License No. 15H, dated March 20, 2020, is replaced and superseded in its entirety by this General License No. 15I.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: July 16, 2020.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

General License No. 15I

Authorizing Certain Activities Involving GAZ Group

(a) Except as provided in paragraphs (c) and (d) of this general license, transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589 (URSR), that are ordinarily incident and necessary to the manufacture and sale of existing and new models of vehicles, components, and spare parts, including automobiles, light commercial vehicles, trucks, buses, engines/powertrains, produced by GAZ Group, or any entity in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest, are authorized through 12:01 a.m. eastern standard time, January 26, 2022, including:

- Research, design, development, production, modification, upgrade, certification, distribution, and marketing;
- Provision or receipt of services, including warranty, maintenance, logistics, storage, shipping, insurance, security, brokerage, legal, banking and financial (including financing and renegotiation of debt), technical and engineering, advertising, and customer services;
- Entry into joint ventures, contract manufacturing agreements, supplier contracts, and other new contracts associated with activities authorized by paragraph (a);
- Payment and receipt of dividends and other funds owed by or to GAZ Group relating to activities authorized by paragraph (a);
- The conduct of financial transactions associated with activities authorized by paragraph (a); and
- Activities necessary for compliance with paragraph (f)(1)(i), including financial auditing services.

(b) Except as provided in paragraphs (c) and (d) of this general license, all transactions and activities otherwise prohibited by the URSR that are ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements involving GAZ Group, or any other entity in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest, and that were in effect prior to April 6, 2018, including the importation of goods, services, or technology into the United States, are authorized through 12:01 a.m. eastern standard time, January 26, 2022.

(c) All funds in accounts of blocked persons identified in paragraphs (a) and (b) that were blocked as of 12:01 a.m. eastern daylight time, May 22, 2018, remain blocked, except that such funds may be used for the activities authorized by this general license.

(d) This general license does not authorize:

(1) The divestiture or transfer of debt, equity, or other holdings in, to, or for the benefit of the blocked persons described above;

(2) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the blocked persons described in paragraphs (a) and (b) of this general license; or

(3) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraphs (a) or (b).

(e) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, via email to *OFACReport@treasury.gov* (preferred) or mail to Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220.

(f)(1) GAZ Group is required to provide the following information to OFAC:

(i) Audited financial statements and board meeting minutes for GAZ Group, reports of composition and changes to GAZ Group's Board of Directors, lists of any new joint ventures entered into by GAZ Group and any joint ventures under development by GAZ Group in which GAZ Group is a participant, and financing agreements entered into by GAZ Group valued at or exceeding $5 million U.S. dollars. This information must be reported within five days of the close of each calendar quarter.

(ii) Certification that GAZ Group is not acting for or on behalf of Mr. Oleg Deripaska or any other person included on OFAC's list of Specially Designated Nationals and Blocked Persons, and that control over the actions, policies, and decisions of the company rests with GAZ Group's Board of Directors and shareholders. This information must be reported within five days of the close of each calendar month.

(2) Information reported under paragraph (f)(1) of this general license must reference General License 15J and be sent via email to *OFACReport@treasury.gov* (preferred) or mail to Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220.

(g) Effective December 23, 2020, General License No. 15I, dated July 16, 2020, is replaced and superseded in its entirety by this General License No. 15J.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control.

Dated: December 23, 2020.

Dated: July 19, 2021.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2021–15669 Filed 7–27–21; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 589

Publication of Ukraine-Related Web General License 13 and Subsequent Iterations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing 17 Ukraine-related web general licenses (GLs) in the **Federal Register**: GL 13, GL 13A, GL 13B, GL 13C, GL 13D, GL 13E, GL 13F, GL 13G, GL 13H, GL 13I, GL 13J, GL 13K, GL 13L, GL 13M, GL 13N, and GL 13O, each of which is now expired, and was previously issued on OFAC's website, as well as GL 13P, which was also previously issued on OFAC's website.

DATES: GL 13P was issued on December 23, 2020 and expires on January 26, 2022. See **SUPPLEMENTARY INFORMATION** of this rule for additional relevant dates.

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 March 6, 2014, 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.) 13660, ''Blocking Property of Certain Persons Contributing to the Situation in Ukraine'' (79 FR 13493, March 10, 2014). In E.O. 13660, the President determined that the actions and policies of persons including persons who have asserted governmental authority in the Crimean region without the authorization of the Government of Ukraine that undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets, constitute an unusual and extraordinary threat to the national security and foreign policy of the United States, and declared a national emergency to deal with that threat.

The President subsequently issued E.O. 13661 of March 16, 2014, ''Blocking Property of Additional Persons Contributing to the Situation in Ukraine'' (79 FR 15535, March 19, 2014), and E.O. 13662 of March 20, 2014, ''Blocking Property of Additional Persons Contributing to the Situation in Ukraine'' (79 FR 16169, March 20, 2014), pursuant to the national emergency declared in E.O. 13660. E.O. 13661 and E.O. 13662 expanded the scope of the national emergency declared in E.O. 13660. On May 8, 2014, OFAC published the Ukraine Related Sanctions Regulations, 31 CFR part 589 (the ''Regulations''), to implement E.O. 13660, E.O. 13661, and E.O. 13662 (79 FR 26365, May 8, 2014). The President has issued additional Executive orders pursuant to the national emergency declared in E.O. 13660, and expanded in E.O. 13661 and E.O. 13662, which are not discussed in this publication as they are not relevant to the web GLs being published.

OFAC, in consultation with the Department of State, issued GL 13 on April 6, 2018, pursuant to the Regulations, to authorize certain transactions and activities with specific blocked entities that were otherwise prohibited by the Regulations. Subject to certain conditions, GL 13 authorized activities and transactions that were ordinarily incident and necessary to divest or transfer debt, equity, or other holdings in the entities to a non-U.S. person, or facilitate the transfer of debt, equity, or other holdings in the entities by a non U.S. person to another non-U.S. person. Subsequently, OFAC issued 16 further iterations of GL 13, which extended and expanded the authorization to include entities in which those entities owned, directly or indirectly, a 50 percent or greater interest, and other issuer holdings, and in later iterations narrowed the scope of the authorization, due to the removal of two entities, EN+ Group PLC and United Company RUSAL PLC, from OFAC's Specially Designated Nationals and Blocked Persons List on January 27, 2019.

On May 1, 2018, OFAC issued GL 13A which replaced and superseded GL 13; on May 31, 2018, OFAC issued GL 13B, which replaced and superseded GL 13A; on July 31, 2018, OFAC issued GL 13C, which replaced and superseded GL 13B; on September 21, 2018, OFAC issued GL 13D, which replaced and superseded GL 13C; on October 12, 2018, OFAC issued GL 13E, which replaced and superseded GL 13D; on October 19, 2018, OFAC issued GL 13F, which replaced and superseded GL 13E; on November 9, 2018, OFAC issued GL 13G, which replaced and superseded GL 13F; on December 7, 2018, OFAC issued GL 13H, which replaced and superseded GL 13G; on December 20, 2018, OFAC issued GL 13I, which replaced and superseded GL 13H; on January 16, 2019, OFAC issued GL 13J, which replaced and superseded GL 13I; on March 6, 2019, OFAC issued GL 13K, which replaced and superseded GL 13J; on June 26, 2019, OFAC issued GL 13L, which replaced and superseded GL 13K; on November 1, 2019, OFAC issued GL 13M, which replaced and superseded GL 13L; on March 20, 2020, OFAC issued GL 13N, which replaced and superseded GL 13M; on July 16, 2020, OFAC issued GL 13O, which replaced and superseded GL 13N; and on December 23, 2020, OFAC issued GL 13P, which replaced and superseded GL 13O. GL 13P expires on January 26, 2022. The texts of the following 17 GLs are provided below: GLs 13, 13A, 13B, 13C, 13D, 13E, 13F, 13G, 13H, 13I, 13J, 13K, 13L, 13M, 13N, 13O, and 13P.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

General License No. 13

Authorizing Certain Transactions Necessary To Divest or Transfer Debt, Equity, or Other Holdings in Certain Blocked Persons

(a) Except as provided in paragraph (c) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary to divest or transfer debt, equity, or other holdings in the following blocked persons to a non-U.S. person, or to facilitate the transfer of debt, equity, or other holdings in the following blocked persons by a non-U.S. person to another non-U.S. person, are authorized through 12:01 a.m. eastern daylight time, May 7, 2018:

- EN+ Group PLC
- GAZ Group
- United Company RUSAL PLC

(b) The transactions and activities authorized in paragraph (a) include facilitating, clearing, and settling transactions to divest to a non-U.S. person debt, equity, or other holdings in the blocked persons identified in paragraph (a), including on behalf of U.S. persons.

(c) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraph (a);

(2) U.S. persons to sell debt, equity, or other holdings to; to purchase or invest in debt, equity, or other holdings in; or to facilitate such transactions with, directly or indirectly, any person whose property and interests in property are blocked pursuant to 31 CFR part 589, including the blocked persons identified in paragraph (a);

(3) Any transactions or dealings involving the property or interests in property of any person whose property and interests in property are blocked pursuant to 31 CFR part 589 other than the blocked persons listed in paragraph (a) of this general license; or

(4) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V.

(d) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of

parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

Andrea Gacki,

Acting Director, Office of Foreign Assets Control.

Dated: April 6, 2018.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

General License No. 13A

Authorizing Certain Transactions Necessary To Divest or Transfer Debt, Equity, or Other Holdings in Certain Blocked Persons

(a) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in the following blocked persons to a non-U.S. person, or (2) to facilitate the transfer of debt, equity, or other holdings in the following blocked persons by a non-U.S. person to another non-U.S. person, are authorized through 12:01 a.m. eastern daylight time, June 6, 2018:

- EN+ Group PLC
- GAZ Group
- United Company RUSAL PLC

(b) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by 31 CFR part 589 that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or in entities in which those persons own, directly or indirectly, a 50 percent or greater interest, that were issued by the persons listed below (hereinafter, ''Other Issuer Holdings''), to a non-U.S. person; or (2) to facilitate the transfer of Other Issuer Holdings by a non-U.S. person to another non-U.S. person, are authorized through 12:01 a.m. eastern daylight time, June 6, 2018:

- Irkutskenergo
- GAZ Auto Plant
- Rusal Capital Designated Activity Company

(c) The transactions and activities authorized in paragraphs (a) and (b) include facilitating, clearing, and settling transactions to divest to a non-U.S. person debt, equity, or other holdings in EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or Other Issuer Holdings as described in paragraph (b), including on behalf of U.S. persons.

(d) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to any other part of 31 CFR chapter V;

(2) U.S. persons to sell debt, equity, or other holdings to; to purchase or invest in debt, equity, or other holdings in; or to facilitate such transactions with, directly or indirectly, any person whose property and interests in property are blocked pursuant to 31 CFR part 589, including EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, other than purchases of or investments in debt, equity, or other holdings in those persons, or Other Issuer Holdings as described in paragraph (b) (including settlement of purchases or sales that were pending on April 6, 2018), that are ordinarily incident and necessary to the divestment or transfer of debt, equity, or other holdings in EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or Other Issuer Holdings as described in paragraph (b);

(3) Any transactions or dealings involving the property or interests in property of any person whose property and interests in property are blocked pursuant to 31 CFR part 589 other than EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or any entity in which those persons have a 50 percent or greater interest consistent with the authorization in paragraph (b) of this general license; or

(4) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V.

(e) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

(f) Effective May 1, 2018, General License No. 13, dated April 6, 2018, is replaced and superseded in its entirety by this General License No. 13A.

John E. Smith,

Director, Office of Foreign Assets Control.

Dated: May 1, 2018.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

General License No. 13B

Authorizing Certain Transactions Necessary To Divest or Transfer Debt, Equity, or Other Holdings in Certain Blocked Persons

(a) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in the following blocked persons to a non-U.S. person, or (2) to facilitate the transfer of debt, equity, or other holdings in the following blocked persons by a non-U.S. person to another non-U.S. person, are authorized through 12:01 a.m. eastern daylight time, August 5, 2018:

- EN+ Group PLC
- GAZ Group
- United Company RUSAL PLC

(b) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by 31 CFR part 589 that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or in entities in which those persons own, directly or indirectly, a 50 percent or greater interest, that were issued by the persons listed below (hereinafter, ''Other Issuer Holdings''), to a non-U.S. person; or (2) to facilitate the transfer of Other Issuer Holdings by a non-U.S. person to another non-U.S. person, are authorized through 12:01 a.m. eastern daylight time, August 5, 2018:

- Irkutskenergo
- GAZ Auto Plant
- Rusal Capital Designated Activity Company

(c) The transactions and activities authorized in paragraphs (a) and (b) include facilitating, clearing, and settling transactions to divest to a non-U.S. person debt, equity, or other holdings in EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or Other Issuer Holdings as described in paragraph (b), including on behalf of U.S. persons.

(d) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to any other part of 31 CFR chapter V;

(2) U.S. persons to sell debt, equity, or other holdings to; to purchase or invest in debt, equity, or other holdings in; or to facilitate such transactions with, directly or indirectly, any person whose property and interests in property are blocked pursuant to 31 CFR part 589, including EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, other than purchases of or investments in debt, equity, or other holdings in those persons, or Other Issuer Holdings as described in paragraph (b) (including settlement of purchases or sales that were pending on April 6, 2018), that are ordinarily incident and necessary to the divestment or transfer of debt, equity, or other holdings in EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or Other Issuer Holdings as described in paragraph (b);

(3) Any transactions or dealings involving the property or interests in property of any person whose property and interests in property are blocked pursuant to 31 CFR part 589 other than EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or any entity in which those persons have a 50 percent or greater interest consistent with the authorization in paragraph (b) of this general license; or

(4) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V.

(e) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

(f) Effective May 31, 2018, General License No. 13A, dated May 1, 2018, is replaced and superseded in its entirety by this General License No. 13B.

Andrea Gacki,

Acting Director, Office of Foreign Assets Control.

Dated: May 31, 2018.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

General License No. 13C

Authorizing Certain Transactions Necessary To Divest or Transfer Debt, Equity, or Other Holdings in Certain Blocked Persons

(a) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in the following blocked persons to a non-U.S. person, or (2) to facilitate the transfer of debt, equity, or other holdings in the following blocked persons by a non-U.S. person to another non-U.S. person, are authorized through 12:01 a.m. eastern daylight time, October 23, 2018:

- EN+ Group PLC
- GAZ Group
- United Company RUSAL PLC

(b) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by 31 CFR part 589 that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or in entities in which those persons own, directly or indirectly, a 50 percent or greater interest, that were issued by the persons listed below (hereinafter, ''Other Issuer Holdings''), to a non-U.S. person; or (2) to facilitate the transfer of Other Issuer Holdings by a non-U.S. person to another non-U.S. person, are authorized through 12:01 a.m. eastern daylight time, October 23, 2018:

- Irkutskenergo
- GAZ Auto Plant
- Rusal Capital Designated Activity Company

(c) The transactions and activities authorized in paragraphs (a) and (b) include facilitating, clearing, and settling transactions to divest to a non-U.S. person debt, equity, or other holdings in EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or Other Issuer Holdings as described in paragraph (b), including on behalf of U.S. persons.

(d) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to any other part of 31 CFR chapter V;

(2) U.S. persons to sell debt, equity, or other holdings to; to purchase or invest in debt, equity, or other holdings in; or to facilitate such transactions with, directly or indirectly, any person whose property and interests in property are blocked pursuant to 31 CFR part 589, including EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, other than purchases of or investments in debt, equity, or other holdings in those persons, or Other Issuer Holdings as described in paragraph (b) (including settlement of purchases or sales that were pending on April 6, 2018), that are ordinarily incident and necessary to the divestment or transfer of debt, equity, or other holdings in EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or Other Issuer Holdings as described in paragraph (b);

(3) Any transactions or dealings involving the property or interests in property of any person whose property and interests in property are blocked pursuant to 31 CFR part 589 other than EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or any entity in which those persons have a 50 percent or greater interest consistent with the authorization in paragraph (b) of this general license; or

(4) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V.

(e) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

(f) Effective July 31, 2018, General License No. 13B, dated May 31, 2018, is replaced and superseded in its entirety by this General License No. 13C.

Andrea Gacki,

Acting Director, Office of Foreign Assets Control.

Dated: July 31, 2018.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

General License No. 13D

Authorizing Certain Transactions Necessary To Divest or Transfer Debt, Equity, or Other Holdings in Certain Blocked Persons

(a) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in the following blocked persons to a non-U.S. person, or (2) to facilitate the transfer of debt, equity, or other holdings in the following blocked persons by a non-U.S. person to another non-U.S. person, are authorized through the Applicable Expiration Date, as defined in paragraph (f) of this general license:

- EN+ Group PLC
- GAZ Group
- United Company RUSAL PLC

(b) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by 31 CFR part 589 that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or in entities in which those persons own, directly or indirectly, a 50 percent or greater interest, that were issued by the persons listed below (hereinafter, ''Other Issuer Holdings''), to a non-U.S. person; or (2) to facilitate the transfer of Other Issuer Holdings by a non-U.S. person to another non-U.S. person, are authorized through the Applicable Expiration Date, as defined in paragraph (f) of this general license:

- Irkutskenergo
- GAZ Auto Plant
- Rusal Capital Designated Activity Company

(c) The transactions and activities authorized in paragraphs (a) and (b) include facilitating, clearing, and settling transactions to divest to a non-U.S. person debt, equity, or other holdings in EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or Other Issuer Holdings as described in paragraph (b), including on behalf of U.S. persons.

(d) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to any other part of 31 CFR chapter V;

(2) U.S. persons to sell debt, equity, or other holdings to; to purchase or invest in debt, equity, or other holdings in; or to facilitate such transactions with, directly or indirectly, any person whose property and interests in property are blocked pursuant to 31 CFR part 589, including EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, other than purchases of or investments in debt, equity, or other holdings in those persons, or Other Issuer Holdings as described in paragraph (b) (including settlement of purchases or sales that were pending on April 6, 2018), that are ordinarily incident and necessary to the divestment or transfer of debt, equity, or other holdings in EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or Other Issuer Holdings as described in paragraph (b);

(3) Any transactions or dealings involving the property or interests in property of any person whose property and interests in property are blocked pursuant to 31 CFR part 589 other than EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or any entity in which those persons have a 50 percent or greater interest consistent with the authorization in paragraph (b) of this general license; or

(4) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V.

(e) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

(f) For purposes of this general license, the term *Applicable Expiration Date* means:

(1) With respect to transactions authorized by this general license involving GAZ Group or entities in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest, 12:01 a.m. eastern daylight time, October 23, 2018; and

(2) With respect to transactions authorized by this general license involving EN+ Group PLC or United Company RUSAL PLC, or entities in which those persons own, directly or indirectly, a 50 percent or greater interest, 12:01 eastern standard time, November 12, 2018.

(g) Effective September 21, 2018, General License No. 13C, dated July 31, 2018, is replaced and superseded in its entirety by this General License No. 13D.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: September 21, 2018.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

General License No. 13E

Authorizing Certain Transactions Necessary To Divest or Transfer Debt, Equity, or Other Holdings in Certain Blocked Persons

(a) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in the following blocked persons to a non-U.S. person, or (2) to facilitate the transfer of debt, equity, or other holdings in the following blocked persons by a non-U.S. person to another non-U.S. person, are authorized through the Applicable Expiration Date, as defined in paragraph (f) of this general license:

- EN+ Group PLC
- GAZ Group
- United Company RUSAL PLC

(b) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by 31 CFR part 589 that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or in entities in which those persons own, directly or indirectly, a 50 percent or greater interest, that were issued by the persons listed below (hereinafter, ''Other Issuer Holdings''), to a non-U.S. person; or (2) to facilitate the transfer of Other Issuer Holdings by a non-U.S. person to another non-U.S. person, are authorized through the Applicable Expiration Date, as defined in paragraph (f) of this general license:

- Irkutskenergo
- GAZ Auto Plant
- Rusal Capital Designated Activity Company

(c) The transactions and activities authorized in paragraphs (a) and (b) include facilitating, clearing, and settling transactions to divest to a non-

U.S. person debt, equity, or other holdings in EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or Other Issuer Holdings as described in paragraph (b), including on behalf of U.S. persons.

(d) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to any other part of 31 CFR chapter V;

(2) U.S. persons to sell debt, equity, or other holdings to; to purchase or invest in debt, equity, or other holdings in; or to facilitate such transactions with, directly or indirectly, any person whose property and interests in property are blocked pursuant to 31 CFR part 589, including EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, other than purchases of or investments in debt, equity, or other holdings in those persons, or Other Issuer Holdings as described in paragraph (b) (including settlement of purchases or sales that were pending on April 6, 2018), that are ordinarily incident and necessary to the divestment or transfer of debt, equity, or other holdings in EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or Other Issuer Holdings as described in paragraph (b);

(3) Any transactions or dealings involving the property or interests in property of any person whose property and interests in property are blocked pursuant to 31 CFR part 589 other than EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or any entity in which those persons have a 50 percent or greater interest consistent with the authorization in paragraph (b) of this general license; or

(4) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V.

(e) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

(f) For purposes of this general license, the term *Applicable Expiration Date* means:

(1) With respect to transactions authorized by this general license involving GAZ Group or entities in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest, 12:01 a.m. eastern daylight time, October 23, 2018; and

(2) With respect to transactions authorized by this general license involving EN+ Group PLC or United Company RUSAL PLC, or entities in which those persons own, directly or indirectly, a 50 percent or greater interest, 12:01 eastern standard time, December 12, 2018.

(g) Effective October 12, 2018, General License No. 13D, dated September 21, 2018, is replaced and superseded in its entirety by this General License No. 13E.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: October 12, 2018.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

General License No. 13F

Authorizing Certain Transactions Necessary To Divest or Transfer Debt, Equity, or Other Holdings in Certain Blocked Persons

(a) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in the following blocked persons to a non-U.S. person, or (2) to facilitate the transfer of debt, equity, or other holdings in the following blocked persons by a non-U.S. person to another non-U.S. person, are authorized through the Applicable Expiration Date, as defined in paragraph (f) of this general license:

- EN+ Group PLC
- GAZ Group
- United Company RUSAL PLC

(b) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by 31 CFR part 589 that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or in entities in which those persons own, directly or indirectly, a 50 percent or greater interest, that were issued by the persons listed below (hereinafter, ''Other Issuer Holdings''), to a non-U.S. person; or (2) to facilitate the transfer of Other Issuer Holdings by a non-U.S. person to another non-U.S. person, are authorized through the Applicable Expiration Date, as defined in paragraph (f) of this general license:

- Irkutskenergo
- GAZ Auto Plant
- Rusal Capital Designated Activity Company

(c) The transactions and activities authorized in paragraphs (a) and (b) include facilitating, clearing, and settling transactions to divest to a non-U.S. person debt, equity, or other holdings in EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or Other Issuer Holdings as described in paragraph (b), including on behalf of U.S. persons.

(d) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to any other part of 31 CFR chapter V;

(2) U.S. persons to sell debt, equity, or other holdings to; to purchase or invest in debt, equity, or other holdings in; or to facilitate such transactions with, directly or indirectly, any person whose property and interests in property are blocked pursuant to 31 CFR part 589, including EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, other than purchases of or investments in debt, equity, or other holdings in those persons, or Other Issuer Holdings as described in paragraph (b) (including settlement of purchases or sales that were pending on April 6, 2018), that are ordinarily incident and necessary to the divestment or transfer of debt, equity, or other holdings in EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or Other Issuer Holdings as described in paragraph (b);

(3) Any transactions or dealings involving the property or interests in property of any person whose property and interests in property are blocked pursuant to 31 CFR part 589 other than EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or any entity in which those persons have a 50 percent or greater interest consistent with the authorization in paragraph (b) of this general license; or

(4) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V.

(e) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S.

Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

(f) For purposes of this general license, the term *Applicable Expiration Date* means:

(1) With respect to transactions authorized by this general license involving GAZ Group or entities in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest, 12:01 a.m. eastern standard time, December 12, 2018; and

(2) With respect to transactions authorized by this general license involving EN+ Group PLC or United Company RUSAL PLC, or entities in which those persons own, directly or indirectly, a 50 percent or greater interest, 12:01 eastern standard time, December 12, 2018.

(g) Effective October 19, 2018, General License No. 13E, dated October 12, 2018, is replaced and superseded in its entirety by this General License No. 13F.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: October 19, 2018.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

General License No. 13G

Authorizing Certain Transactions Necessary To Divest or Transfer Debt, Equity, or Other Holdings in Certain Blocked Persons

(a) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in the following blocked persons to a non-U.S. person, or (2) to facilitate the transfer of debt, equity, or other holdings in the following blocked persons by a non-U.S. person to another non-U.S. person, are authorized through the Applicable Expiration Date, as defined in paragraph (f) of this general license:

- EN+ Group PLC
- GAZ Group
- United Company RUSAL PLC

(b) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by 31 CFR part 589 that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or in entities in which those persons own, directly or indirectly, a 50 percent or greater interest, that were issued by the persons listed below (hereinafter, ''Other Issuer Holdings''), to a non-U.S. person; or (2) to facilitate the transfer of Other Issuer Holdings by a non-U.S. person to another non-U.S. person, are authorized through the Applicable Expiration Date, as defined in paragraph (f) of this general license:

- Irkutskenergo
- GAZ Auto Plant
- Rusal Capital Designated Activity Company

(c) The transactions and activities authorized in paragraphs (a) and (b) include facilitating, clearing, and settling transactions to divest to a non-U.S. person debt, equity, or other holdings in EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or Other Issuer Holdings as described in paragraph (b), including on behalf of U.S. persons.

(d) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to any other part of 31 CFR chapter V;

(2) U.S. persons to sell debt, equity, or other holdings to; to purchase or invest in debt, equity, or other holdings in; or to facilitate such transactions with, directly or indirectly, any person whose property and interests in property are blocked pursuant to 31 CFR part 589, including EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, other than purchases of or investments in debt, equity, or other holdings in those persons, or Other Issuer Holdings as described in paragraph (b) (including settlement of purchases or sales that were pending on April 6, 2018), that are ordinarily incident and necessary to the divestment or transfer of debt, equity, or other holdings in EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or Other Issuer Holdings as described in paragraph (b);

(3) Any transactions or dealings involving the property or interests in property of any person whose property and interests in property are blocked pursuant to 31 CFR part 589 other than EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or any entity in which those persons have a 50 percent or greater interest consistent with the authorization in paragraph (b) of this general license; or

(4) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V.

(e) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

(f) For purposes of this general license, the term *Applicable Expiration Date* means 12:01 a.m. eastern standard time January 7, 2019.

(g) Effective November 9, 2018, General License No. 13F, dated October 19, 2018, is replaced and superseded in its entirety by this General License No. 13G.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: November 9, 2018.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

General License No. 13H

Authorizing Certain Transactions Necessary To Divest or Transfer Debt, Equity, or Other Holdings in Certain Blocked Persons

(a) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in the following blocked persons to a non-U.S. person, or (2) to facilitate the transfer of debt, equity, or other holdings in the following blocked persons by a non-U.S. person to another non-U.S. person, are authorized through the Applicable Expiration Date, as defined in paragraph (f) of this general license:

- EN+ Group PLC
- GAZ Group
- United Company RUSAL PLC

(b) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by 31 CFR part 589 that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or in entities in which those persons own, directly or indirectly, a 50 percent or greater interest, that were issued by

the persons listed below (hereinafter, ''Other Issuer Holdings''), to a non-U.S. person; or (2) to facilitate the transfer of Other Issuer Holdings by a non-U.S. person to another non-U.S. person, are authorized through the Applicable Expiration Date, as defined in paragraph (f) of this general license:

- Irkutskenergo
- GAZ Auto Plant
- Rusal Capital Designated Activity Company

(c) The transactions and activities authorized in paragraphs (a) and (b) include facilitating, clearing, and settling transactions to divest to a non-U.S. person debt, equity, or other holdings in EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or Other Issuer Holdings as described in paragraph (b), including on behalf of U.S. persons.

(d) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to any other part of 31 CFR chapter V;

(2) U.S. persons to sell debt, equity, or other holdings to; to purchase or invest in debt, equity, or other holdings in; or to facilitate such transactions with, directly or indirectly, any person whose property and interests in property are blocked pursuant to 31 CFR part 589, including EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, other than purchases of or investments in debt, equity, or other holdings in those persons, or Other Issuer Holdings as described in paragraph (b) (including settlement of purchases or sales that were pending on April 6, 2018), that are ordinarily incident and necessary to the divestment or transfer of debt, equity, or other holdings in EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or Other Issuer Holdings as described in paragraph (b);

(3) Any transactions or dealings involving the property or interests in property of any person whose property and interests in property are blocked pursuant to 31 CFR part 589 other than EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or any entity in which those persons have a 50 percent or greater interest consistent with the authorization in paragraph (b) of this general license; or

(4) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V.

(e) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

(f) For purposes of this general license, the term *Applicable Expiration Date* means 12:01 a.m. eastern standard time January 21, 2019.

(g) Effective December 7, 2018, General License No. 13G, dated November 9, 2018, is replaced and superseded in its entirety by this General License No. 13H.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: December 7, 2018.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

General License No. 13I

Authorizing Certain Transactions Necessary To Divest or Transfer Debt, Equity, or Other Holdings in Certain Blocked Persons

(a) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in the following blocked persons to a non-U.S. person, or (2) to facilitate the transfer of debt, equity, or other holdings in the following blocked persons by a non-U.S. person to another non-U.S. person, are authorized through the Applicable Expiration Date, as defined in paragraph (f) of this general license:

- EN+ Group PLC
- GAZ Group
- United Company RUSAL PLC

(b) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by 31 CFR part 589 that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or in entities in which those persons own, directly or indirectly, a 50 percent or greater interest, that were issued by the persons listed below (hereinafter, ''Other Issuer Holdings''), to a non-U.S. person; or (2) to facilitate the transfer of Other Issuer Holdings by a non-U.S. person to another non-U.S. person, are authorized through the Applicable Expiration Date, as defined in paragraph (f) of this general license:

- Irkutskenergo
- GAZ Auto Plant
- Rusal Capital Designated Activity Company

(c) The transactions and activities authorized in paragraphs (a) and (b) include facilitating, clearing, and settling transactions to divest to a non-U.S. person debt, equity, or other holdings in EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or Other Issuer Holdings as described in paragraph (b), including on behalf of U.S. persons.

(d) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to any other part of 31 CFR chapter V;

(2) U.S. persons to sell debt, equity, or other holdings to; to purchase or invest in debt, equity, or other holdings in; or to facilitate such transactions with, directly or indirectly, any person whose property and interests in property are blocked pursuant to 31 CFR part 589, including EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, other than purchases of or investments in debt, equity, or other holdings in those persons, or Other Issuer Holdings as described in paragraph (b) (including settlement of purchases or sales that were pending on April 6, 2018), that are ordinarily incident and necessary to the divestment or transfer of debt, equity, or other holdings in EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or Other Issuer Holdings as described in paragraph (b);

(3) Any transactions or dealings involving the property or interests in property of any person whose property and interests in property are blocked pursuant to 31 CFR part 589 other than EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or any entity in which those persons have a 50 percent or greater interest consistent with the authorization in paragraph (b) of this general license; or

(4) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V.

(e) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the

Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

(f) For purposes of this general license, the term *Applicable Expiration Date* means:

(1) With respect to transactions authorized by this general license involving GAZ Group or entities in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest, 12:01 a.m. eastern standard time, March 7, 2019; and

(2) With respect to transactions authorized by this general license involving EN+ Group PLC or United Company RUSAL PLC, or entities in which those persons own, directly or indirectly, a 50 percent or greater interest, 12:01 a.m. eastern standard time January 21, 2019.

(g) Effective December 20, 2018, General License No. 13H, dated December 7, 2018, is replaced and superseded in its entirety by this General License No. 13I.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: December 20, 2018.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

General License No. 13J

Authorizing Certain Transactions Necessary To Divest or Transfer Debt, Equity, or Other Holdings in Certain Blocked Persons

(a) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in the following blocked persons to a non-U.S. person, or (2) to facilitate the transfer of debt, equity, or other holdings in the following blocked persons by a non-U.S. person to another non-U.S. person, are authorized through the Applicable Expiration Date, as defined in paragraph (f) of this general license:

- EN+ Group PLC
- GAZ Group
- United Company RUSAL PLC

(b) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by 31 CFR part 589 that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or in entities in which those persons own, directly or indirectly, a 50 percent or greater interest, that were issued by the persons listed below (hereinafter, ''Other Issuer Holdings''), to a non-U.S. person; or (2) to facilitate the transfer of Other Issuer Holdings by a non-U.S. person to another non-U.S. person, are authorized through the Applicable Expiration Date, as defined in paragraph (f) of this general license:

- Irkutskenergo
- GAZ Auto Plant
- Rusal Capital Designated Activity Company

(c) The transactions and activities authorized in paragraphs (a) and (b) include facilitating, clearing, and settling transactions to divest to a non-U.S. person debt, equity, or other holdings in EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or Other Issuer Holdings as described in paragraph (b), including on behalf of U.S. persons.

(d) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to any other part of 31 CFR chapter V;

(2) U.S. persons to sell debt, equity, or other holdings to; to purchase or invest in debt, equity, or other holdings in; or to facilitate such transactions with, directly or indirectly, any person whose property and interests in property are blocked pursuant to 31 CFR part 589, including EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, other than purchases of or investments in debt, equity, or other holdings in those persons, or Other Issuer Holdings as described in paragraph (b) (including settlement of purchases or sales that were pending on April 6, 2018), that are ordinarily incident and necessary to the divestment or transfer of debt, equity, or other holdings in EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or Other Issuer Holdings as described in paragraph (b);

(3) Any transactions or dealings involving the property or interests in property of any person whose property and interests in property are blocked pursuant to 31 CFR part 589 other than EN+ Group PLC, GAZ Group, or United Company RUSAL PLC, or any entity in which those persons have a 50 percent or greater interest consistent with the authorization in paragraph (b) of this general license; or

(4) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V.

(e) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

(f) For purposes of this general license, the term *Applicable Expiration Date* means:

(1) With respect to transactions authorized by this general license involving GAZ Group or entities in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest, 12:01 a.m. eastern standard time, March 7, 2019; and

(2) With respect to transactions authorized by this general license involving EN+ Group PLC or United Company RUSAL PLC, or entities in which those persons own, directly or indirectly, a 50 percent or greater interest, 12:01 a.m. eastern standard time, January 28, 2019.

(g) Effective January 16, 2019, General License No. 13I, dated December 20, 2018, is replaced and superseded in its entirety by this General License No. 13J.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: January 16, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

General License No. 13K

Authorizing Certain Transactions Necessary To Divest or Transfer Debt, Equity, or Other Holdings in GAZ Group

(a) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in GAZ Group to a non-U.S. person, or (2) to facilitate the transfer of debt, equity, or other holdings in GAZ Group by a non-U.S. person to another non-U.S. person, are authorized through 12:01 a.m. eastern daylight time, July 6, 2019.

(b) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by 31 CFR part 589 that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in GAZ Group, or in entities in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest, that were issued by GAZ Auto Plant (hereinafter, ''Other Issuer Holdings''), to a non-U.S. person; or (2) to facilitate the transfer of Other Issuer Holdings by a non-U.S. person to another non-U.S. person, are authorized through 12:01 a.m. eastern daylight time, July 6, 2019.

(c) The transactions and activities authorized in paragraphs (a) and (b) include facilitating, clearing, and settling transactions to divest to a non-U.S. person debt, equity, or other holdings in GAZ Group, or Other Issuer Holdings as described in paragraph (b), including on behalf of U.S. persons.

(d) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to any other part of 31 CFR chapter V;

(2) U.S. persons to sell debt, equity, or other holdings to; to purchase or invest in debt, equity, or other holdings in; or to facilitate such transactions with, directly or indirectly, any person whose property and interests in property are blocked pursuant to 31 CFR part 589, including GAZ Group, other than purchases of or investments in debt, equity, or other holdings in those persons, or Other Issuer Holdings as described in paragraph (b) (including settlement of purchases or sales that were pending on April 6, 2018), that are ordinarily incident and necessary to the divestment or transfer of debt, equity, or other holdings in GAZ Group, or Other Issuer Holdings as described in paragraph (b);

(3) Any transactions or dealings involving the property or interests in property of any person whose property and interests in property are blocked pursuant to 31 CFR part 589 other than GAZ Group, or any entity in which GAZ Group has a 50 percent or greater interest consistent with the authorization in paragraph (b) of this general license; or

(4) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V.

(e) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

(f) Effective March 6, 2019, General License No. 13J, dated January 16, 2019, is replaced and superseded in its entirety by this General License No. 13K.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: March 6, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

General License No. 13L

Authorizing Certain Transactions Necessary To Divest or Transfer Debt, Equity, or Other Holdings in GAZ Group

(a) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in GAZ Group to a non-U.S. person, or (2) to facilitate the transfer of debt, equity, or other holdings in GAZ Group by a non-U.S. person to another non-U.S. person, are authorized through 12:01 a.m. eastern standard time, November 8, 2019.

(b) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by 31 CFR part 589 that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in GAZ Group, or in entities in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest, that were issued by GAZ Auto Plant (hereinafter, ''Other Issuer Holdings''), to a non-U.S. person; or (2) to facilitate the transfer of Other Issuer Holdings by a non-U.S. person to another non-U.S. person, are authorized through 12:01 a.m. eastern standard time, November 8, 2019.

(c) The transactions and activities authorized in paragraphs (a) and (b) include facilitating, clearing, and settling transactions to divest to a non-U.S. person debt, equity, or other holdings in GAZ Group, or Other Issuer Holdings as described in paragraph (b), including on behalf of U.S. persons.

(d) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to any other part of 31 CFR chapter V;

(2) U.S. persons to sell debt, equity, or other holdings to; to purchase or invest in debt, equity, or other holdings in; or to facilitate such transactions with, directly or indirectly, any person whose property and interests in property are blocked pursuant to 31 CFR part 589, including GAZ Group, other than purchases of or investments in debt, equity, or other holdings in those persons, or Other Issuer Holdings as described in paragraph (b) (including settlement of purchases or sales that were pending on April 6, 2018), that are ordinarily incident and necessary to the divestment or transfer of debt, equity, or other holdings in GAZ Group, or Other Issuer Holdings as described in paragraph (b);

(3) Any transactions or dealings involving the property or interests in property of any person whose property and interests in property are blocked pursuant to 31 CFR part 589 other than GAZ Group, or any entity in which GAZ Group has a 50 percent or greater interest consistent with the authorization in paragraph (b) of this general license; or

(4) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V.

(e) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

(f) Effective June 26, 2019, General License No. 13K, dated March 6, 2019, is replaced and superseded in its entirety by this General License No. 13L.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: June 26, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

General License No. 13M

Authorizing Certain Transactions Necessary To Divest or Transfer Debt, Equity, or Other Holdings in GAZ Group

(a) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in GAZ Group to a non-U.S. person, or (2) to facilitate the transfer of debt, equity, or other holdings in GAZ Group by a non-U.S. person to another non-U.S. person, are authorized through 12:01 a.m. eastern daylight time, March 31, 2020.

(b) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by 31 CFR part 589 that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in GAZ Group, or in entities in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest, that were issued by GAZ Auto Plant (hereinafter, ''Other Issuer Holdings''), to a non-U.S. person; or (2) to facilitate the transfer of Other Issuer Holdings by a non-U.S. person to another non-U.S. person, are authorized through 12:01 a.m. eastern daylight time, March 31, 2020.

(c) The transactions and activities authorized in paragraphs (a) and (b) include facilitating, clearing, and settling transactions to divest to a non-U.S. person debt, equity, or other holdings in GAZ Group, or Other Issuer Holdings as described in paragraph (b), including on behalf of U.S. persons.

(d) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to any other part of 31 CFR chapter V;

(2) U.S. persons to sell debt, equity, or other holdings to; to purchase or invest in debt, equity, or other holdings in; or to facilitate such transactions with, directly or indirectly, any person whose property and interests in property are blocked pursuant to 31 CFR part 589, including GAZ Group, other than purchases of or investments in debt, equity, or other holdings in those persons, or Other Issuer Holdings as described in paragraph (b) (including settlement of purchases or sales that were pending on April 6, 2018), that are ordinarily incident and necessary to the divestment or transfer of debt, equity, or other holdings in GAZ Group, or Other Issuer Holdings as described in paragraph (b);

(3) Any transactions or dealings involving the property or interests in property of any person whose property and interests in property are blocked pursuant to 31 CFR part 589 other than GAZ Group, or any entity in which GAZ Group has a 50 percent or greater interest consistent with the authorization in paragraph (b) of this general license; or

(4) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V.

(e) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

(f) Effective November 1, 2019, General License No. 13L, dated June 26, 2019, is replaced and superseded in its entirety by this General License No. 13M.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: November 1, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

General License No. 13N

Authorizing Certain Transactions Necessary To Divest or Transfer Debt, Equity, or Other Holdings in GAZ Group

(a) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in GAZ Group to a non-U.S. person, or (2) to facilitate the transfer of debt, equity, or other holdings in GAZ Group by a non-U.S. person to another non-U.S. person, are authorized through 12:01 a.m. eastern daylight time, July 22, 2020.

(b) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by 31 CFR part 589 that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in GAZ Group, or in entities in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest, that were issued by GAZ Auto Plant (hereinafter, ''Other Issuer Holdings''), to a non-U.S. person; or (2) to facilitate the transfer of Other Issuer Holdings by a non-U.S. person to another non-U.S. person, are authorized through 12:01 a.m. eastern daylight time, July 22, 2020.

(c) The transactions and activities authorized in paragraphs (a) and (b) include facilitating, clearing, and settling transactions to divest to a non-U.S. person debt, equity, or other holdings in GAZ Group, or Other Issuer Holdings as described in paragraph (b), including on behalf of U.S. persons.

(d) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to any other part of 31 CFR chapter V;

(2) U.S. persons to sell debt, equity, or other holdings to; to purchase or invest in debt, equity, or other holdings in; or to facilitate such transactions with, directly or indirectly, any person whose property and interests in property are blocked pursuant to 31 CFR part 589, including GAZ Group, other than purchases of or investments in debt, equity, or other holdings in those persons, or Other Issuer Holdings as described in paragraph (b) (including settlement of purchases or sales that were pending on April 6, 2018), that are ordinarily incident and necessary to the divestment or transfer of debt, equity, or other holdings in GAZ Group, or Other Issuer Holdings as described in paragraph (b);

(3) Any transactions or dealings involving the property or interests in property of any person whose property and interests in property are blocked pursuant to 31 CFR part 589 other than GAZ Group, or any entity in which GAZ Group has a 50 percent or greater interest consistent with the authorization in paragraph (b) of this general license; or

(4) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V.

(e) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of

parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

(f) Effective March 20, 2020, General License No. 13M, dated November 1, 2019, is replaced and superseded in its entirety by this General License No. 13N.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: March 20, 2020.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

General License No. 13O

Authorizing Certain Transactions Necessary To Divest or Transfer Debt, Equity, or Other Holdings in GAZ Group

(a) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in GAZ Group to a non-U.S. person, or (2) to facilitate the transfer of debt, equity, or other holdings in GAZ Group by a non-U.S. person to another non-U.S. person, are authorized through 12:01 a.m. eastern standard time, January 22, 2021.

(b) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by 31 CFR part 589 that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in GAZ Group, or in entities in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest, that were issued by GAZ Auto Plant (hereinafter, ''Other Issuer Holdings''), to a non-U.S. person; or (2) to facilitate the transfer of Other Issuer Holdings by a non-U.S. person to another non-U.S. person, are authorized through 12:01 a.m. eastern standard time, January 22, 2021.

(c) The transactions and activities authorized in paragraphs (a) and (b) include facilitating, clearing, and settling transactions to divest to a non-U.S. person debt, equity, or other holdings in GAZ Group, or Other Issuer Holdings as described in paragraph (b), including on behalf of U.S. persons.

(d) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to any other part of 31 CFR chapter V;

(2) U.S. persons to sell debt, equity, or other holdings to; to purchase or invest in debt, equity, or other holdings in; or to facilitate such transactions with, directly or indirectly, any person whose property and interests in property are blocked pursuant to 31 CFR part 589, including GAZ Group, other than purchases of or investments in debt, equity, or other holdings in those persons, or Other Issuer Holdings as described in paragraph (b) (including settlement of purchases or sales that were pending on April 6, 2018), that are ordinarily incident and necessary to the divestment or transfer of debt, equity, or other holdings in GAZ Group, or Other Issuer Holdings as described in paragraph (b);

(3) Any transactions or dealings involving the property or interests in property of any person whose property and interests in property are blocked pursuant to 31 CFR part 589 other than GAZ Group, or any entity in which GAZ Group has a 50 percent or greater interest consistent with the authorization in paragraph (b) of this general license; or

(4) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V.

(e) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email (preferred) to *OFACReport@treasury.gov.*

(f) Effective July 16, 2020, General License No. 13N, dated March 20, 2020, is replaced and superseded in its entirety by this General License No. 13O.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: July 16, 2020.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

General License No. 13P

Authorizing Certain Transactions Necessary To Divest or Transfer Debt, Equity, or Other Holdings in GAZ Group

(a) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in GAZ Group to a non-U.S. person, or (2) to facilitate the transfer of debt, equity, or other holdings in GAZ Group by a non-U.S. person to another non-U.S. person, are authorized through 12:01 a.m. eastern standard time, January 26, 2022.

(b) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by 31 CFR part 589 that are ordinarily incident and necessary (1) to divest or transfer debt, equity, or other holdings in GAZ Group, or in entities in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest, that were issued by GAZ Auto Plant (hereinafter, ''Other Issuer Holdings''), to a non-U.S. person; or (2) to facilitate the transfer of Other Issuer Holdings by a non-U.S. person to another non-U.S. person, are authorized through 12:01 a.m. eastern standard time, January 26, 2022.

(c) The transactions and activities authorized in paragraphs (a) and (b) include facilitating, clearing, and settling transactions to divest to a non-U.S. person debt, equity, or other holdings in GAZ Group, or Other Issuer Holdings as described in paragraph (b), including on behalf of U.S. persons.

(d) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to any other part of 31 CFR chapter V;

(2) U.S. persons to sell debt, equity, or other holdings to; to purchase or invest in debt, equity, or other holdings in; or to facilitate such transactions with, directly or indirectly, any person whose property and interests in property are blocked pursuant to 31 CFR part 589, including GAZ Group, other than purchases of or investments in debt, equity, or other holdings in those persons, or Other Issuer Holdings as described in paragraph (b) (including settlement of purchases or sales that were pending on April 6, 2018), that are

ordinarily incident and necessary to the divestment or transfer of debt, equity, or other holdings in GAZ Group, or Other Issuer Holdings as described in paragraph (b);

(3) Any transactions or dealings involving the property or interests in property of any person whose property and interests in property are blocked pursuant to 31 CFR part 589 other than GAZ Group, or any entity in which GAZ Group has a 50 percent or greater interest consistent with the authorization in paragraph (b) of this general license; or

(4) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V.

(e) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email (preferred) to *OFACReport@treasury.gov.*

(f) Effective December 23, 2020, General License No. 13O, dated July 16, 2020, is replaced and superseded in its entirety by this General License No. 13P.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control.

Dated: December 23, 2020.

Dated: July 19, 2021.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2021–15668 Filed 7–27–21; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2021–0445]

Safety Zone; Coast Guard Exercise Area, Hood Canal, Washington

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

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce regulations for safety zones surrounding vessels involved in Coast Guard training exercises in Hood Canal, WA, from August 1, 2021, through August 14, 2021. This enforcement is necessary to ensure the safety of the maritime public and vessels near these training exercises. During the enforcement period, entry into the safety zones is prohibited, unless authorized by the Captain of the Port or their Designated Representative.

DATES: The regulations in 33 CFR 165.1339 will be enforced from 8 a.m. on August 1, 2021, through 5 p.m. on August 14, 2021.

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

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones around vessels involved in Coast Guard training exercises in Hood Canal, WA, set forth in 33 CFR 165.1339, from 8 a.m. on August 1, 2021, through 5 p.m. on August 14, 2021. Under the provisions of 33 CFR 165.1339, no person or vessel may enter or remain within 500 yards of any vessel involved in Coast Guard training exercises while such vessel is transiting Hood Canal, WA, between Foul Weather Bluff and the entrance to Dabob Bay, unless authorized by the Captain of the Port or their Designated Representative. In addition, the regulation requires all vessel operators seeking to enter any of the zones during the enforcement period to first obtain permission. You may seek permission by contacting the on-scene patrol commander on VHF channel 13 or 16, or the Sector Puget Sound Joint Harbor Operations Center at 206–217–6001.

You will be able to identify participating vessels as those flying the Coast Guard Ensign. The Captain of the Port may also be assisted in the enforcement of the zone by other Federal, state, or local agencies. The Captain of the Port will issue a general permission to enter the safety zones if the training exercise is completed before 5 p.m. on August 14, 2021. In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via a Local Notice to Mariners.

Dated: June 23, 2021.

P.M. Hilbert,

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

[FR Doc. 2021–16029 Filed 7–27–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0555]

RIN 1625–AA00

Safety Zone; Port Huron Float Down, St. Clair River, Port Huron, MI

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the St. Clair River in the vicinity of Port Huron, MI. This zone is intended to restrict and control movement of vessels in a portion of the St. Clair River. Though this is an unsanctioned, non-permitted marine event, this zone is necessary to provide for the safety of life on the navigable waters during a float down event near Port Huron, MI.

DATES: This rule is effective from 12 p.m. through 8 p.m. on August 15, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0555 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ms. Tracy Girard, U.S. Coast Guard; (313) 568–9564, *Tracy.M.Girard@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

During the afternoon of August 15, 2021, a non-sanctioned public event is scheduled to take place. The event is advertised over various social-media sites, in which a large number of

persons float down a segment of the St. Clair River, using inner tubes and other similar floatation devices. The 2021 float down event will occur from approximately 12 noon through 8 p.m. on August 15, 2021. This non-sanctioned event has taken place in the month of August annually since 2009.

No private or municipal entity requested a marine event permit from the Coast Guard for this event, and it has not received state or Federal permits since its inception. The event has drawn over 5,000 participants of various ages annually. Despite plans put together by Federal, state and local officials, emergency responders and law enforcement officials have been overburdened pursuing safety during this event. Medical emergencies, people drifting across the international border, and people trespassing on residential property when trying to get out of the water before the designated finish line are some of the numerous difficulties encountered during the float down event.

During the 2014 float-down event, a 19-year-old participant died. During the 2016 float down, a wind shift caused thousands of U.S. citizen rafters with no passports to drift into Canadian waters. The current and wind made it impossible for the rafters to paddle back into U.S. waters, necessitating significant coordination with the Canadian authorities. Despite these events, promotional information for the event continues to be published. More than 5,000 people are again anticipated to float down the river this year. No public or private organization holds themselves responsible as the event sponsor.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so is impracticable. The organizers of this event are very secretive, and careful not to be found out as the event has ''no sponsor.'' The Coast Guard could not receive notice of the float down with sufficient time to undergo notice and comment because the date of the event varies from year to year. The Coast Guard was not made aware the float down would occur in 2021 until there was insufficient time to allow for a comment period to run. We must establish this safety zone by August 15, 2021, in order to protect the public form the hazards listed above associated with the float down.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because action is needed to ensure that the potential safety hazards associated with the float down are effectively mitigated.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Detroit (COTP) has determined the float down poses significant risk to public safety and property from 12 noon through 8 p.m. on August 15, 2021. The likely combination of large numbers of participants, strong river currents, limited rescue resources, and difficult emergency response scenarios could easily result in serious injuries or fatalities to float down participants and spectators. Therefore, the COTP is establishing a safety zone around the event location to help minimize risks to safety of life and property during this event.

IV. Discussion of the Rule

This rule establishes a safety zone from 12 noon through 8 p.m. on August 15, 2021. The safety zone will begin at Lighthouse Beach and encompass all U.S. waters of the St. Clair River bound by a line starting at a point on land north of Coast Guard Station Port Huron at position 43°00.416′ N; 082°25.333′ W, extending east to the international boundary to a point at position 43°00.416′ N; 082°25.033′ W, following south along the international boundary to a point at position 42°54.500′ N; 082°27.683′ W, extending west to a point on land just north of Stag Island at position 42°54.500′ N; 082°27.966′ W, and following north along the U.S. shoreline to the point of origin (WGS 84). No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. Vessel operators must contact the COTP or his or her on-scene representative to obtain permission to transit through this safety zone. Additionally, no one under the age of 18 will be permitted to enter the safety zone if they are not wearing a Coast Guard approved personal floatation device. The COTP or his or her on-scene representative may be contacted via VHF Channel 16.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will not able to safely transit around this safety zone which will impact a designated area of the St. Clair River for 8 hours. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental

jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 8 hours that will prohibit entry to a designated portion of the St. Clair River is categorically excluded from further review under paragraph L[60] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0555 to read as follows:

§ 165.T09–0555 Safety Zones; Port Huron Float Down, St. Clair River, Port Huron, MI.

(a) *Location.* A safety zone is established to include all U.S. navigable waters of southern Lake Huron and the St. Clair River adjacent to Port Huron, MI, beginning at Lighthouse Beach and encompassing all U.S. waters of the St. Clair River bound by a line starting at a point on land north of Coast Guard Station Port Huron at position 43°00.416′ N; 082°25.333′ W, extending east to the international boundary to a point at position 43°00.416′ N; 082°25.033′ W, following south along the international boundary to a point at position 42°54.500′ N; 082°27.683′ W, extending west to a point on land just north of Stag Island at position 42°54.500′ N; 082°27.966′ W, and following north along the U.S. shoreline to the point of origin (NAD 83). (WGS 84).

(b) *Enforcement period.* The safety zone described in paragraph (a) of this section will be enforced from 12 p.m. to 8 p.m. on August 15, 2021.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within these safety zones is prohibited unless authorized by the Captain of the Port (COTP) Detroit or a designated on-scene representative.

(2) The safety zones are closed to all vessel traffic, except as may be permitted by the COTP Detroit or a designated on-scene representative.

(3) The ''on-scene representative'' of the COTP Detroit is any Coast Guard commissioned, warrant or petty officer or a Federal, state, or local law enforcement officer designated by the COTP Detroit to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zones must contact the COTP Detroit or an on-scene representative to obtain permission to do so. The COTP Detroit or an on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP Detroit or an on-scene representative.

Dated: July 22, 2021.

Brad W. Kelly,

Commander, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2021–16030 Filed 7–27–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0576]

RIN 1625–AA00

Safety Zone; Maumee River; Toledo, OH

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters on the Maumee River near Promenade Park in Toledo, OH. The safety zone is necessary to protect spectators, personnel, vessels, and the marine environment from potential hazards created by the Promedica Health System Fireworks event. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Detroit, or a designated representative.

DATES: This rule is effective from 9:30 p.m. through 10:30 p.m. on September 3, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0576 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST2 Jacob Haan, Waterways Department, Marine Safety Unit Toledo, Coast Guard; telephone (419) 418–6040, email *Jacob.A.Haan@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking with respect to this rule because the event sponsor notified the Coast Guard with insufficient time to accommodate the comment period. Thus, delaying the effective date of this rule to wait for the comment period to run would be impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a maritime fireworks display.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Detroit (COTP) has determined that potential hazards associated with the fireworks display will be a safety concern for anyone within a 250-yard radius of the launch site. The likely combination of recreational vessels, darkness punctuated by bright flashes of light, and fireworks debris falling into the water presents risks of collisions which could result in serious injuries or fatalities. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone that will be enforced from 9:30 p.m. through 10:30 p.m. on September 3, 2021. The safety zone will encompass all U.S. navigable waters of the Maumee River within a 250-yard radius of the fireworks launch site located near Promenade Park in Toledo, OH. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the fireworks display. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Detroit or a designated representative. The Captain of the Port, Sector Detroit or a designated representative may be contacted via VHF Channel 16.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. This safety zone would impact a small designated area of the Maumee River for a period of one hour during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business

Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only one hour that will prohibit entry within 250-yard radius of where the fireworks display will be conducted. It is categorically excluded from further review under paragraph L[60] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0576 to read as follows:

§ 165.T09–0576 Safety Zone; Maumee River; Toledo, OH.

(a) *Location.* The following area is a safety zone: All U.S. navigable waters of the Maumee River within a within a 250-yard radius of the fireworks launch site located at position 41°38′54″ N 83°31′54″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Enforcement period.* This section will be enforced from 9:30 p.m. through 10:30 p.m. on September 3, 2021. The Captain of the Port Detroit, or a designated representative may suspend enforcement of the safety zone at any time.

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

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated representative.

(3) The ''designated representative'' of the Captain of the Port Detroit is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Detroit to act on their behalf. The designated representative of the Captain of the Port Detroit will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port Detroit or a designated representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Detroit or a designated representative.

Dated: July 22, 2021.

Brad W. Kelly,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2021–16031 Filed 7–27–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Parts 31 and 32

[Docket ID ED–2021–OFO–0083]

RIN 1880–AA90

Permissibility of Administrative Law Judges Presiding Over Salary Pre-Offset Hearings

AGENCY: Office of Finance and Operations (OFO), Department of Education.

ACTION: Final regulations.

SUMMARY: The Department of Education (Department) amends its regulations regarding salary pre-offset hearings to expressly permit administrative law judges (ALJs) to act as the presiding officers.

DATES: These final regulations are effective July 28, 2021.

FOR FURTHER INFORMATION CONTACT: Anthony Cummings, 550 12th Street SW, Room 10089, Potomac Center Plaza, Washington, DC 20202. Telephone:

(202) 245–7185. Email: *Anthony.Cummings@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: As explained more fully below, the Department is revising its regulations in 34 CFR parts 31 and 32 to permit ALJs to preside over salary pre-offset hearings.

Statute: Under 20 U.S.C. 1221e–3, the Secretary is vested with broad authority to make, promulgate, issue, rescind, and amend rules and regulations governing the manner and operation of, and governing the applicable programs administered by, the Department. This provision is mirrored in 20 U.S.C. 3474, providing the Secretary authority to prescribe such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department. In particular, under 20 U.S.C. 1234(f)(1), the Secretary shall prescribe by regulation the rules for conducting proceedings within its Office of Administrative Law Judges (OALJ). Such rules must conform to the Administrative Procedure Act (APA) at 5 U.S.C. 554, 556, and 557.

Under 5 U.S.C. 5514(a)(1), the Secretary may collect debts owed to the United States by employees of the Federal Government. Such debts are commonly recoupment of overpayments made by the Department to an employee due to a miscalculation of the employee's level of pay or a failure of the Department to correctly calculate a deduction to the employee's pay. To collect these debts, the Secretary generally imposes deductions to the employee's pay in regular installments. This process of debt collection is referred to as administrative offset. 31 U.S.C. 3716.

Prior to implementing an administrative offset, an employee is entitled to, among other things, a minimum of 30 days' written notice, informing the employee of the nature and amount of the indebtedness and the agency's intention to initiate an administrative offset. 5 U.S.C. 5514(a)(2)(A). After receipt of the notice, the employee is entitled to request a hearing on the agency's determination concerning the existence or the amount of the debt or to challenge the terms of any nonvoluntary repayment schedule the agency intends to implement. 5 U.S.C. 5514(a)(2)(D).

A hearing conducted under the authority of 5 U.S.C. 5514(a)(2)(D) may not be conducted by an individual under the supervision or control of the head of the agency, except that nothing in this sentence shall be construed to prohibit the appointment of an ALJ. 5 U.S.C. 5514(a)(2).

The Secretary is required to establish regulations to carry out the statutory provisions for administrative offsets described above. 5 U.S.C. 5514(b)(1); 31 U.S.C. 3716(b)(2).

Current Regulations: Under 34 CFR 31.7(a), a hearing conducted for a salary offset for a current or former Federal employee indebted to the United States under a program administered by the Secretary is conducted by a hearing official who is neither an employee of the Department nor otherwise under the supervision or control of the Secretary.

Under 34 CFR 32.5(d), a salary pre-offset hearing held to recover overpayments of pay or allowances paid to a current or former Department employee is conducted by a hearing official who is not an employee of the Department or under the supervision or control of the Secretary.

New Regulations: Revised §§ 31.7(a) and 32.5(d) expressly provide that ALJs are not prohibited from presiding over hearings for the collection of debts owed to the United States by current or former employees of the Federal Government.

Reasons: The Department employs ALJs within OALJ. Congress established OALJ to consider cases before the Department involving hearings for recovery of funds, withholding hearings, cease-and-desist hearings, and other proceedings designated by the Secretary. 20 U.S.C. 1234(a); 34 CFR 81.3. The Secretary appoints ALJs to OALJ in accordance with 5 U.S.C. 3105 and 20 U.S.C. 1234(b).

The statutory authority for salary pre-offset hearings prohibits individuals under the supervision or control of an agency head from presiding but specifically excepts ALJs from that prohibition. 5 U.S.C. 5514(a)(2). However, a review of the Department's regulations revealed a disconnect between the regulations and the statute. Sections 31.7(a) and 32.5(d) mirror the statutory prohibition on individuals under the supervision or control of the Secretary presiding over hearings, but they do not include the statute's exception, allowing ALJs to preside over such hearings.

The omission in §§ 31.7(a) and 32.5(d) of the exception for ALJs was likely due to a drafting oversight. This amendment of the regulations harmonizes the regulations with the express statutory exception that ALJs are not prohibited from presiding over pre-offset hearings involving collection of indebtedness to the United States from Federal employees.

As contemplated in the statutory exception, the Department's ALJs are well-suited for the task of presiding over such hearings because they act with impartiality and independence. ALJs are subject to less supervision and control by the Secretary than ordinary Department employees. For example, pursuant to 5 CFR 930.206, ALJs may not be rated on their job performance and may not receive a monetary or honorary award or incentive. Similarly, pursuant to 5 U.S.C. 7521, ALJs may not be removed from their positions or have other specified actions taken against them except by the independent action of the Merit Systems Protection Board.

Therefore, the Department is revising its regulations to correct the drafting oversight and expressly permit ALJs to preside over salary pre-offset hearings.

Waiver of Proposed Rulemaking and Delayed Effective Date

Under the APA (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. These regulations only govern the procedures for conducting administrative offset hearings to which the parties are the Department and current or former employees. As such, these regulations make procedural changes only and do not establish substantive policy. The regulations are, therefore, rules of agency practice and procedure and exempt from notice and comment rulemaking under 5 U.S.C. 553(b)(A). Moreover, the APA provides that an agency is not required to conduct notice and comment rulemaking when the agency for good cause finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). Rulemaking is ''unnecessary'' when ''the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.'' *Utility Solid Waste Activities Group* v. *EPA,* 236 F.3d 749, 755 (D.C. Cir. 2001), *quoting U.S. Department of Justice, Attorney General's Manual on the Administrative Procedure Act 31* (1947) and *South Carolina* v. *Block,* 558 F. Supp. 1004, 1016 (D.S.C. 1983). Because we are amending these procedural regulations to align them more closely with the applicable statutory provision, under 5 U.S.C. 553(b)(B), the Secretary has determined that proposed regulations are unnecessary.

The APA generally requires that regulations be published at least 30 days before their effective date, unless the

agency has good cause to implement its regulations sooner (5 U.S.C. 553(d)(3)). As previously stated, because the final regulations merely reflect an applicable statutory provision and address agency procedure, there is good cause to waive the delayed effective date in the APA and make the final regulations effective upon publication.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f)(1) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency —

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these final regulations are consistent with the principles in Executive Order 13563. We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities. Because this regulatory action does not implicate any new process or other financial commitment or burden, this regulatory action will not create any new costs.

Regulatory Flexibility Act Certification

Because notice-and-comment rulemaking is not necessary for this procedural rule, the Regulatory Flexibility Act (96 Pub. L. 354, 5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act of 1995

The final regulations do not create any new information collection requirements.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

List of Subjects

34 CFR Part 31

Claims, Government employees, Grant programs—education, Loan programs—education, Student aid, Wages.

34 CFR Part 32

Claims, Government employees, Wages.

Denise L. Carter,

Acting Assistant Secretary for Finance and Operations.

For the reasons discussed in the preamble, the Secretary amends parts 31 and 32 of title 34 of the Code of Federal Regulations as follows:

PART 31—SALARY OFFSET FOR FEDERAL EMPLOYEES WHO ARE INDEBTED TO THE UNITED STATES UNDER PROGRAMS ADMINISTERED BY THE SECRETARY OF EDUCATION

■ 1. The authority citation for part 31 continues to read as follows:

Authority: 5 U.S.C. 5514; 31 U.S.C. 3716.

■ 2. Section 31.7 is amended by revising paragraph (a) to read as follows:

§ 31.7 Hearing procedures.

(a) *Independence of hearing official.* A hearing provided under this part is conducted by a hearing official who is not under the supervision or control of

the Secretary, except that this prohibition does not apply to the Department's administrative law judges.

* * * * *

PART 32—SALARY OFFSET TO RECOVER OVERPAYMENTS OF PAY OR ALLOWANCES FROM DEPARTMENT OF EDUCATION EMPLOYEES

■ 3. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 5514; 31 U.S.C. 3716.

■ 4. Section 32.5 is amended by revising paragraph (d) to read as follows:

§ 32.5 Pre-offset hearing—general.

* * * * *

(d) The hearing is conducted by a hearing official who is not under the supervision or control of the Secretary, except that this prohibition does not apply to the Department's administrative law judges.

* * * * *

[FR Doc. 2021–15897 Filed 7–27–21; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2021–0222; FRL–8714–02–R9]

Air Plan Approval; California; Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the Mojave Desert Air Quality Management District (MDAQMD or ''District'') portion of the State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOCs) from wood products coating operations. We are approving a local rule that regulates these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule will be effective on August 27, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2021–0222. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Robert Schwartz, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3286 or by email at *schwartz.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

Table of Contents

I. Proposed Action

On April 21, 2021 (86 FR 20643), the EPA proposed to approve the following rule into the California SIP.

Local Agency	Rule No.	Rule title	Amended	Submitted
MDAQMD	1114	Wood Products Coating Operations	08/24/2020	11/18/2020

We proposed to approve this rule because we determined that it complies with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments

The EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

III. EPA Action

No comments were submitted. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving this rule into the California SIP. The August 24, 2020 version of Rule 1114 will replace the previously approved version of this rule in the SIP.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the MDAQMD rules described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this 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 Clean Air Act; and

• Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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. The 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 27, 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 8, 2021.

Elizabeth Adams,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended 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 F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(518)(i)(A)(*6*) and (c)(558) to read as follows:

§ 52.220 Identification of plan-in part.

* * * * *

(c) * * *

(518) * * *

(i) * * *

(A) * * *

(*6*) Previously approved on July 2, 2019 in paragraph (c)(518)(i)(A)(*1*) of this section and now deleted with replacement in paragraph (c)(558)(i)(A)(*1*) of this section, Rule 1114, ''Wood Products Coating Operations,'' amended on January 22, 2018.

* * * * *

(558) The following rules were submitted on November 18, 2020, by the Governor's designee as an attachment to a letter dated November 17, 2020.

(i) *Incorporation by reference.* (A) Mojave Desert Air Quality Management District.

(*1*) Rule 1114, ''Wood Products Coating Operations,'' amended on August 24, 2020.

(*2*) [Reserved]

(B) [Reserved]

(ii) [Reserved]

* * * * *

[FR Doc. 2021–16006 Filed 7–27–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2020–0477; FRL–8739–02–R9]

Air Plan Approval; California; Placer County Air Pollution Control District; Open Burning Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Placer County Air Pollution Control District (PCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern emissions of oxides of nitrogen (NO_X) and particulate matter (PM) from open burning. We are approving local rules that regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: These rules will be effective on August 27, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2020–0477. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Kevin Gong, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3073 or by email at *Gong.Kevin@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

Table of Contents

I. Proposed Action

On February 18, 2021 (86 FR 10225), the EPA proposed to approve the following rules into the California SIP.

Local Agency	Rule No.	Rule title	Amended	Submitted
PCAPCD	301	Nonagricultural Burning and Smoke Management	08/09/2018	11/21/2018
PCAPCD	302	Agricultural Waste Burning Smoke Management	08/09/2018	11/21/2018
PCAPCD	305	Residential Allowable Burning	10/11/2018	01/31/2019

We proposed to approve these rules because we determined that they comply with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received five public comments. These comments were generally supportive of the action and none raised any concerns with our proposed rule.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving these rules into the California SIP. The August 9, 2018 versions of Rule 301 and 302 and the October 11, 2018 version of Rule 305 will replace the previously approved versions of these rules in the SIP.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the PCAPCD rules described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this 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 Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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. The 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 27, 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, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 16, 2021.

Deborah Jordan,

Acting Regional Administrator, Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 52, chapter I, title 40 of the Code of Federal Regulations 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 F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(423)(i)(A)(*8*), (*9*), and (*10*), (c)(527)(i)(C), and (c)(545)(i)(C) to read as follows:

§ 52.220 Identification of plan-in part.

* * * * *

(c) * * *

(423) * * *

(i) * * *

(A) * * *

(*8*) Previously approved on January 31, 2013, in paragraph (c)(423)(i)(A)(*1*) of this section and now deleted with replacement in paragraph (c)(527)(i)(C)(*1*) of this section, Rule 301 ''Nonagricultural Burning Smoke Management'', amended on February 9, 2012.

(*9*) Previously approved on January 31, 2013, in paragraph (c)(423)(i)(A)(*2*) of this section and now deleted with replacement in paragraph (c)(527)(i)(C)(*2*) of this section, Rule 302 ''Agricultural Waste Burning Smoke Management'', amended on February 9, 2012.

(*10*) Previously approved on January 31, 2013, in paragraph (c)(423)(i)(A)(*5*) of this section and now deleted with replacement in paragraph (c)(545)(i)(C)(*1*) of this section, Rule 305 ''Residential Allowable Burning'', amended on February 9, 2012.

* * * * *

(527) * * *

(i) * * *

(C) Placer County Air Pollution Control District.

(*1*) Rule 301, ''Nonagricultural Burning Smoke Management,'' amended on August 9, 2018.

(*2*) Rule 302, ''Agricultural Waste Burning Smoke Management'' amended on August 9, 2018.

* * * * *

(545) * * *

(i) * * *

(C) Placer County Air Pollution Control District,

(*1*) Rule 305, ''Residential Allowable Burning'' amended on October 11, 2018.

(*2*) [Reserved]

* * * * *

[FR Doc. 2021–16009 Filed 7–27–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2020–0334; FRL–8656–01–OCSPP]

Fludioxonil; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of fludioxonil in or on banana. Syngenta Crop Protection, LLC requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 28, 2021. Objections and requests for hearings must be received on or before September 27, 2021, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2020–0334, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

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

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2020–0334 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before September 27, 2021. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

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

2020–0334, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of April 22, 2021 (86 FR 21317) (FRL–10022–59), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9E8798) by Syngenta Crop Protection, LLC, 410 Swing Road, NC 27419–8300. The petition requested that 40 CFR 180.516 be amended by establishing a tolerance for residues of the fungicide fludioxonil, 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile, in or on banana at 2.0 parts per million (ppm). That document referenced a summary of the petition prepared by Syngenta Crop Protection, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

FFDCA section 408(d)(4)(A)(i) permits the Agency to finalize a tolerance that varies from that sought by the petition. Based upon review of the data supporting the petition, EPA is modifying the requested tolerance based on crop field trial data and for consistency with the Organization for Economic Co-Operation and Development (OECD) tolerance-rounding class practice. The reason for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

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

In an effort to streamline **Federal Register** publications, EPA is not reprinting here summaries of its analyses that have previously appeared in the **Federal Register** in previous tolerance rulemakings for the same pesticide. To that end, this rulemaking refers the reader to several sections from the November 6, 2018 tolerance rulemaking for residues of fludioxonil that remain unchanged for an understanding of the Agency's rationale in support of this rulemaking. See 83 FR 55491 (FRL–9982–75). Those sections are: Units III.A. (Toxicological Profile); III.B. (Toxicological Points of Departure/Levels of Concern); III.C. (Exposure Assessment), except as explained in the next paragraphs; and III.D. (Safety Factor for Infants and Children). Further information about the Agency's risk assessment and determination of safety supporting the new tolerance for residues of fludioxonil on bananas can be found in docket ID number EPA–HQ–OPP–2020–0334 in the document titled ''Fludioxonil. Human Health Risk Assessment for the Establishment of a Permanent Tolerance on Imported Bananas.''

Updates to exposure assessments. EPA's dietary (food and drinking water) exposure assessments have been updated to include the additional exposure from use of fludioxonil on bananas, and relied on tolerance-level residues, an assumption of 100 percent crop treated (PCT), and 2018 default processing factors for all processed commodities. EPA's aggregate exposure assessment incorporated this additional dietary exposure. Drinking water exposures are not impacted by the new use on banana, and thus have not changed since the last assessment.

Assessment of aggregate risks. An acute aggregate risk assessment was not conducted since effects attributable to a single exposure were not identified. Short-term aggregate risk for adults and children resulted in margins of exposure ≥ 280, which is above the level of concern of 100 and not of concern. An intermediate-term aggregate risk assessment was not conducted since exposures are not expected based on the use pattern. The chronic aggregate risk assessment was equivalent to the chronic dietary risk assessment and was not conducted since there are no long-term exposures expected based on the use pattern. Chronic aggregate risks consist of dietary (food and drinking water) exposure only and are below the Agency's level of concern: 56% of the chronic population adjusted dose (cPAD) for children 1 to 2 years old, the group with the highest exposure.

Determination of safety. Therefore, based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to fludioxonil residues. More detailed information on the subject action to establish a tolerance in or on bananas can be found in the document entitled, ''Fludioxonil. Human Health Risk Assessment for the Establishment of a Permanent Tolerance on Imported Bananas'' by going to *http://www.regulations.gov.* The referenced document is available in the docket established by this action, EPA–HQ–OPP–2020–0334.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high-performance liquid chromatography/ultraviolet (HPLC/UV) methods (Methods AG–597 and AG–597B)) is available for enforcing tolerances for fludioxonil on plant commodities. An adequate liquid chromatography, tandem mass spectrometry (LC–MS/MS) method (Analytical Method GRM025.03A) is available for enforcing tolerances for fludioxonil on livestock commodities.

The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905;

email address: *residuemethods@epa.gov.*

B. International Residue Limits

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

The Codex has not established a MRL for fludioxonil; however, Canada's Pest Management Regulatory Agency (PMRA) has a default MRL of 0.1 ppm on banana. EPA is establishing a tolerance level for bananas at 3 ppm.

C. Revisions to Petitioned-For Tolerances

The petitioned-for tolerance level of 2.0 ppm in bananas has been modified to 3 ppm based on crop field trial data and the OECD tolerance calculation procedure.

V. Conclusion

Therefore, a tolerance is established for residues of fludioxonil, 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile, in or on banana at 3 ppm.

VI. Statutory and Executive Order Reviews

This action establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

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

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

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: July 15, 2021.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

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

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

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

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

■ 2. In § 180.516, amend table 1 to paragraph (a)(1) by adding in alphabetical order the entry ''Banana'' and footnote 1 to read as follows:

§ 180.516 Fludioxonil; tolerances for residues.

(a) * * *

(1) * * *

TABLE 1 TO PARAGRAPH (a)(1)

Commodity	Parts per million
* * * * *	
Banana[1]	3
* * * * *	

[1] There are no U.S. registrations as of July 28, 2021.

* * * * *

[FR Doc. 2021–16091 Filed 7–27–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 12–375, FCC 21–60; FRS 35682]

Rates for Interstate Inmate Calling Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of reconsideration.

SUMMARY: In this Order on Reconsideration, the Federal Communications Commission (Commission) denies a petition for reconsideration filed by Global Tel*Link Corp. (GTL) seeking reconsideration of the *2020 ICS Order on Remand,* released on August 7, 2020. The Commission reiterates that the jurisdictional nature of a telephone call from a prison or jail depends, for purposes of charging consumers, on the physical location of the originating and terminating endpoints of the call. To the extent the endpoints of any particular call from a prison or jail could be either intrastate or interstate and such endpoints are not known or easily knowable, consistent with Commission precedent, rates or charges for such calls may not exceed any applicable federally prescribed rates or charges.

DATES: Effective July 28, 2021.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Minsoo Kim, Pricing Policy Division of the Wireline Competition Bureau, at (202) 418–1739 or via email at *Minsoo.Kim@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration, FCC 21–60, released on May 24, 2021. This summary is based on the public redacted version of the document, the full text of which can be obtained from the following internet address: *https://docs.fcc.gov/public/attachments/FCC-21-60A1.pdf.*

I. Introduction

1. Unlike virtually everyone else in the United States, incarcerated people have no choice in their telephone service provider. Instead, their only option typically is to use a service provider chosen by the correctional facility, and once chosen, that service provider typically operates on a monopoly basis. Egregiously high rates and charges and associated unreasonable practices for the most basic and essential communications capability—telephone service—impedes incarcerated peoples' ability to stay connected with family and loved ones, clergy, and counsel, and financially burdens incarcerated people and their loved ones. Never have such connections been as vital as they are now, as many correctional facilities have eliminated in-person visitation in response to the COVID–19 pandemic.

2. The Commission adopts an Order on Reconsideration denying GTL's petition for reconsideration of the *2020 ICS Order on Remand,* published at 85 FR 67450 (Oct. 23, 2020), and reiterates that the jurisdictional nature of a telephone call for purposes of charging consumers depends on the physical location of the originating and terminating endpoints of the call. To the extent the endpoints of any particular call could be either intrastate or interstate and such endpoints are not known or easily knowable, consistent with the Commission's precedent, rates or charges for such calls may not exceed any applicable federally prescribed rates or charges.

3. The Commission expects today's actions to have immediate meaningful and positive impacts on the ability of incarcerated people and their loved ones to satisfy the Commission's universal, basic need to communicate. Although the Commission uses various terminology throughout this item to refer to the intended beneficiaries of the Commission's actions herein, unless context specifically indicates otherwise, these beneficiaries are broadly defined as the people placing and receiving inmate calling services (ICS) calls, whether they are incarcerated people, members of their family, or other loved ones and friends. The Commission also may refer to them, generally, as consumers.

II. Background

4. Access to affordable communications services is critical for everyone in the United States, including incarcerated members of our society. Studies have long shown that incarcerated people who have regular contact with family members are more likely to succeed after release and have lower recidivism rates. Because correctional facilities generally grant exclusive rights to service providers, incarcerated people must purchase service from ''locational monopolies'' and subsequently face rates far higher than those charged to other Americans.

A. Statutory Background

5. The Communications Act of 1934, as amended (Communications Act or Act) divides regulatory authority over interstate, intrastate, and international communications services between the Commission and the states. Section 2(a) of the Act empowers the Commission to regulate ''interstate and foreign communication by wire or radio.'' This regulatory authority includes ensuring that ''[a]ll charges, practices, classifications, and regulations for and in connection with'' interstate or international communications services are ''just and reasonable'' in accordance with section 201(b) of the Act. Section 201(b) also provides that ''[t]he Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out'' these provisions.

6. Section 2(b) of the Act preserves states' jurisdiction over ''charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service.'' The Commission is thus ''generally forbidden from entering the field of intrastate communication service, which remains the province of the states.'' Stated differently, section 2(b) ''erects a presumption against the Commission's assertion of regulatory authority over intrastate communications.''

7. Section 276 of the Act directs the Commission to prescribe regulations that ensure that payphone service providers, including inmate calling services providers, ''are fairly compensated for each and every completed intrastate and interstate call using their payphone.'' The statute explicitly exempts telecommunications relay service calls for hearing disabled individuals from the requirement that providers must be compensated for ''each and every'' completed call. Although the Telecommunications Act of 1996 (1996 Act) amended the Act and ''chang[ed] the FCC's authority with respect to some intrastate activities,'' with respect to section 276, the U.S. Court of Appeals for the District of Columbia Circuit has held that ''the strictures of [section 2(b)] remain in force.'' Accordingly, that court concluded that section 276 does not authorize the Commission to determine ''just and reasonable'' rates for intrastate calls, and that the Commission's authority under that provision to ensure that providers ''are fairly compensated'' both for intrastate and interstate calls does not extend to establishing rate caps on intrastate services. Judge Pillard dissented from this view, finding permissible the Commission's contrary interpretation of the meaning of ''fairly compensated'' in section 276.

B. History of Commission Proceedings Prior to 2020

8. In 2003, Martha Wright and her fellow petitioners, current and former incarcerated people and their relatives and legal counsel (Wright Petitioners), filed a petition seeking a rulemaking to address ''excessive'' inmate calling services rates. The petition sought to prohibit exclusive inmate calling services contracts and collect-call-only restrictions in correctional facilities. In 2007, the Wright Petitioners filed an alternative petition for rulemaking in

which they emphasized the urgency of the need for Commission action due to ''exorbitant'' inmate calling services rates. The Wright Petitioners proposed benchmark rates for interstate long distance inmate calling services calls and reiterated their request that providers offer debit calling as an alternative option to collect calling. The Commission sought and received comment on both petitions.

9. In 2012, the Commission commenced an inmate calling services rulemaking proceeding by releasing the *2012 ICS Notice* seeking comment on, among other matters, the proposals in the Wright Petitioners' petitions and whether to establish rate caps for interstate inmate calling services calls.

10. In the *2013 ICS Order,* in light of record evidence that rates for calling services used by incarcerated people greatly exceeded the reasonable costs of providing those services, the Commission adopted interim interstate rate caps of $0.21 per minute for debit and prepaid calls and $0.25 per minute for collect calls. These interim interstate rate caps were first adopted in 2013, were readopted in 2015, and remain in effect as a result of the vacatur, by the D.C. Circuit, of the permanent rate caps adopted in the *2015 ICS Order.* Under the Commission's rules, ''Debit Calling'' means ''a presubscription or comparable service which allows an Inmate, or someone acting on an Inmate's behalf, to fund an account set up [through] a Provider that can be used to pay for Inmate Calling Services calls originated by the Inmate.'' ''Prepaid Calling'' means ''a presubscription or comparable service in which a Consumer, other than an Inmate, funds an account set up [through] a Provider of Inmate Calling Services. Funds from the account can then be used to pay for Inmate Calling Services, including calls that originate with an Inmate.'' ''Collect Calling'' means ''an arrangement whereby the called party takes affirmative action clearly indicating that it will pay the charges associated with a call originating from an Inmate Telephone.'' In the First Mandatory Data Collection, the Commission required all inmate calling services providers to submit data on their underlying costs so that the agency could develop permanent rate caps. In the *2014 ICS Notice,* the Commission sought comment on reforming charges for services ancillary to the provision of inmate calling services and on establishing rate caps for both interstate and intrastate calls. Ancillary service charges are fees that providers assess on calling services used by incarcerated people that are not included in the per-minute rates assessed for individual calls.

11. The Commission adopted a comprehensive framework for interstate and intrastate inmate calling services in the *2015 ICS Order,* including limits on ancillary service charges and permanent rate caps for interstate and intrastate inmate calling services calls in light of ''egregiously high'' rates for inmate calling services calls. Because of continued growth in the number and dollar amount of ancillary service charges that inflated the effective price paid for inmate calling services, the Commission limited permissible ancillary service charges to only five types and capped the charges for each: (1) Fees for Single-Call and Related Services—billing arrangements whereby an incarcerated person's collect calls are billed through a third party on a per-call basis, where the called party does not have an account with the inmate calling services provider or does not want to establish an account; (2) Automated Payment Fees—credit card payment, debit card payment, and bill processing fees, including fees for payments made by interactive voice response, web, or kiosk; (3) Third-Party Financial Transaction Fees—the exact fees, with no markup, that providers of calling services used by incarcerated people are charged by third parties to transfer money or process financial transactions to facilitate a consumer's ability to make account payments via a third party; (4) Live Agent Fees—fees associated with the optional use of a live operator to complete inmate calling services transactions; and (5) Paper Bill/Statement Fees—fees associated with providing customers of inmate calling services an optional paper billing statement. The Commission relied on sections 201(b) and 276 of the Act to adopt rate caps for both interstate and intrastate inmate calling services. The Commission relied on sections 201(b) and 276 of the Act to adopt rate caps for both interstate and intrastate inmate calling services. The Commission set tiered rate caps of $0.11 per minute for prisons; $0.14 per minute for jails with average daily populations of 1,000 or more; $0.16 per minute for jails with average daily populations of 350 to 999; and $0.22 per minute for jails having average daily populations of less than 350. The Commission calculated these rate caps using industry-wide average costs based on data from the First Mandatory Data Collection and stated that this approach would allow providers to ''recover average costs at each and every tier.'' The Commission did not include site commission payments in its permanent rate caps, finding these payments were not costs reasonably related to the provision of inmate calling services. The Commission also readopted the interim interstate rate caps it had adopted in 2013, and extended them to intrastate calls, pending the effectiveness of the new rate caps, and sought comment on whether and how to reform rates for international inmate calling services calls. At the same time, the Commission adopted a Second Mandatory Data Collection to identify trends in the market and form the basis for further reform as well as an annual filing obligation requiring providers to report information on their current operations, including their interstate, intrastate, and international rates as well as their ancillary service charges.

12. In the *2016 ICS Reconsideration Order,* the Commission reconsidered its decision to entirely exclude site commission payments from its 2015 permanent rate caps. The Commission increased those permanent rate caps to account for claims that certain correctional facility costs reflected in site commission payments are directly and reasonably related to the provision of inmate calling services. The Commission set the revised rate caps at $0.13 per minute for prisons; $0.19 per minute for jails with average daily populations of 1,000 or more; $0.21 per minute for jails with average daily populations of 350 to 999; and $0.31 per minute for jails with average daily populations of less than 350.

C. Judicial Actions

13. In January 2014, in response to providers' petitions for review of the *2013 ICS Order,* the D.C. Circuit stayed the application of certain portions of the *2013 ICS Order* but allowed the Commission's interim rate caps to remain in effect. Later that year, the court held the petitions for review in abeyance while the Commission proceeded to set permanent rates. In March 2016, in response to providers' petitions for review of the *2015 ICS Order,* the D.C. Circuit stayed the application of the *2015 ICS Order*'s permanent rate caps and ancillary service charge caps for Single Call Services while the appeal was pending. Single-Call Services mean ''billing arrangements whereby an Inmate's collect calls are billed through a third party on a per-call basis, where the called party does not have an account with the Provider of Inmate Calling Services or does not want to establish an account.'' Later that month, the court stayed the application of the Commission's interim rate caps to

intrastate inmate calling services. In November 2016, the D.C. Circuit also stayed the *2016 ICS Reconsideration Order,* pending the outcome of the challenge to the *2015 ICS Order.*

14. In 2017, in *GTL* v. *FCC,* the D.C. Circuit vacated the permanent rate caps adopted in the *2015 ICS Order.* First, the panel majority held that the Commission lacked the statutory authority to cap intrastate calling services rates. The court explained that the Commission's authority over intrastate calls is, except as otherwise provided by Congress, limited by section 2(b) of the Act and nothing in section 276 of the Act overcomes this limitation. In particular, section 276 ''merely directs the Commission to 'ensure that all providers [of calling services to incarcerated people] are fairly compensated' for their inter- and intrastate calls,'' and it ''is not a 'general grant of jurisdiction' over intrastate ratemaking.'' The court noted that it ''need not decide the precise parameters of the Commission's authority under § 276.''

15. Second, the D.C. Circuit concluded that the ''Commission's categorical exclusion of site commissions from the calculus used to set [inmate calling services] rate caps defie[d] reasoned decision making because site commissions obviously are costs of doing business incurred by [inmate calling services] providers.'' The court noted that some site commissions were ''mandated by state statute,'' while others were ''required by state correctional institutions'' and were thus also a ''condition of doing business.'' The court directed the Commission to ''assess on remand which portions of site commissions might be directly related to the provision of [inmate calling services] and therefore legitimate, and which are not.'' The court did not reach the providers' remaining arguments ''that the exclusion of site commissions denies [them] fair compensation under [section] 276 and violates the Takings Clause of the Constitution because it forces providers to provide services below cost.'' Instead, the court stated that the Commission should address these issues on remand when revisiting the categorical exclusion of site commissions. Judge Pillard dissented from this view, noting that site commissions are not legitimate simply because a state demands them.

16. Third, the D.C. Circuit held that the Commission's use of industry-wide averages in setting rate caps was arbitrary and capricious because it lacked justification in the record and was not supported by reasoned decision making. Judge Pillard also dissented on this point, noting that the Commission has ''wide discretion'' under section 201 of the Act to decide ''which costs to take into account and to use industry-wide averages that do not necessarily compensate 'each and every' call.'' More specifically, the court found the Commission's use of a weighted average per-minute cost to be ''patently unreasonable'' given that such an approach made calls with above-average costs unprofitable and thus did ''not fulfill the mandate of § 276 that 'each and every' '' call be fairly compensated. Additionally, the court found that the *2015 ICS Order* ''advance[d] an efficiency argument—that the larger providers can become profitable under the rate caps if they operate more efficiently—based on data from the two smallest firms,'' which ''represent[ed] less than one percent of the industry,'' and that the *Order* did not account for conflicting record data. The court therefore vacated this portion of the *2015 ICS Order.*

17. Finally, the court remanded the ancillary service charge caps. The D.C. Circuit held that ''the Order's imposition of ancillary fee caps in connection with interstate calls is justified'' given the Commission's ''plenary authority to regulate interstate rates under § 201(b), including 'practices . . . for and in connection with' interstate calls.'' The court held that the Commission ''had no authority to impose ancillary fee caps with respect to intrastate calls.'' Because the court could not ''discern from the record whether ancillary fees can be segregated between interstate and intrastate calls,'' it remanded the issue so the Commission could determine whether it could segregate ancillary fee caps on interstate calls (which are permissible) and on intrastate calls (which are impermissible). The court also vacated the video visitation annual reporting requirements adopted in the *2015 ICS Order.*

18. In December 2017, after it issued the *GTL* v. *FCC* opinion, the D.C. Circuit in *Securus* v. *FCC* ordered the *2016 ICS Reconsideration Order* ''summarily vacated insofar as it purports to set rate caps on inmate calling service'' because the revised rate caps in that *2016 Order* were ''premised on the same legal framework and mathematical methodology'' rejected by the court in *GTL* v. *FCC.* The court remanded ''the remaining provisions'' of that *Order* to the Commission ''for further consideration . . . in light of the disposition of this case and other related cases.'' As a result of the D.C. Circuit's decisions in *GTL* and *Securus,* the interim rate caps that the Commission adopted in 2013 ($0.21 per minute for debit/prepaid calls and $0.25 per minute for collect calls) remain in effect for interstate inmate calling services calls.

D. 2020 Rates and Charges Reform Efforts

19. *2020 ICS Order on Remand and Notice.* In February 2020, the Wireline Competition Bureau (Bureau or WCB) issued a public notice seeking to refresh the record on ancillary service charges in light of the D.C. Circuit's remand in *GTL* v. *FCC.* This Public Notice was published in the **Federal Register**. In the *Ancillary Services Refresh Public Notice,* the Bureau sought comment on ''whether each permitted [inmate calling services] ancillary service charge may be segregated between interstate and intrastate calls and, if so, how.'' The Bureau also sought comment on any steps the Commission should take to ensure, consistent with the D.C. Circuit's opinion, that providers of interstate inmate calling services do not circumvent or frustrate the Commission's ancillary service charge rules. The Bureau also defined jurisdictionally mixed services as '' '[s]ervices that are capable of communications both between intrastate end points and between interstate end points' '' and sought comment on, among other issues, how the Commission should proceed if any permitted ancillary service is ''jurisdictionally mixed'' and cannot be segregated between interstate and intrastate calls.

20. In August 2020, the Commission adopted the *2020 ICS Order on Remand* and *2020 ICS Notice.* The Commission responded to the court's remands and took action to comprehensively reform inmate calling services rates and charges. First, the Commission addressed the D.C. Circuit's directive that the Commission consider whether ancillary service charges—separate fees that are not included in the per-minute rates assessed for individual inmate calling services calls—can be segregated into interstate and intrastate components for the purpose of excluding the intrastate components from the reach of the Commission's rules. The Commission found that ancillary service charges generally are jurisdictionally mixed and cannot be practicably segregated between the interstate and intrastate jurisdictions except in the limited number of cases where, at the time a charge is imposed and the consumer accepts the charge, the call to which the service is ancillary is clearly an intrastate call. As a result,

the Commission concluded that inmate calling services providers are generally prohibited from imposing any ancillary service charges other than those permitted by the Commission's rules, and providers are generally prohibited from imposing charges in excess of the Commission's applicable ancillary service fee caps.

21. Second, the Commission proposed rate reform of the inmate calling services within its jurisdiction. As a result of the D.C. Circuit's decisions, the interim interstate rate caps of $0.21 per minute for debit and prepaid calls and $0.25 per minute for collect calls that the Commission adopted in 2013 remain in effect today. Commission staff performed extensive analyses of the data it collected in the Second Mandatory Data Collection as well as the data in the April 1, 2020, annual reports. In the *2015 ICS Order,* the Commission directed that the Second Mandatory Data Collection be conducted ''two years from publication of Office of Management and Budget (OMB) approval of the information collection.'' The Commission received OMB approval in January 2017, and **Federal Register** publication occurred on March 1, 2017. Accordingly, on March 1, 2019, inmate calling services providers submitted their responses to the Second Mandatory Data Collection. WCB and the Office of Economics and Analytics (OEA) undertook a comprehensive analysis of the Second Mandatory Data Collection responses, and conducted multiple follow-up discussions with providers to supplement and clarify their responses, in order to conduct the data analysis upon which the proposals in the August 2020 ICS Notice are based. Based on that analysis, the Commission proposed to lower the interstate rate caps to $0.14 per minute for debit, prepaid, and collect calls from prisons and $0.16 per minute for debit, prepaid, and collect calls from jails. In so doing, the Commission used a methodology that addresses the flaws underlying the Commission's 2015 and 2016 rate caps (which used industry-wide averages to set rate caps) and that is consistent with the mandate in section 276 of the Act that inmate calling services providers be fairly compensated for each and every completed interstate call. The Commission's methodology included a proposed 10% reduction in GTL's costs to account, in part, for seemingly substantially overstated costs. The Commission also proposed to adopt a waiver process that would permit providers to seek waivers of the proposed rate caps on a facility-by-facility or contract basis if the rate caps would prevent a provider from recovering the costs of providing interstate inmate calling services at a facility or facilities covered by a contract. The *2020 ICS Notice* also proposed ''to adopt a rate cap formula for international inmate calling services calls that permits a provider to charge a rate up to the sum of the inmate calling services provider's per-minute interstate rate cap for that correctional facility plus the amount that the provider must pay its underlying international service provider for that call on a per-minute basis (without a markup).'' The Commission explained that this cap ''would enable inmate calling services providers to account for widely varying costs,'' be consistent with the ''just and reasonable' standard in section 201(b) of the Act, and comport with the ''fair compensation'' provision of section 276 of the Act.

22. In response to the *2020 ICS Notice,* the Commission received over 90 comments and reply comments and 9 economic studies. Filers included providers of calling services to incarcerated people, public interest groups and advocates for the incarcerated, telecommunications companies, organizations representing individuals who are deaf or hard of hearing, and providers of telecommunications relay service.

23. *Intrastate Rate Reform Efforts.* By April 1 of each year, inmate calling services providers file annual reports with the Commission that include rates, ancillary service charges, and site commissions. In an effort to compare interstate inmate calling services rate levels with intrastate rate levels, Commission staff analyzed the intrastate rate data submitted as part of the providers' April 1, 2020, annual reports. Commission staff's review revealed that intrastate rates for debit or prepaid calls exceed interstate rates in 45 states, with 33 states allowing rates that are at least double the Commission's interstate cap and 27 states allowing ''first-minute'' charges that can be more than 25 times that of the first minute of an interstate call. For example, one provider reported a first-minute intrastate rate of $5.34 and additional per-minute intrastate rates of $1.39 while reporting the per-minute interstate rate of $0.21 for the same correctional facility. Similarly, another provider reported a first-minute intrastate rate of $6.50 and an additional per-minute intrastate rate of $1.25 while reporting the per-minute interstate rate of $0.25 for the same correctional facility. Further, Commission staff identified instances in which a 15-minute intrastate debit or prepaid call costs as much as $24.80—almost seven times more than the maximum $3.15 that an interstate call of the same duration would cost.

24. In light of these data, in September 2020, former Chairman Pai and Brandon Presley, then president of the National Association of Regulatory Utility Commissioners (NARUC), jointly sent a letter to the co-chairs of the National Governors Association urging state governments to take action to reduce intrastate rates and related fees. At least one state has enacted a law to reduce intrastate inmate calling services rates and fees, at least one state commenced a regulatory proceeding aimed at reducing intrastate inmate calling services rates and fees, and several states are considering legislation.

III. Order On Reconsideration

25. The Commission denies the GTL Petition in full on the merits and, independently, dismisses that petition as procedurally defective, insofar as it relies on arguments the Commission already considered and rejected in the underlying order. The Commission considered and rejected GTL's arguments regarding so-called Commission ''precedent'' purporting to establish a general policy of reliance on NPA–NXX as a proxy for jurisdiction and whether the Commission's statement required prior notice and an opportunity to comment. GTL seeks reconsideration of a single sentence from the *2020 ICS Order on Remand,* reiterating that ''the jurisdictional nature of a call depends on the physical location of the endpoints of the call and not on whether the area code or NXX prefix of the telephone number . . . associated with the account, are associated with a particular state.'' GTL claims that this sentence (1) ignores telecommunications carriers' historical reliance on NPA–NXX codes to classify calls as interstate or intrastate; (2) unfairly singles out providers of calling services for incarcerated people; (3) presents implementation issues; (4) potentially compromises state programs funded by assessments on intrastate revenues; and (5) promulgates a new rule without notice and an opportunity to comment. The Commission finds each of these claims to be without merit and affirm the Commission's continued use of the traditional end-to-end jurisdictional analysis relied upon in the *2020 ICS Order on Remand.*

E. Background

26. Last year, the Commission responded to the D.C. Circuit's directive that it consider whether ancillary

service charges can be segregated into interstate and intrastate components to exclude the intrastate components from the reach of the Commission's rules. The Bureau issued the *Ancillary Services Refresh Public Notice,* published at 85 FR 9444 (Feb. 19, 2020), seeking to refresh the record in light of the D.C. Circuit's remand. Based on the record developed in response to that public notice, the Commission found that ''ancillary service charges generally cannot be practically segregated between the interstate and intrastate jurisdiction except in the limited number of cases where, at the time a charge is imposed and the consumer accepts the charge, the call to which the service is ancillary is a clearly intrastate-only call.'' Thus, the Commission concluded that providers are generally prohibited from imposing ancillary service charges, other than those explicitly permitted by the Commission's rules, and are also generally prohibited from imposing ancillary service charges in excess of the permitted ancillary service fee caps in the Commission's rules.

27. In the *2020 ICS Order on Remand,* the Commission addressed record debate about the jurisdictional classification methodology for certain inmate calling services calls and the ancillary services provided in connection with those calls by reminding providers that ''the jurisdictional nature of a call depends on the physical locations of the endpoints of the call,'' rather than on the area codes or NXX prefixes of the telephone numbers used to make and receive the call. GTL and Securus objected to this approach, asserting that relying on a call's endpoints was inconsistent with prior Commission decisions and with providers' practice of using NPA–NXX codes as proxies for jurisdiction. GTL and Securus raised these objections in *ex parte* filings during the public circulation period of the *2020 ICS Order on Remand* but before the Commission adopted that *Order* on August 6, 2020. GTL and Securus also claimed that the Commission's clarification regarding how carriers are to determine the jurisdictional nature of a call required prior notice and an opportunity to comment. In addition, NCIC questioned ''the FCC's determination that [inmate calling services] providers will be able to determine the location of the terminating point of an [inmate calling services] wireless call—and thus determine whether the call is intrastate or interstate in nature.''

28. In response to these objections, the Commission explained that although it has allowed the use of proxies to determine the jurisdictional nature of certain calls, it has done so only in specific contexts ''typically related to carrier-to-carrier matters or payment of fees owed'' and that it ''never adopted a general policy allowing the broad use of such proxies.'' The Commission distinguished the so-called ''precedent'' cited by GTL and Securus, explaining that none of those decisions established actual Commission policy or practice regarding the use of jurisdictional proxies and that the examples provided ''relate specifically to carrier-to-carrier arrangements involving intercarrier compensation or applicable federal fees due between carriers and the Commission, not to using a proxy for charging a customer a higher or different rate than it would otherwise be subject to based on whether the customer's call is interstate or intrastate.'' The Commission, therefore, rejected GTL's and Securus's argument that application of the end-to-end analysis required prior notice and an opportunity to comment, explaining that it was merely clarifying ''the long-established standard that inmate calling services providers must apply in classifying calls for purposes of charging customers the appropriate rates and charges.'' The Commission further explained that the Bureau's public notice seeking to refresh the record on ancillary service charges in light of the D.C. Circuit's remand provided ''notice of, and a full opportunity to comment on, the jurisdictional status of inmate calling services calls'' because the public notice sought comment on how to proceed if ancillary services were ''jurisdictionally mixed'' and defined jurisdictionally mixed services as those that are ''capable of communications both between intrastate end points and between interstate end points.''

29. In November 2020, GTL filed a petition seeking reconsideration of the application of the end-to-end jurisdictional analysis in the *2020 ICS Order on Remand.* The Bureau released a Public Notice announcing the filing of GTL's Petition and establishing deadlines for oppositions and replies to the Petition. The Bureau received comments from Pay Tel and replies from NCIC and GTL.

F. Discussion

30. *Standard of Review.* Any interested party may file a petition for reconsideration of a final action in a rulemaking proceeding. Reconsideration ''may be appropriate when the petitioner demonstrates that the original order contains a material error or omission, or raises additional facts that were not known or did not exist until after the petitioner's last opportunity to present such matters.'' Petitions for reconsideration that do not warrant consideration by the Commission include those that: ''[f]ail to identify any material error, omission, or reason warranting reconsideration; [r]ely on facts or arguments which have not been previously presented to the Commission . . . ; [r]ely on arguments that have been fully considered and rejected by the Commission within the same proceeding;'' or ''[r]elate to matters outside the scope of the order for which reconsideration is sought.'' The Commission may consider facts or arguments not previously presented if: (1) They ''relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission;'' (2) they were ''unknown to petitioner until after [their] last opportunity to present them to the Commission, and [the petitioner] could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity;'' or (3) ''[t]he Commission determines that consideration of the facts or arguments relied on is required in the public interest.''

1. GTL's Substantive Arguments Against the End-to-End Analysis Do Not Warrant Reconsideration

31. GTL's Petition provides no new substantive facts or arguments that justify reconsideration of the Commission's application of the end-to-end jurisdictional analysis to calling services for incarcerated people. Although GTL cites various documents it claims establish a general Commission policy on the use of jurisdictional proxies for classifying interstate and intrastate calls, none of the cited documents establish such a policy, especially in the provision of inmate calling services. The Commission is also unpersuaded by GTL's arguments regarding the possible discriminatory treatment of providers of these calling services, its reliance on third parties to make jurisdictional determinations, or its unsubstantiated claims about the effects the Commission's jurisdictional analysis may have on state programs.

32. GTL first argues that the end-to-end analysis ignores what it claims is the industry custom and practice of using NPA–NXX codes to determine whether a call is interstate or intrastate. GTL asserts that the ''Commission's prior statements have recognized that using NPA–NXX *is* an appropriate industry standard for determining whether a call is interstate or intrastate.'' In this regard, GTL

emphasizes the 2003 *Starpower Damages Order*. For its part, NCIC argues that the Commission's ''precedent'' has been ''correctly cited by GTL,'' and that the Commission should ''continue to follow that precedent'' in the context of calling services for incarcerated people.

33. The Commission disagrees. The Commission reaffirms the Commission's prior conclusion that not one of the decisions cited in GTL's Petition adopted a general policy allowing broad use of jurisdictional proxies, such as NPA–NXX codes. Those decisions primarily concern the use of jurisdictional proxies to determine the appropriate rating between and among various types of service providers routing calls originating from one NPA–NXX code to a terminating NPA–NXX code and vice versa. None of them allow for the use of jurisdictional proxies in the context of inmate calling services for which consumers may be charged different rates based on whether a call is classified as interstate or intrastate. Instead, the decisions GTL cites merely reflect that the Commission ''has allowed carriers to use proxies for determining the jurisdictional nature of calls in specific contexts, typically related to carrier-to-carrier matters or payment of fees owed.''

34. At bottom, GTL requests that the Commission engraft into its inmate calling services rules a jurisdictional proxy—relying on NPA–NXX codes for all telephone calls from incarcerated people to a called party regardless of the called parties' service provider of choice—that the Commission has never suggested might be used in determining the jurisdictional classification of an inmate calling services call. The Commission thus is not persuaded that GTL's approach reflects a reasonable interpretation of the Commission's existing rules.

35. GTL seizes on certain language in the *Starpower Damages Order* that, GTL claims, establishes a ''historical'' or ''consistent'' use of NPA–NXX codes. Contrary to GTL's assertions, however, the *Starpower* decision did not announce a general policy permitting the use of jurisdictional proxies. Rather, *Starpower* was narrowly concerned with an intercarrier compensation dispute, the resolution of which hinged on the treatment of traffic under a Verizon tariff. In the liability phase of the proceeding, Starpower obtained an order from the Commission obligating Verizon to pay reciprocal compensation under an interconnection agreement ''for whatever calls Verizon South bills to its own customers as local calls under the Tariff, regardless of whether a call is jurisdictionally interstate.'' In the damages phase, Verizon argued that, under its tariff definition, the physical location of the called parties, and not the telephone numbers, determined whether service was ''local.'' But the Commission concluded that Verizon rated and billed ISP-bound traffic under its tariff by looking to the telephone numbers of the parties to a call and not the parties' physical locations. The Commission held that since Verizon treated ISP-bound calls as ''local under the Tariff,'' Verizon was obligated to pay reciprocal compensation under the interconnection agreement. Thus, although *Starpower* contains passing references to the use of NPA–NXX to determine the jurisdictional nature of certain traffic, the decision ultimately turned on the Commission's interpretation of Verizon's tariff and Verizon's own practices in applying that tariff. Accordingly, *Starpower* does not establish any Commission or industry-wide policy on the use of jurisdictional proxies. The fact that *Starpower* involved internet service provider-bound traffic—*i.e.,* traffic to another type of service provider, which at the time was a separate unsettled jurisdictional issue, rather than an end user telephone subscriber—alone, makes this case entirely inapposite.

36. In any event, it is simply not reasonable or reliable now, nor has it been for many years, to assume that a called party is physically located in the geographic area (rate center) of the switch to which the party's NPA–NXX code is native. Before Congress adopted the 1996 Act, when incumbent LECs controlled 99% of the local voice marketplace, one could reasonably assume that a called party was physically located in the geographic area associated with a particular NPA–NXX, as NPA–NXX codes were associated only with a particular incumbent's rate center. Since that time, however, number porting between and among competing wireline LECs, wireless carriers, and fixed and nomadic VoIP providers has rendered NPA–NXX codes an all-too-frequently unreliable means to determine whether a called party is physically located within a particular state when it receives and answers a given call.

37. In the 1996 Act, Congress included the requirement that each LEC ''provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.'' This definition now appears in section 3(37) of the Act. The number portability rules subsequently adopted by the Commission, as modified over time, limit number porting between wireline incumbents and wireline competitors to ports within the same rate center. With respect to wireline-to-wireless porting, the Commission requires wireline carriers to port to requesting wireless carriers ''where the requesting wireless carrier's 'coverage area' overlaps the geographic location in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's [NPA–NXX] original rate center designation following the port.'' In other words, when the wireline number is ported to the wireless carrier's customer, the original rate center designation is maintained for routing and rating purposes by other service providers. A wireless carrier may only port a number to a wireline carrier if the number is associated with the rate center of the wireline carrier where the customer is located. Nomadic VoIP ''is usually a VoIP phone installed in a portable computer which can be taken with the subscriber'' so that ''[c]alls can be made from anywhere in the world.'' By comparison, fixed VoIP is not movable. ''The [fixed] service is provided by a cable company, for example, where the telephone does not leave the residence.'' The Commission began its work implementing the 1996 Act's number portability requirement with its 1996 *First Number Portability Order,* in which it adopted an initial set of rules governing wireline-to-wireline, wireless-to-wireless, and wireline-to-wireless number portability obligations. It required that LECs in the 100 largest Metropolitan Statistical Areas (MSAs) begin implementing a long-term number portability methodology on a phased deployment schedule, and that CMRS providers be able to port numbers by the wireline carriers' deadline to complete number portability implementation and to support network-wide roaming thereafter. The Commission also established LEC number portability implementation obligations outside of the 100 largest MSAs. Subsequently, in 2007, the Commission extended local number portability obligations to interconnected VoIP providers, both fixed and nomadic. In 2015, the Commission opened direct access to numbering resources to interconnected VoIP providers.

38. Today, consumers increasingly rely on nomadic VoIP and mobile voice services for telephone service. Nomadic interconnected VoIP services are provided as over-the-top applications and are not associated with any specific geographic location. ''In this way, nomadic interconnected VoIP service is

similar to mobile service, but distinct from fixed telephony service.'' ''Over-the-top'' VoIP providers are VoIP providers that are not facilities-based. The consumer of an over-the-top VoIP service ''uses an independent data service over a broadband connection.'' The Commission's December 2019 FCC Form 477 data reflected 12.9 million over-the-top VoIP subscriptions in the United States at that time. Subscribers to these services can readily move to other rate centers throughout the country while retaining their telephone numbers. And nearly half of all assigned telephone numbers are associated with wireless phones, which is unsurprising given that the majority of households in the United States no longer subscribe to a landline service. The *combination* of the Commission's number portability orders and the significant technological changes to the communications marketplace means that NPA–NXX codes reflected in telephone numbers are often subject to movement across state lines, on a permanent, nomadic, or mobile basis, making them unreliable as a geographic indicator of endpoints for a given call. As the foregoing analysis suggests, *only* where the calling party (here, the incarcerated person) and the called party each have wireline telephone numbers, can an inmate calling services provider reasonably and reliably determine the jurisdictional nature of a call between those parties based on the NPA–NXX codes of the originating and terminating telephone numbers. That is the case because the Commission's rules require the NPA–NXX of a wireline telephone subscriber to necessarily physically remain within the particular rate center from which each wireline telephone number originated. Unlike for wireless voice service and nomadic VoIP service, the Commission's number porting rules do not permit telephone numbers of wireline subscribers to port across rate center boundaries.

39. GTL next complains that the Commission's confirmation of the end-to-end analysis inappropriately ''singles out [inmate calling services] providers,'' and that the Commission ''cannot target particular classes of telecommunications service providers in its rulemaking when the legal basis for it (and the criticisms that undergird it) are of universal applicability.'' This complaint is completely without merit. The Commission has not singled out inmate calling services providers for disparate treatment. The end-to-end analysis is, and remains, the generally applicable, default standard for all telecommunications carriers—not just inmate calling services providers—for determining the jurisdictional classification of a telephone call. In addition, inmate calling services providers *are* unlike other telecommunications carriers. Calling service providers have a captive consumer base at each correctional facility they serve for which they rarely, if ever, offer all-distance calling plans with uniform rates and charges for intrastate and interstate calls as do most, if not all, other telecommunications services providers. Indeed, inmate calling services providers typically have a myriad of different rates and charges applicable to different jurisdictional call types (*i.e.,* intraLATA intrastate, interLATA intrastate, intraLATA interstate, and interLATA interstate). And while providers have not explained in detail what their resale arrangements with underlying telecommunications carriers entail, it is the Commission's understanding that providers typically pay a flat rate for all minutes of use (except for international calling) regardless of the jurisdictional nature of the call. Calling service providers continue to charge incarcerated people (or their families) different rates and charges purportedly based on differences in costs to serve these different call types, even though those rates are based on fictional determinations that have nothing to do with actual geographic endpoints, except in the case of wireline-to-wireline calls.

40. As explained above, the generally accepted method of determining the jurisdictional nature of any given call is by an end-to-end analysis. Thus, contrary to the providers' claims, jurisdictional proxies are the exception, not the rule. It is only ''[w]here the Commission has found it difficult to apply an end-to-end approach for jurisdictional purposes, [that] it has proposed or adopted proxy or allocation mechanisms to approximate the end-to-end result.'' The Commission subsequently adopted permissible proxies for determining what portion of such jurisdictionally indeterminate VoIP services to attribute to the interstate jurisdiction for Universal Service Fund (USF) payment purposes, but such proxies did not pertain to classifying the underlying calls as either interstate or intrastate for purposes of billing consumers different rates for telephone calls. In the *Vonage Order,* for example, the Commission expressly declined to adopt the use of proxies for determining whether a call was jurisdictionally intrastate or interstate or to address the conflict between federal and state regulatory regimes. Indeed, GTL itself recognized the general applicability of the end-to-end analysis in its comments on the *Ancillary Services Refresh Public Notice,* explaining that ''[t]he *jurisdictional nature of calls themselves is easily classified* as either interstate or intrastate *based on the call's points of origination and termination.* This accords with *the Commission's traditional end-to-end analysis for determining jurisdictional boundaries* 'beginning with the end point at the inception of a communication to the end point at its completion.' '' GTL fails to explain how the application of the Commission's long-established approach for determining the appropriate jurisdiction of a call unfairly singles out providers of calling services for incarcerated people given that, by GTL's own admission, the Commission generally applies this ''traditional'' analysis to all telecommunications providers.

41. Because an NPA–NXX code frequently fails to provide any indication of the actual physical location of a called party (unless it is known that the called party is a wireline telephone subscriber), it generally cannot be relied upon to determine the jurisdictional nature of a call. As the Commission stated in the *2020 ICS Order on Remand,* to do so would undercut interstate callers' federal protection from unjust and unreasonable interstate charges and practices.

42. GTL also alleges, through reliance on decades-old discussions of rating based on NPA–NXX and industry guides, that there are technical barriers that prevent providers of calling services for incarcerated people from applying the traditional end-to-end analysis. These allegations arise from the fact that providers rely on third parties to classify the jurisdiction of calls. As GTL explains it, calls from correctional facilities, whether to wireline, wireless, or VoIP numbers, ''are handed off to unaffiliated third-party telecommunications service providers that route them across the public switched telephone network to their appropriate termination point, based on the called number's entry in the Local Exchange Routing Guide.'' The Local Exchange Routing Guide (LERG) is ''an industry guide generally used by carriers in their network planning and engineering and numbering administration. It contains information regarding all North American central offices and end offices.'' GTL adds that ''[inmate calling services] providers assess charges on

inmate calls by purchasing access to third-party databases that classify them as intrastate, interstate, or international'' and that these databases do not provide the ''actual geographical location associated with a particular device or service.'' Relatedly, Securus explains that these third parties use ''telephone numbers or, since the advent of local number portability, the Local Routing Number . . . as a proxy for . . . jurisdiction,'' and lack ''the information needed to apply the end-to-end analysis.'' The Local Routing Number is a ''telephone number assigned in the local number portability database for the purposes of routing a call to a telephone number that has been ported. When a call is made to a number that has been ported, the routing path for the call is established based on the L[ocal] R[outing] N[umber] rather than on the dialed number.'' GTL concludes that ''[g]iven indicia that classification determinations have, for decades, been under the control of entities over which many providers exercise no authority, critical logistical and financial questions present themselves, such as the costs attendant upon [inmate calling services] providers should they be required to design, deploy, and implement an alternative call classification system.''

43. The Commission finds these arguments unpersuasive. The Commission's rules specify that providers of inmate calling services are currently prohibited from charging more than $0.21 per minute for interstate Debit Calling, Prepaid Calling, or Prepaid Collect Calling and prior to today's accompanying Report and Order more than $0.25 per minute for interstate Collect Calling. The current rule language tracks the language adopted in 2013 but adds the term ''interstate.'' The term ''interstate'' was added to section 64.6030 of the Commission's rules as a non-substantive change to reflect a D.C. Circuit decision that the Commission's regulation of inmate calling services rates could extend no further than the extent of its authority over interstate (and international) calls. The fact that the addition of ''interstate'' was a non-substantive change to reflect a court decision limiting the Commission's inmate calling services rate regulations to the limit of the Commission's authority further reinforces the reasonableness of interpreting ''interstate'' consistent with the Commission's historical jurisdictional approach. The Commission's interpretation of the term ''interstate'' in its rule accords not only with the use of that terminology in the Communications Act, but also with the Commission's traditional approach to defining jurisdiction. It is the *provider's* responsibility to ''appropriately comply[] with this most basic regulatory obligation of telecommunications service providers with respect to their customers—determining the proper jurisdiction of a call when charging its customers the correct and lawful rates for those calls using the end-to-end analysis.'' Providers did not express any concerns about their ability to determine the jurisdiction of any given call when the Commission's adopted ''interim rate caps . . . for *interstate* [inmate calling services]'' in 2013. Nor did they express such concerns in the following years, as those interim rate caps continued to apply. Indeed, despite GTL's claims here, it and other providers use the Commission's historical approach when defining the terms ''interstate'' and ''intrastate'' in at least some of their tariffs and price lists. It is unclear why GTL, or any provider, would base its rates on the geographic locations of the parties to a call if the service provider could not, in fact, determine where the parties are located at the time of the call. The record also provides no indication that the third parties upon which GTL and others claim they rely for determining the jurisdiction of their calls could not accurately determine whether a consumer is making calls between NPA–NXX codes assigned to wireline, wireless, or nomadic VoIP numbers to determine whether those calls are subject to the Commission's interstate rate caps without relying on another methodology to determine the actual endpoints of the call.

44. Further, many of the guides and brochures to which GTL cites in this regard relate predominantly to call *routing* rather than rating. For example, GTL cites to the iconectiv brochure ''Route It Right Every Time with LERG OnLine.'' That brochure contains precisely two references to rating, neither of which relate to the billing of end-user customers. GTL also points to an iconectiv Catalog of Products and Services, but that document is similarly unhelpful for GTL. Finally, the iconectiv catalog to which GTL cites notes that the Telecom Routing Administration's products ''are a mainstay in supporting the various offerings of service providers . . . and, bottom line, in ensuring calls placed by their customers and through their network complete without any problems.'' In other words, the Telecom Routing Administration provides data that supports the *routing* of calls. Nowhere in that catalog does it state that providers should rely solely on NPA–NXX codes for rating calls to end users. The Commission also disagrees with GTL's characterization of the Local Exchange Routing Guide as requiring the use of NPA–NXXs for determining the jurisdictional nature of a call. Once again, GTL conflates the relationship of an NPA–NXX code to that code's original rate center designation, reflected in the Local Exchange Routing Guide for *routing* purposes, with using the same rate center information to determine whether the terminating call to that NPA–NXX code is jurisdictionally intrastate or interstate. The original rate center designation of an NPA–NXX number has no bearing on where calls to that number actually terminate when the called party is a customer of a wireless or nomadic VoIP provider, at a minimum. But even if it did, that would have no bearing on inmate calling services providers' obligations to charge incarcerated people and those whom they call lawful rates.

45. To the extent that the technical issues raised by GTL make it impracticable or impossible to determine whether a call is interstate or intrastate based on the geographical endpoints of the call, the Commission does not require providers of calling services for incarcerated people to redesign or deploy other call classification systems. Instead, the Commission reaffirms that providers must charge a rate at or below the applicable interstate cap for that call. Pay Tel complains that today's Order ''effectively classif[ies] all [inmate calling services] calls as jurisdictionally 'interstate.'" Pay Tel asserts that, as a consequence, consumers will face significant rate increases due to assessment of federal Universal Service Fund charges on all calls, in addition to a host of other concomitant consequences. The Commission finds such concerns misplaced. Under the Commission's end-to-end analysis, charges for a call that is jurisdictionally indeterminant may not exceed the applicable interim interstate rate cap, but where a state has a lower rate cap in place for intrastate calls, charges for a call of indeterminate nature must comply with the lower state rate cap. The Commission also disagrees that there would necessarily be a significant impact on Universal Service Fund assessments as Pay Tel and Securus allege. First, the Commission does not reclassify any calls as interstate calls; and second providers may continue to use whatever proxy or good faith

determination of interstate revenue for purposes of universal service contributions that they have used in the past for this traffic. The Commission's actions today go only to the question of the appropriate jurisdictional treatment for purposes of determining the rates providers may charge for telephone calls to consumers. The Commission's actions neither limit the ability of providers to avail themselves of applicable proxies or safe harbors used for purposes of Universal Service Fund reporting nor suggest that providers have been incorrectly complying with the Commission's universal service contribution rules. Finally, the Commission takes this opportunity to remind providers that they are permitted but not required to pass through universal service charges to their end users. As the Commission explained in the *2020 ICS Order on Remand,* ''where the Commission has jurisdiction under section 201(b) of the Act to regulate rates, charges, and practices of interstate communications services, the impossibility exception extends that authority to the intrastate portion of jurisdictionally mixed services 'where it is impossible or impractical to separate the service's intrastate from interstate components' and state regulation of the intrastate component would interfere with valid federal rules applicable to the interstate component.'' There is no dispute that the Commission has jurisdiction over providers' interstate rates, and GTL does not dispute the Commission's authority to regulate jurisdictionally indeterminate services. Accordingly, to the extent that GTL and other providers find it impossible or impracticable to determine the actual endpoints, hence the actual jurisdictional nature of a call, they must treat that call as jurisdictionally indeterminate and must charge a rate at or below the applicable interstate cap.

46. The Commission rejects GTL's argument that the Commission's application of the end-to-end analysis violates the jurisdictional limitation in section 221(b) of the Act. That section has been narrowly interpreted to ''enable state commissions to regulate local exchange service in metropolitan areas . . . which extend across state boundaries.'' Section 221(b), which refers to ''telephone exchange service'' says nothing about payphone service, which is separately defined in section 276 of the Act. ''Telephone exchange service'' is broadly defined as ''service within a telephone exchange'' or ''comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.'' Indeed, the statute recognizes and treats payphone service separately from exchange service in section 276(a), which prevents Bell operating company-owned payphones from receiving subsidies ''from . . . telephone exchange service operations.'' The Commission has previously recognized this distinction, explaining that although states traditionally regulated payphones, including by setting local rates, that role was ''in the context of LECs providing local payphone service as part of their regulated service.'' By disallowing LEC payphones from receiving subsidies from their basic exchange service, the Commission emphasized that section 276 ''greatly changes the way in which states set local coin rates.'' In sum, the Act treats the exchange service in section 221(b) separate from payphone service in section 276, and the courts have narrowly interpreted section 221(b) to apply only to a state's ability to regulate local exchange service. The Commission is therefore unpersuaded by GTL's argument that the Commission violated section 221(b) or acted in a manner precluded by the implementation of that provision by reiterating that providers of calling services for incarcerated people must charge their end users for interstate and intrastate calls based on the physical endpoints of the call.

47. The Commission is also unpersuaded by GTL's claim that the Commission's jurisdictional analysis might have some ''potential impact'' on state communications programs that depend on assessments of intrastate revenues or that the Commission is somehow limiting the ability of state commissions to use NPA–NXX as a jurisdictional proxy. GTL provides no evidence that applying an end-to-end analysis for purposes of complying with the federal interstate rate cap for inmate calling services charges would either interfere with state authority to use NPA–NXX as a proxy for determining which calls are within their jurisdiction or would somehow result in the ''reclassification of all telecommunications traffic that relies on NPA–NXX . . . as interstate.'' The Commission does not disturb state and local laws or regulations that use NPA–NXX or other proxies to determine, for example, the application of state fees and taxes. The end-to-end jurisdictional analysis that the Commission reaffirms today only affects what calling providers may charge incarcerated people and their loved ones for jurisdictionally indeterminant telephone calls, and as the Commission has indicated above, continued compliance with applicable state and local laws that are not in conflict with federal law remain unaffected.

2. GTL's Procedural Arguments Do Not Warrant Reconsideration

48. The Commission rejects GTL's claim that the Commission needed to provide additional notice and an additional opportunity for comment before it clarified in the *2020 ICS Order on Remand* that providers must use the geographical endpoints of a call rather than the area code or NXX prefix of the call's recipient to determine whether the call is interstate or intrastate. The Commission rejects this claim on procedural grounds insofar as the Commission considered and responded to these arguments in the *2020 ICS Order on Remand,* 35 FCC Rcd at 8502–04, paras. 52–54. The Commission also rejects it on substantive grounds as discussed herein. GTL mischaracterizes the Commission's clarification as a ''new and unprecedented [r]ule'' and a ''serious departure from prior practice.'' On the contrary, after identifying confusion and debate in the record, the Commission ''remind[ed]'' and ''clarifie[d]'' for providers the end-to-end analysis it ''has traditionally used to determine whether a call is within its interstate jurisdiction'' to ensure that providers of calling services for incarcerated people do not ''circumvent or frustrate [the Commission's] ancillary service charge rules.'' Providers of calling services for incarcerated people have been on notice since the Commission adopted interstate rate caps in 2013 that they could not charge more than the capped amounts for interstate calls. By interpreting the rate cap rule as requiring that inmate calling services calls be classified based on their endpoints, the Commission applied the ordinary meaning of the term ''interstate'' as that term is defined in the Communications Act. The Communications Act defines ''interstate communication'' or ''interstate transmission'' as [C]ommunication or transmission (A) from any State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, to any other State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, (B) from or to the United States to or from the Canal Zone, insofar as such communication or transmission takes place within the United States, or (C) between points within the United States

but through a foreign country; but shall not, with respect to the provisions of subchapter II of this chapter (other than second 223 of this title), include wire or radio communication between points in the same State, Territory, or possession of the United States, or the District of Columbia, through any place outside thereof, if such communication is regulated by a State commission. There has been no new legislative rule that would have required notice and an opportunity to comment. The Commission's reminder clearly served the purpose of an interpretive rule. The Administrative Procedure Act (APA) exempts interpretive rules from the procedural requirements of notice and comment rulemaking. An interpretive rule is a clarification or explanation of existing laws or regulations rather than a substantive modification in or adoption of new regulations.

49. In essence, GTL contends that ''interstate'' as used in the Commission's inmate calling services rules had a different meaning than ''interstate'' as used in the Communications Act and therefore that it could classify as intrastate a call that originates in one state and terminates in another state based solely on NPA–NXX codes. GTL's claim is unavailing and has no bearing on the question of whether the Commission was required to provide additional notice and an additional opportunity to comment prior to clarifying that ''interstate'' as used in the inmate calling services rules continues to have the same meaning as ''interstate'' as used in the Communications Act and historical Commission usage of the term.

50. In any event, the *Ancillary Services Refresh Public Notice* fully apprised all interested parties that the Commission would be considering how it should proceed in the event an ancillary service could not ''be segregated between interstate and intrastate calls.'' That public notice also invited comment on what additional steps the Commission should take to ensure that providers of interstate inmate calling services do not circumvent or frustrate the Commission's ancillary service charge rules. GTL claims that the *Ancillary Services Refresh Public Notice* was insufficient to inform stakeholders that the Commission might reexamine ''the methodology used to determine whether a call or charge is interstate or intrastate.'' But the *Public Notice* made clear that the Commission would be considering when an ancillary service is interstate, which necessarily involves a determination whether the calls in connection with that service are interstate. For this reason, the Commission also rejects Pay Tel's assertion that the *Ancillary Services Refresh Public Notice* did not contemplate an evaluation of the jurisdictional classification of inmate calling services calls. And, when the record revealed that certain providers were using NPA–NXX codes, rather than endpoints, to classify calls as interstate or intrastate, the Commission properly clarified, consistent with the text of the Act and long-standing precedent, that using the geographic endpoints was the proper method to determine call jurisdiction. Thus, the Commission's clarification that providers must use an end-to-end analysis in classifying calls as interstate or intrastate was, at the very least, a logical outgrowth of the *Ancillary Services Refresh Public Notice.* Indeed, absent such clarification, the Commission could not have responded fully to the D.C. Circuit's directive to ascertain on remand whether ancillary service charges could be segregated between interstate and intrastate components.

51. For the reasons stated herein, the Commission denies GTL's petition on the merits and dismiss it as procedurally defective.

IV. Severability

52. All of the rules and policies that are adopted in the Commission's Third Report and Order and this Order on Reconsideration are designed to ensure that rates for inmate calling services are just and reasonable while also fulfilling the Commission's obligations under sections 201(b) and 276 of the Act. Each of the separate reforms the Commission undertakes here serves a particular function toward these goals. Therefore, it is the Commission's intent that each of the rules and policies adopted herein shall be severable. If any of the rules or policies is declared invalid or unenforceable for any reason, the remaining rules shall remain in full force and effect.

V. Procedural Matters

53. *People with Disabilities.* The Commission asks that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

54. *Congressional Review Act.* The Commission will not send a copy of this Order on Reconsideration to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA), *see* 5 U.S.C. 801(a)(1)(A), because it does not adopt any rule as defined in the CRA, 5 U.S.C. 804(3).

55. *Supplemental Final Regulatory Flexibility Act Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis (FRFA) relating to the Order on Reconsideration. The FRFA is set forth below.

56. *Final Paperwork Reduction Act Analysis.* The Order on Reconsideration does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. Therefore, it does not contain any new or modified information collection burdens for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

VI. Supplemental Final Regulatory Flexibility Analysis

A. Need for, and Objectives of, the Order on Reconsideration

57. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Second Further Notice of Proposed Rulemaking in the Commission's Inmate Calling Services proceeding. The Commission sought written public comment on the proposals in that *Notice,* including comment on the IRFA. The Commission did not receive comments directed toward the IRFA. Thereafter, the Commission issued a Final Regulatory Flexibility Analysis (FRFA) conforming to the RFA. This Supplemental FRFA supplements that FRFA to reflect the actions taken in the Order on Reconsideration and conforms to the RFA.

58. The Order on Reconsideration denies a Petition for Reconsideration of the *2020 ICS Order on Remand* and reiterates that the jurisdictional nature of an inmate calling services telephone call depends on the physical location of the originating and terminating endpoints of the call.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

59. The Commission did not receive comments specifically addressing the rules and policies proposed in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

60. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

61. 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 rules adopted herein. 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. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 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 Small Business Administration (SBA).

62. *Small Businesses.* Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.

63. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. Thus, under this size standard, the majority of firms in this industry can be considered small.

64. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated for the entire year. Of that total, 3,083 operated with fewer than 1,000 employees. Thus under this category and the associated size standard, the Commission estimates that the majority of local exchange carriers are small entities.

65. *Incumbent Local Exchange Carriers (incumbent LECs*). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year. Of this total, 3,083 operated with fewer than 1,000 employees. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by its actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees. Thus, using the SBA's size standard the majority of incumbent LECs can be considered small entities.

66. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Small Business Act contains a definition of ''small business concern,'' which the RFA incorporates into its own definition of ''small business.'' *See* 15 U.S.C. 632(a); *see also* 5 U.S.C. 601(2). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. *See* 13 CFR 121.102(b). The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

67. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers and under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. Based on these data, the Commission concludes that the majority of Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service,

competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

68. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year. Of that number, 3,083 operated with fewer than 1,000 employees. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

69. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by the Commission's action.

70. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by the Commission's action.

71. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the Commission's action.

72. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers, a group that includes inmate calling services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 535 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 531 have 1,500 or fewer employees and four have more than 1,5000 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by the Commission's action.

73. *TRS Providers.* TRS can be included within the broad economic category of All Other Telecommunications. Ten providers currently receive compensation from the TRS Fund for providing at least one form of TRS: ASL Services Holdings, LLC (GlobalVRS); Clarity Products, LLC (Clarity); ClearCaptions, LLC (ClearCaptions); Convo Communications, LLC (Convo); Hamilton Relay, Inc. (Hamilton); MachineGenius, Inc. (MachineGenius); MEZMO Corp. (InnoCaption); Sorenson Communications, Inc. (Sorenson); Sprint Corporation (Sprint); and ZP Better Together, LLC (ZP Better Together).

74. *All Other Telecommunications.* The ''All Other Telecommunications'' category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with annual receipts of $35 million or less. For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than $25 million and 15 firms had annual receipts of $25 million to $49,999,999. Thus, the Commission estimates that the majority of ''All Other Telecommunications'' firms potentially affected by its action can be considered small. Under this category and the associated small business size standard, a majority of the ten TRS providers can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

75. The Order on Reconsideration confirms that providers must properly identify the physical location of the originating and terminating endpoints of the call in order to determine the jurisdictional nature of the call. To the extent those services are interstate, international, or jurisdictionally mixed, the provider must comply with interim interstate and international inmate calling services caps or limits adopted by the Commission.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

76. 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 and reporting requirements under the rules 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.''

77. The Commission's rate caps differentiate between prisons, larger jails, and jails with average daily populations below 1,000 to account for differences in costs incurred by providers servicing these different facility types. The Commission adopts new interim interstate provider-related rate caps for prisons and larger jails and for collect calls from jails with average daily populations below 1,000. The Commission believes these actions properly recognize that, in comparison to prisons and larger jails, jails with average daily populations below 1,000 may be relatively high-cost facilities for providers to serve. The Commission also adopts rate caps for international calls originating from facilities of any size.

78. The Commission adopts new interim interstate facility-related rate components for prisons and larger jails to allow providers to recover portions of site commission payments estimated to be directly related to the provision of inmate calling services and to separately list these charges on consumers' bills. Providers must determine whether a site commission payment is either (1) mandated pursuant to state statute, or law or regulation and adopted pursuant to state administrative procedure statutes where there is notice and an opportunity for public comment that operates independently of the contracting process between correctional institutions and providers (Legally Mandated facility rate component), or (2) results from contractual obligations reflecting negotiations between providers and correctional facilities arising from the bidding and subsequent contracting process (the Contractually Prescribed facility rate component). For Legally Mandated site commission payments, providers may pass these payments through to consumers without any markup, as an additional component of the new interim interstate per-minute rate cap. For Contractually Prescribed site commission payments, providers may recover an amount up to $0.02 per minute to account for these costs. To promote increased transparency, the Third Report and Order requires providers to clearly label a Legally Mandated or Contractually Prescribed facility rate component, as applicable, in the rates and charges portion of a consumer's bill, including disclosing the source of such provider's obligation to pay that facility-related rate component.

79. The Commission recognizes that it cannot foreclose the possibility that in certain limited instances, the interim rate caps may not be sufficient for certain providers to recover their costs of providing interstate and international inmate calling services. To minimize the burden on providers, the Commission adopts a waiver process that allows providers to seek relief from its rules at the facility or contract level if they can demonstrate that they are unable to recover their legitimate inmate calling services-related costs at that facility or for that contract. The Commission will review submitted waivers and potentially raise each applicable rate cap to a level that enables the provider to recover the costs of providing inmate calling services at that facility. This waiver opportunity should benefit any inmate calling services providers that may be small businesses and that are unable to recover their interstate and international costs under the new interim rate caps.

G. Report to Congress

80. The Commission will send a copy of the Third Report and Order and Order on Reconsideration, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the Order on Reconsideration, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order on Reconsideration, and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

VII. Ordering Clauses

81. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i)–(j), 201(b), 218, 220, 225, 255, 276, 403, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201(b), 218, 220, 225, 255, 276, 403, and 617, this Order on Reconsideration *is adopted.*

82. *It is further ordered* that, pursuant to the authority contained in sections 1, 2, 4(i)–(j), 201(b), 218, 220, 225, 255, 276, 403, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201(b), 218, 220, 225, 255, 276, 403, and 617, the Petition for Reconsideration, filed November 23, 2020, by Global Tel*Link Corp. *is denied in full* and *dismissed in part* as described herein.

83. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2021–14729 Filed 7–27–21; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 210723–0150]

RIN 0648–BK24

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 61

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

ACTION: Final rule.

SUMMARY: This action approves and implements Framework Adjustment 61 to the Northeast Multispecies Fishery Management Plan. This rule revises the status determination criteria for Georges Bank and Southern New England-Mid Atlantic winter flounder, implements a revised rebuilding plan for white hake, sets or adjusts catch limits for 17 of the 20 multispecies (groundfish) stocks, and implements a universal exemption for sectors to target Acadian redfish. This action is necessary to respond to updated scientific information and to

achieve the goals and objectives of the fishery management plan. The final measures are intended to help prevent overfishing, rebuild overfished stocks, achieve optimum yield, and ensure that management measures are based on the best scientific information available.

DATES: Effective July 27, 2021.

ADDRESSES: Copies of Framework Adjustment 61, including the Environmental Assessment, the Regulatory Impact Review, and the Regulatory Flexibility Act Analysis prepared by the New England Fishery Management Council in support of this action, are available from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The supporting documents are also accessible via the internet at: *http://www.nefmc.org/management-plans/northeast-multispecies* or *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Liz Sullivan, Fishery Policy Analyst, phone: 978–282–8493; email: *Liz.Sullivan@noaa.gov.*

SUPPLEMENTARY INFORMATION:

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1. Summary of Approved Measures

This action approves the management measures in Framework Adjustment 61 to the Northeast Multispecies Fishery Management Plan (FMP). The measures implemented in this final rule:

- Revise the status determination criteria (SDC) for Georges Bank (GB) and Southern New England/Mid-Atlantic (SNE/MA) winter flounder and provide the numeric estimates of the SDCs for these stocks, based on the peer review recommendations;
- Implement a revised rebuilding plan for white hake;
- Set fishing year 2021 shared U.S./Canada quotas for GB yellowtail flounder and eastern GB cod and haddock;
- Set 2021–2023 specifications, including catch limits, for nine groundfish stocks and adjust 2021–2022 allocations for seven other groundfish stocks; and
- Implement a universal exemption for sectors to target redfish.

2. Status Determination Criteria

The Northeast Fisheries Science Center conducted management track stock assessment updates in 2020 for nine groundfish stocks. This action revises SDCs for GB and SNE/MA winter flounder, and provides updated numerical estimates of these criteria, in order to incorporate the results of the 2020 stock assessments and based on the peer review recommendations from the 2020 stock assessments. Table 1 provides the revisions to the SDCs for GB and SNE/MA winter flounder, and Table 2 provides the resulting numerical estimates of the SDCs. While the numeric estimates are updated based on the revision to the SDCs, we are not changing the stock statuses for both stocks as a result of this update. We provided an explanation of the basis for the revision to the SDCs in the proposed rule (86 FR 33191, June 24, 2021), and it is not repeated here.

TABLE 1—STATUS DETERMINATION CRITERIA

Stock	Biomass target (SSB_{MSY} or proxy)	Minimum biomass threshold	Maximum fishing mortality threshold (F_{MSY} or proxy)
GB Winter Flounder:			
Previous SDC	SSB_{MSY}	½ Btarget	F_{MSY}.
Revised SDC	SSB_{MSY}: SSB/R (40 percent MSP)	½ Btarget	F–40 percent of MSP.
SNE/MA Winter Flounder:			
Previous SDC	SSB_{MSY}	½ Btarget	F_{MSY}.
Revised SDC	SSB_{MSY}: SSB/R (40 percent MSP)	½ Btarget	F–40 percent of MSP.

SSB = spawning stock biomass; MSY = maximum sustainable yield; Btarget = target biomass; F = fishing mortality; SSB/R = spawning stock biomass per recruit; MSP = maximum spawning potential.

TABLE 2—NUMERICAL ESTIMATES OF STATUS DETERMINATION CRITERIA

Stock	Model/approach	B_{MSY} or proxy (mt)	F_{MSY} or proxy	MSY (mt)
GB Winter Flounder:				
Using previous SDC	VPA	7,394	0.358	2,612
Using revised SDC	VPA	7,267	0.358	2,573
SNE/MA Winter Flounder:				
Using previous SDC	ASAP	31,567	0.260	9,102
Using revised SDC	ASAP	12,322	0.284	3,906

VPA = virtual population analysis; ASAP = age-structured assessment program.

3. Rebuilding Plan for White Hake

Framework 61 revises the rebuilding plan for white hake, which we more fully described in the proposed rule and Appendix III of the Framework 61 Environmental Assessment (EA; see **ADDRESSES** for information on how to get this document). The approved rebuilding plan for white hake sets the fishing mortality (F) rate that is required to rebuild the stock ($F_{rebuild}$) at 70 percent of the fishing mortality rate associated with maximum sustainable yield (F_{MSY}) with an 87-percent probability of achieving the biomass associated with maximum sustainable yield (B_{MSY}) by 2031, the end of the rebuilding plan. As explained in more detail in Appendix III of the EA, the approved rebuilding plan accounts for the white hake's stock status, the needs of fishing communities, and the interaction of white hake with other multispecies in the groundfish fishery.

4. Fishing Year 2021 Shared U.S./Canada Quotas

Management of Transboundary Georges Bank Stocks

As described in the proposed rule, eastern GB cod, eastern GB haddock, and GB yellowtail flounder are jointly managed with Canada under the United States/Canada Resource Sharing Understanding. This action adopts shared U.S./Canada quotas for these stocks for fishing year 2021 based on 2020 assessments and the recommendations of the Transboundary Management Guidance Committee (TMGC) and consistent with the Council's Scientific and Statistical Committee (SSC) recommendations. The 2021 shared U.S./Canada quotas, and each country's allocation, are listed in Table 3. Detailed summaries of the assessments can be found at: *https://www.fisheries.noaa.gov/new-england-mid-atlantic/international-affairs/population-dynamics-international-collaboration.*

TABLE 3—2021 FISHING YEAR U.S./CANADA QUOTAS AND PERCENT OF QUOTA ALLOCATED TO EACH COUNTRY

[mt, live weight]

Quota	Eastern GB cod	Eastern GB haddock	GB yellowtail flounder
Total Shared Quota	635	14,100	125.
U.S. Quota	190.5 (30 percent)	6,486 (46 percent)	80 (64 percent).
Canadian Quota	444.5 (70 percent)	7,614 (54 percent)	45 (36 percent).

The regulations implementing the U.S./Canada Resource Sharing Understanding require deducting any overages of the U.S. quota for eastern GB cod, eastern GB haddock, or GB yellowtail flounder from the U.S. quota in the following fishing year. Based on preliminary data through June 22, 2021, the U.S. fishery did not exceed its 2020 fishing year quota for any of the shared stocks. However, if final catch accounting for the 2020 fishing year indicates that the U.S. fishery exceeded its quota for any of the shared stocks, we will reduce the respective U.S. quotas for the 2021 fishing year in an adjustment action, as soon as possible in the 2021 fishing year. If any fishery that is allocated a portion of the U.S. quota exceeds its allocation and causes an overage of the overall U.S. quota, the overage reduction would be applied only to that fishery's allocation in the following fishing year. This ensures that catch by one component of the overall fishery does not negatively affect another component of the overall fishery.

5. Catch Limits for Fishing Years 2021–2023

Summary of the Catch Limits

This rule replaces default specifications as discussed in detail in the proposed rule and adopts catch limits for nine groundfish stocks for the 2021–2023 fishing years based on stock assessments completed in 2020, and fishing year 2021–2022 specifications for GB yellowtail flounder. Framework 59 (85 FR 45794; July 30, 2020) previously set 2021–2022 quotas for the 10 groundfish stocks not assessed in 2020, based on assessments conducted in 2019. This action includes minor adjustments for seven of these stocks for fishing years 2021–2022. The catch limits implemented in this action, including overfishing limits (OFL), acceptable biological catches (ABC), and annual catch limits (ACL), are listed in Tables 4 through 12. A summary of how these catch limits were developed, including the distribution to the various fishery components, was provided in the proposed rule and in Appendix II (Calculation of Northeast Multispecies Annual Catch Limits, FY 2021–FY 2023) to the EA, and is not repeated here. The sector and common pool sub-ACLs implemented in this action are based on fishing year 2021 potential sector contributions (PSC) and final fishing year 2021 sector rosters.

TABLE 4—FISHING YEARS 2021–2023 OVERFISHING LIMITS AND ACCEPTABLE BIOLOGICAL CATCHES

[mt, live weight]

Stock	2021		Percent change from 2020	2022		2023	
	OFL	U.S. ABC		OFL	U.S. ABC	OFL	U.S. ABC
GB Cod	UNK	1,308	1	UNK	1,308	.....	.....
GOM Cod	929	552	0	1,150	552	.....	.....
GB Haddock	116,883	82,723	−37	114,925	81,242	.....	.....
GOM Haddock	21,521	16,794	−15	14,834	11,526	.....	.....
GB Yellowtail Flounder	UNK	80	−33	UNK	80	.....	.....
SNE/MA Yellowtail Flounder	71	22	0	184	22	.....	.....
CC/GOM Yellowtail Flounder	1,076	823	0	1,116	823	.....	.....
American Plaice	3,740	2,881	−9	3,687	2,825	.....	.....
Witch Flounder	UNK	1,483	0	UNK	1,483	.....	.....
GB Winter Flounder	865	608	8	974	608	1,431	608
GOM Winter Flounder*	662	497	11	662	497	662	497
SNE/MA Winter Flounder*	1,438	456	−37	1,438	456	1,438	456
Redfish*	13,519	10,186	−15	13,354	10,062	13,229	9,967
White Hake	2,906	2,147	0	2,986	2,147	.....	.....
Pollock	28,475	22,062	−20	21,744	16,812	.....	.....
N. Windowpane Flounder	UNK	160	171	UNK	160	UNK	160

TABLE 4—FISHING YEARS 2021–2023 OVERFISHING LIMITS AND ACCEPTABLE BIOLOGICAL CATCHES—Continued

[mt, live weight]

Stock	2021		Percent change from 2020	2022		2023	
	OFL	U.S. ABC		OFL	U.S. ABC	OFL	U.S. ABC
S. Windowpane Flounder	513	384	−10	513	384	513	384
Ocean Pout *	125	87	−31	125	87	125	87
Atlantic Halibut	UNK	101	−5	UNK	101	UNK	101
Atlantic Wolffish *	122	92	2	122	92	122	92

UNK = Unknown.

Note: An empty cell indicates no OFL/ABC is adopted for that year. These catch limits would be set in a future action.

TABLE 5—CATCH LIMITS FOR THE 2021 FISHING YEAR

[mt, live weight]

Stock	Total ACL	Groundfish sub-ACL	Sector sub-ACL	Common pool sub-ACL	Recreational sub-ACL	Midwater trawl fishery	Scallop fishery	Small-mesh fisheries	State waters sub-component	Other sub-component
	A to H	A + B + C	A	B	C	D	E	F	G	H
GB Cod	1,250	1,093	1,045	48					20	137
GOM Cod	523	463	262	8.2	193				48	12
GB Haddock	78,574	76,622	74,096	2,526		1,539			0	414
GOM Haddock	15,843	15,575	10,023	258	5,295	156			56	56
GB Yellowtail Flounder	78	64	59	5.1			12	1.5	0.0	0.0
SNE/MA Yellowtail Flounder	21	16	12	3.6			2.0		0.2	3.3
CC/GOM Yellowtail Flounder	787	692	651	41					58	37
American Plaice	2,740	2,682	2,592	90					29	29
Witch Flounder	1,414	1,317	1,273	44					44	52
GB Winter Flounder	591	563	517	47					0	27
GOM Winter Flounder	482	281	267	14					194	7.5
SNE/MA Winter Flounder	441	288	247	41					21	132
Redfish	9,677	9,677	9,537	139					0	0
White Hake	2,041	2,019	1,994	25					11	11
Pollock	21,086	18,549	18,355	193					1,434	1,103
N. Windowpane Flounder	150	108	na	108			31		0.8	10
S. Windowpane Flounder	371	43	na	43			129		23	177
Ocean Pout	83	50	na	50					0	33
Atlantic Halibut	97	73	na	73					20	3.5
Atlantic Wolffish	86	86	na	86					0	0

na: not allocated to sectors.

TABLE 6—CATCH LIMITS FOR THE 2022 FISHING YEAR

[mt, live weight]

Stock	Total ACL	Groundfish sub-ACL	Sector sub-ACL	Common pool sub-ACL	Recreational sub-ACL	Midwater trawl fishery	Scallop fishery	Small-mesh fisheries	State waters sub-component	Other sub-component
	A to H	A + B + C	A	B	C	D	E	F	G	H
GB Cod	1,250	1,093	1,045	48					20	137
GOM Cod	523	463	262	8.2	193				48	12
GB Haddock	77,168	75,250	72,770	2,481		1,511			0	406
GOM Haddock	10,873	10,690	6,879	177	3,634	107			38	38
GB Yellowtail Flounder	78	64	59	5.1			12	1.5	0	0
SNE/MA Yellowtail Flounder	21	16	12	3.6			2.0		0.2	3.3
CC/GOM Yellowtail Flounder	787	692	651	41					58	37
American Plaice	2,687	2,630	2,542	89					28	28
Witch Flounder	1,414	1,317	1,273	44					44	52
GB Winter Flounder	591	563	517	47					0	27

TABLE 6—CATCH LIMITS FOR THE 2022 FISHING YEAR—Continued

[mt, live weight]

Stock	Total ACL	Groundfish sub-ACL	Sector sub-ACL	Common pool sub-ACL	Recreational sub-ACL	Midwater trawl fishery	Scallop fishery	Small-mesh fisheries	State waters sub-component	Other sub-component
	A to H	A + B + C	A	B	C	D	E	F	G	H
GOM Winter Flounder	482	281	267	14					194	7.5
SNE/MA Winter Flounder	441	288	247	41					21	132
Redfish	9,559	9,559	9,421	138					0	0
White Hake	2,041	2,019	1,994	25					11	11
Pollock	16,068	14,135	13,988	147					1,093	841
N. Windowpane Flounder	150	108	na	108			31		0.8	10
S. Windowpane Flounder	371	43	na	43			129		23	177
Ocean Pout	83	50	na	50					0	33
Atlantic Halibut	97	73	na	73					20	3.5
Atlantic Wolffish	86	86	na	86					0	0

na: not allocated to sectors.

TABLE 7—CATCH LIMITS FOR THE 2023 FISHING YEAR

[mt, live weight]

Stock	Total ACL	Groundfish sub-ACL	Sector sub-ACL	Common pool sub-ACL	Recreational sub-ACL	Midwater trawl fishery	Scallop fishery	Small-mesh fisheries	State waters sub-component	Other sub-component
	A to H	A + B + C	A	B	C	D	E	F	G	H
GB Cod*										
GOM Cod*										
GB Haddock*										
GOM Haddock*										
GB Yellowtail Flounder**										
SNE/MA Yellowtail Flounder*										
CC/GOM Yellowtail Flounder*										
American Plaice*										
Witch Flounder*										
GB Winter Flounder	591	563	517	47					0	27
GOM Winter Flounder	482	281	267	14					194	7.5
SNE/MA Winter Flounder	441	288	247	41					21	132
Redfish	9,469	9,469	9,332	136					0	0
White Hake*.										
Pollock*.										
N. Windowpane Flounder	150	108	na	108			31		0.8	10
S. Windowpane Flounder	371	43	na	43			129		23	177
Ocean Pout	83	50	na	50					0	33
Atlantic Halibut	97	73	na	73					20	3.5
Atlantic Wolffish	86	86	na	86					0	0

na: not allocated to sectors.
*These stocks only have an allocation for fishing years 2021–2022, previously approved in Framework 59.
** Framework 61 approves allocations for GB yellowtail flounder for fishing years 2021 and 2022 only.

TABLE 8—FISHING YEARS 2021–2023 COMMON POOL TRIMESTER TACS

[mt, live weight]

Stock	2021			2022			2023		
	Trimester 1	Trimester 2	Trimester 3	Trimester 1	Trimester 2	Trimester 3	Trimester 1	Trimester 2	Trimester 3
GB Cod	13.4	16.3	18.2	13.4	16.3	18.2			
GOM Cod	4.0	2.7	1.5	4.0	2.7	1.5			
GB Haddock	682.0	833.5	1010.4	669.8	818.6	992.3			
GOM Haddock	69.6	67.1	121.2	47.8	46.0	83.2			
GB Yellowtail Flounder	1.0	1.5	2.6	1.0	1.5	2.6			
SNE/MA Yellowtail Flounder	0.8	1.0	1.8	0.8	1.0	1.8			
CC/GOM Yellowtail Flounder	23.6	10.8	7.0	23.6	10.8	7.0			

TABLE 8—FISHING YEARS 2021–2023 COMMON POOL TRIMESTER TACS—Continued

[mt, live weight]

Stock	2021			2022			2023		
	Trimester 1	Trimester 2	Trimester 3	Trimester 1	Trimester 2	Trimester 3	Trimester 1	Trimester 2	Trimester 3
American Plaice	66.8	7.2	16.3	65.5	7.1	15.9	.....	.....	.....
Witch Flounder	24.3	8.8	11.0	24.3	8.8	11.0	.....	.....	.....
GB Winter Flounder	3.7	11.2	31.7	3.7	11.2	31.7	3.7	11.2	31.7
GOM Winter Flounder	5.1	5.3	3.5	5.1	5.3	3.5	5.1	5.3	3.5
Redfish	34.8	43.2	61.3	34.4	42.7	60.6	34.1	42.3	60.0
White Hake	9.5	7.8	7.8	9.5	7.8	7.8	.....	.....	.....
Pollock	54.1	67.6	71.5	41.2	51.5	54.5	.....	.....	.....

TABLE 9—COMMON POOL INCIDENTAL CATCH TACS FOR THE 2021–2023 FISHING YEARS

[mt, live weight]

Stock	Percentage of common pool sub-ACL	2020	2021	2022
GB Cod	1.68	0.81	0.81	.....
GOM Cod	1	0.08	0.08	.....
GB Yellowtail Flounder	2	0.10	0.10	.....
CC/GOM Yellowtail Flounder	1	0.41	0.41	.....
American Plaice	5	4.51	4.43	.....
Witch Flounder	5	2.21	2.21	.....
SNE/MA Winter Flounder	1	0.41	0.41	0.41

TABLE 10—PERCENTAGE OF INCIDENTAL CATCH TACS DISTRIBUTED TO EACH SPECIAL MANAGEMENT PROGRAM

Stock	Regular B DAS program (percent)	Eastern U.S./CA haddock SAP (percent)
GB Cod	60	40
GOM Cod	100	n/a
GB Yellowtail Flounder	50	50
CC/GOM Yellowtail Flounder	100	n/a
American Plaice	100	n/a
Witch Flounder	100	n/a
SNE/MA Winter Flounder	100	n/a

TABLE 11—FISHING YEARS 2021–2023 INCIDENTAL CATCH TACS FOR EACH SPECIAL MANAGEMENT PROGRAM

[mt, live weight]

Stock	Regular B DAS program			Eastern U.S./Canada haddock SAP		
	2021	2022	2023	2021	2022	2023
GB Cod	0.48	0.48	.....	0.32	0.32	.....
GOM Cod	0.08	0.08	.....	n/a	n/a	n/a
GB Yellowtail Flounder	0.05	0.05	.....	0.05	0.05	.....
CC/GOM Yellowtail Flounder	0.41	0.41	.....	n/a	n/a	n/a
American Plaice	4.51	4.43	.....	n/a	n/a	n/a
Witch Flounder	2.21	2.21	.....	n/a	n/a	n/a
SNE/MA Winter Flounder	0.41	0.41	0.41	n/a	n/a	n/a

TABLE 12—FISHING YEARS 2021–2023 REGULAR B DAS PROGRAM QUARTERLY INCIDENTAL CATCH TACS

[mt, live weight]

Stock	2021				2022				2023			
	1st Quarter (13 percent)	2nd Quarter (29 percent)	3rd Quarter (29 percent)	4th Quarter (29 percent)	1st Quarter (13 percent)	2nd Quarter (29 percent)	3rd Quarter (29 percent)	4th Quarter (29 percent)	1st Quarter (13 percent)	2nd Quarter (29 percent)	3rd Quarter (29 percent)	4th Quarter (29 percent)
GB Cod	0.06	0.14	0.14	0.14	0.06	0.14	0.14	0.14	.....	.....	.....	.....
GOM Cod	0.01	0.02	0.02	0.02	0.01	0.02	0.02	0.02	.....	.....	.....	.....
GB Yellowtail Flounder	0.007	0.015	0.015	0.015	0.01	0.01	0.01	0.01	.....	.....	.....	.....
CC/GOM Yellowtail Flounder	0.05	0.12	0.12	0.12	0.05	0.12	0.12	0.12	.....	.....	.....	.....
American Plaice	0.59	1.31	1.31	1.31	0.58	1.28	1.28	1.28	.....	.....	.....	.....
Witch Flounder	0.29	0.64	0.64	0.64	0.29	0.64	0.64	0.64	.....	.....	.....	.....
SNE/MA Winter Flounder	0.05	0.12	0.12	0.12	0.05	0.12	0.12	0.12	0.05	0.12	0.12	0.12

Sector Annual Catch Entitlements (ACE)

At the start of the 2021 fishing year, we allocated stocks to each sector, based on the catch limits set by prior frameworks. This rule updates the ACE allocated to sectors based on the catch limits approved in Framework 61, fishing year 2021 PSC, and final fishing year 2021 sector rosters. We calculate a sector's allocation for each stock by summing its members' PSC for the stock and then multiplying that total percentage by the commercial sub-ACL for that stock. The process for allocating ACE to sectors is further described in the final rule allocating ACE to sectors for fishing year 2021 (86 FR 22898; April 30, 2021) and is not repeated here. Table 13 shows the cumulative PSC by stock for each sector for fishing year 2021. Tables 14 and 15 show the ACEs allocated to each sector for fishing year 2021, in pounds and metric tons, respectively. We have included the common pool sub-ACLs in tables 13 through 15 for comparison.

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Table 13 -- Cumulative PSC (percentage) each sector is receiving by stock for fishing year 2021

Sector Name	MRI Count	GB Cod	GOM Cod	GB Haddock	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder	Redfish	White Hake	Pollock
Fixed Gear Sector	66	12.91201525	0.69970954	1.96267839	0.18099559	0.01093447	0.19005237	1.70866378	0.50303247	1.09848991	0.02003390	8.02535090	1.02747169	0.56965180	1.07558798	3.41104460
Maine Coast Community Sector	100	2.46465820	14.32831077	3.41760008	11.09853612	2.62555258	2.56811874	4.98632158	13.90683769	11.13417790	1.20530346	5.56725060	2.00900077	9.71980227	14.29807630	13.45174502
Maine Permit Bank	11	0.13361161	1.15527371	0.04432773	1.12456784	0.01377701	0.03180705	0.31794656	1.16407704	0.72688466	0.00021715	0.42663133	0.01789123	0.82190541	1.65423037	1.69506266
Mooncusser Sector	48	11.95940509	6.22441724	3.83051665	3.68870155	1.22307304	0.85547320	3.01233271	0.85789918	1.81231812	0.94550207	2.84735133	2.44445581	4.74534752	10.66178384	10.52833852
NEFS 2	127	6.50377730	26.60642444	10.68672011	22.23639211	1.90722660	1.65680176	25.06542516	11.18795860	14.64245378	3.21713432	24.52914050	4.17525707	15.19764105	8.97809039	14.53817798
NEFS 4	58	7.40278746	11.14715279	5.81741902	8.87488520	2.16178984	2.26424835	6.38868785	9.51519683	8.85678156	0.69256896	7.43025795	0.99122070	6.67292713	8.26904075	6.86549108
NEFS 5	22	0.47171697	0.32173996	0.58091379	0.11414072	1.05907256	18.39722054	0.94737902	0.46136022	0.65508997	0.31546201	0.84237741	11.30626214	0.01842240	0.08282167	0.03832046
NEFS 6	23	3.11400760	2.92154892	3.58633261	4.39667574	3.30346794	5.11479613	4.18474608	4.55131759	6.00691065	1.72190154	4.75208259	1.90633969	6.81082532	4.52244826	3.66490102
NEFS 7	7	0.46305698	0.02291312	0.39735538	0.01682579	1.30011492	1.03798542	0.05122608	0.25069186	0.25401118	0.30163925	0.05425034	0.18875853	0.15784019	0.07884075	0.18125420
NEFS 8	52	9.74740165	2.36155604	9.19478219	5.08770917	22.13250390	7.55578310	6.88682924	7.61264285	6.36103710	29.74215982	3.95221384	10.21118534	5.31534068	4.49126659	4.00416803
NEFS 10	29	0.52585353	2.47139968	0.17673209	1.28210628	0.00114846	0.54787117	4.28071114	1.08110214	2.04602336	0.01083157	9.10605344	0.60104219	0.33492866	0.65504499	0.76337372
NEFS 11	43	0.39631081	11.55197634	0.03469810	2.78851224	0.00148374	0.01147434	2.43786953	1.58857268	1.60337452	0.00305958	2.04949811	0.02122336	1.87813755	4.30520429	8.77057673
NEFS 12	22	0.62936609	3.13340099	0.09375956	1.08960389	0.00042969	0.03423699	8.58774919	0.79724602	0.62375273	0.00060545	13.19945544	0.25920606	0.22794000	0.29614103	0.77811802
NEFS 13	70	12.65390016	0.80182096	21.35179272	0.97739231	36.32284531	23.98638456	7.00125506	8.74395988	9.65967443	19.43367782	2.32792940	17.66348486	4.43539316	2.27032027	2.70789206
New Hampshire Permit Bank	4	0.00082216	1.14551884	0.00003406	0.03234889	0.00002026	0.00001788	0.02180780	0.02847787	0.00615970	0.00000324	0.06070545	0.00003630	0.01940243	0.08135666	0.11135242
Sustainable Harvest Sector 1	30	5.57899029	2.98581817	7.55457484	9.03142800	3.19074027	1.07671984	2.83579743	11.36677073	9.28674073	7.82278738	2.56491779	3.04430302	8.25371859	12.69547070	6.46257663
Sustainable Harvest Sector 2	28	3.67707499	1.67621458	1.80758272	1.49630004	5.08889227	4.55761667	5.67454721	2.88513497	2.46063067	8.67082704	4.21283994	8.32194044	1.13510819	1.90338847	1.27911759
Sustainable Harvest Sector 3	58	16.98068153	7.39596460	26.16564167	23.97370662	11.63547821	7.10548269	9.62314826	20.13175298	19.41125647	17.60739462	3.10048367	21.67414282	32.24513087	22.44023779	19.70729108
Common Pool	511	4.38456235	3.04883932	3.29653828	2.50917190	8.02144893	23.00790920	5.98755633	3.36596842	3.35423255	8.28889083	4.95120998	14.13677799	1.44053678	1.24064892	1.04119820
Sector Total	798	95.62	96.95	96.70	97.49	91.98	76.99	94.01	96.63	96.65	91.71	95.05	85.86	98.56	98.76	98.96

Table 14 -- ACE (in 1,000 lb), by stock, for each sector for fishing year 2021 #^

Sector Name	GB Cod East	GB Cod West	GOM Cod	GB Haddock East	GB Haddock West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder	Redfish	White Hake	Pollock
Fixed Gear Sector	54	257	4	281	3,035	41	0	0	26	30	32	0	50	7	122	48	1,395
Maine Coast Community Sector	10	49	85	489	5,284	2,516	4	1	76	822	323	15	34	13	2,074	637	5,501
Maine Permit Bank	1	3	7	6	69	255	0	0	5	69	21	0	3	0	175	74	693
Mooncusser Sector	50	238	37	548	5,923	836	2	0	46	51	53	12	18	16	1,012	475	4,305
NEFS 2	27	129	159	1,528	16,524	5,040	3	1	382	662	425	40	152	27	3,242	400	5,945
NEFS 4	31	147	66	832	8,995	2,012	3	1	97	563	257	9	46	6	1,424	368	2,807
NEFS 5	2	9	2	83	898	26	1	6	14	27	19	4	5	72	4	4	16
NEFS 6	13	62	17	513	5,545	997	5	2	64	269	174	21	29	12	1,453	201	1,499
NEFS 7	2	9	0	57	614	4	2	0	1	15	7	4	0	1	34	4	74
NEFS 8	41	194	14	1,315	14,217	1,153	31	3	105	450	185	369	24	65	1,134	200	1,637
NEFS 10	2	10	15	25	273	291	0	0	65	64	59	0	56	4	71	29	312
NEFS 11	2	8	69	5	54	632	0	0	37	94	47	0	13	0	401	192	3,587
NEFS 12	3	13	19	13	145	247	0	0	131	47	18	0	82	2	49	13	318
NEFS 13	53	252	5	3,053	33,015	222	51	8	107	517	281	241	14	112	946	101	1,107
New Hampshire Permit Bank	0	0	7	0	0	7	0	0	0	2	0	0	0	0	4	4	46
Sustainable Harvest Sector 1	23	111	18	1,080	11,681	2,047	4	0	43	672	270	97	16	19	1,761	565	2,643
Sustainable Harvest Sector 2	15	73	10	258	2,795	339	7	2	87	171	71	108	26	53	242	85	523
Sustainable Harvest Sector 3	71	338	44	3,741	40,458	5,434	16	2	147	1,190	564	219	19	138	6,879	999	8,059
Common Pool	18	87	18	471	5,097	569	11	8	91	199	97	103	31	90	307	55	426
Sector Total	402	1,903	578	13,828	149,527	22,097	129	26	1,434	5,714	2,807	1,139	589	545	21,026	4,396	40,467

Numbers are rounded to the nearest thousand pounds. In some cases, this table shows an allocation of 0, but that sector may be allocated a small amount of that stock in tens or hundreds pounds.

^ The data in the table represent the total allocations to each sector.

Table 15 -- ACE (in metric tons), by stock, for each sector for fishing year 2021 #^

Sector Name	GB Cod East	GB Cod West	GOM Cod	GB Haddock East	GB Haddock West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder	Redfish	White Hake	Pollock
Fixed Gear Sector	25	117	2	127	1,377	19	0	0	12	13	14	0	23	3	55	22	633
Maine Coast Community Sector	5	22	39	222	2,397	1,141	2	0	35	373	147	7	16	6	941	289	2,495
Maine Permit Bank	0	1	3	3	31	116	0	0	2	31	10	0	1	0	80	33	314
Mooncusser Sector	23	108	17	248	2,687	379	1	0	21	23	24	5	8	7	459	215	1,953
NEFS 2	12	59	72	693	7,495	2,286	1	0	173	300	193	18	69	12	1,471	181	2,697
NEFS 4	14	67	30	377	4,080	912	1	0	44	255	117	4	21	3	646	167	1,273
NEFS 5	1	4	1	38	407	12	1	3	7	12	9	2	2	33	2	2	7
NEFS 6	6	28	8	233	2,515	452	2	1	29	122	79	10	13	5	659	91	680
NEFS 7	1	4	0	26	279	2	1	0	0	7	3	2	0	1	15	2	34
NEFS 8	19	88	6	596	6,449	523	14	1	48	204	84	168	11	29	514	91	743
NEFS 10	1	5	7	11	124	132	0	0	30	29	27	0	26	2	32	13	142
NEFS 11	1	4	31	2	24	287	0	0	17	43	21	0	6	0	182	87	1,627
NEFS 12	1	6	8	6	66	112	0	0	59	21	8	0	37	1	22	6	144
NEFS 13	24	114	2	1,385	14,975	100	23	4	48	235	127	109	7	51	429	46	502
New Hampshire Permit Bank	0	0	3	0	0	3	0	0	0	1	0	0	0	0	2	2	21
Sustainable Harvest Sector 1	11	50	8	490	5,298	929	2	0	20	305	122	44	7	9	799	256	1,199
Sustainable Harvest Sector 2	7	33	5	117	1,268	154	3	1	39	77	32	49	12	24	110	38	237
Sustainable Harvest Sector 3	32	153	20	1,697	18,352	2,465	7	1	67	540	256	99	9	62	3,120	453	3,655
Common Pool	8	40	8	214	2,312	258	5	4	41	90	44	47	14	41	139	25	193
Sector Total	182	863	262	6,272	67,824	10,023	59	12	651	2,592	1,273	517	267	247	9,537	1,994	18,355

Numbers are rounded to the nearest metric ton, but allocations are made in pounds. In some cases, this table shows a sector allocation of 0 metric tons, but that sector may be allocated a small amount of that stock in pounds.

^ The data in the table represent the total allocations to each sector.

6. Universal Sector Exemption for Acadian Redfish

This rule approves and implements a new universal sector exemption that allows sector vessels to target redfish within a defined area using a 5.5-inch (14.0-centimeter (cm)) mesh codend. Redfish is a healthy stock that sectors already harvest under a sector exemption that is evaluated and approved as part of the sector operations plan process annually or biennially. As part of this rule, we are also eliminating the current sector exemption for redfish, to prevent conflict and confusion between two very similar exemptions, consistent with the Council's intent to replace the current redfish sector exemption with a new universal redfish exemption for sectors.

The approved universal sector exemption expands the current redfish exemption area (Figure 1), creates two seasonal closures of the redfish exemption area, adds a 55-percent or greater annual redfish catch threshold, modifies the existing monthly catch and discard thresholds, and creates provisions that require sectors to be placed in probationary status and/or have their vessels prohibited from using the universal exemption if catch or discard thresholds are not met. The reporting and monitoring requirements of the universal exemption remain the same as the annually approved redfish exemption; however, those requirements are codified in regulation rather than detailed in sector operations plans. A complete description of the universal exemption is described in the proposed rule, and is not repeated here. The universal redfish exemption, instead of an annual sector exemption, is intended to increase stability for fishery participants and to improve Council oversight of the redfish fishery.

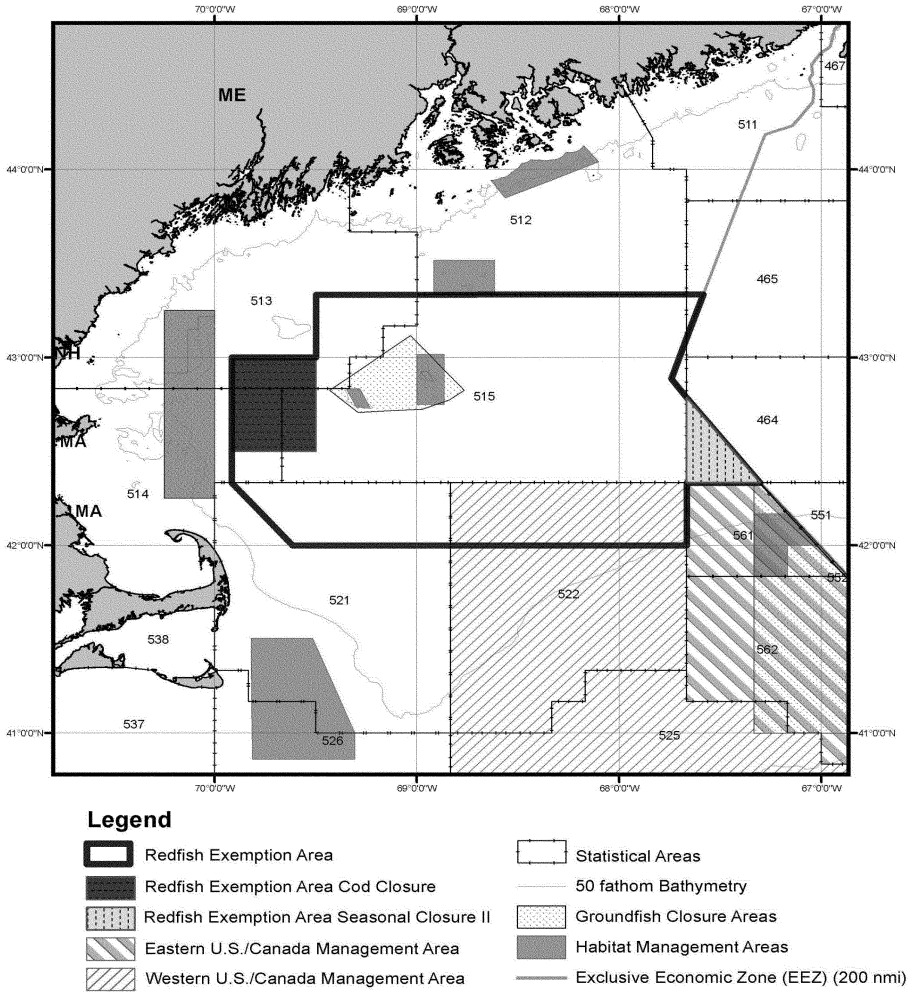

Figure 1 – Universal Redfish Exemption Area

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7. Comments and Responses on Measures Proposed in the Framework 61 Proposed Rule

We received comments on the Framework 61 proposed rule from Sustainable Harvest Sector (SHS), Northeast Sector Service Network (NESSN), Associated Fisheries of Maine (AFM), Conservation Law Foundation (CLF), and the New England Fishery Management Council. Only comments that were applicable to the proposed measures are addressed below.

General Comments on Framework 61

Comment 1: NESSN commented in support of NMFS waiving the cooling off period in order to ensure the fishery can continue to operate seamlessly between the default specifications and the implementation of this action. AFM also urged swift approval of the

framework to prevent a disruption to the fishery due to the expiration of default specifications on July 31.

Response 1: We agree. For the reasons discussed in the Classification section of this final rule, the Assistant Administrator for Fisheries finds that there is good cause to waive the 30-day delayed effectiveness of this action.

Catch Limits for Fishing Years 2021–2023

Comment 2: CLF commented that NMFS should disapprove the catch limits for GOM cod and GB cod as proposed in Framework 61, because they will not rebuild the stocks. Additionally, CLF urged NMFS to take emergency action to implement interim measures for GOM cod.

Response 2: The OFLs and ABCs for GOM cod and GB cod were set by Framework 59, which was approved on July 28, 2020, and are not subject to approval or disapproval in this action. The changes to the specifications for all groundfish stocks were summarized in Table 4 of the proposed rule. For GOM cod, the only change under consideration in Framework 61 is an adjustment to the sub-components, which results in a change only to the sub-ACLs for the stock. For GB cod, Framework 61 is adjusting the sub-components, as well as setting a new U.S. ABC, but the total ABC and ACL are unchanged and were not subject to change in this action. The new U.S. ABC is due to a small decrease in the eastern GB cod TAC and a slight increase in the portion of this shared U.S./Canada quota that is allocated to the United States, consistent with the TMGC recommendations. To disapprove the changes as proposed in Framework 61 would mean the continuation of the sub-ACLs and sub-components, and of the U.S. ABC for GB cod, as set by Framework 59. Because the sub-ACLs and sub-components are adjusted based on the most recent catch data for state and other fisheries (see Appendix II of the EA for a full description of this process), disapproval of the proposed changes would result in specifications based on outdated information. Disapproval of the U.S. ABC for GB cod would go against the recommendations of the TMGC. Therefore, we are approving the proposed changes to the specifications of GOM cod and GB cod, which are based on the best scientific information available and consistent with National Standard 2. A request for emergency action would be considered separate from the Council's recommended measures in this action, and we are therefore not addressing it here.

Universal Sector Exemption for Acadian Redfish

Comment 3: SHS, NESSN, and AFM support the universal sector exemption for redfish. AFM cited an increase in the spring survey index for redfish between 2019 and 2021.

Response 3: We agree. For the reasons discussed in the preamble, we have approved the universal sector exemption for redfish as proposed. Data from the spring 2021 survey will be considered in the next stock assessment for redfish, which will be used to help evaluate the stock status and the performance and appropriateness of this universal exemption.

Comment 4: SHS and NESSN identified a typographical error in the regulatory text. In Table 14 to Paragraph (e)(1)(ii), the latitude of point H should be 42°00′ N, not 42°20′ N.

Response 4: We have corrected the coordinate in the final regulatory text as noted by SHS and NESSN.

Comment 5: SHS requested clarification regarding the timing of when a vessel must submit the redfish exemption fishing notification. Under the previous redfish exemption, the notification must be submitted by a vessel once inside the redfish exempted area. SHS asked whether this was also required under the proposed universal sector exemption.

Response 5: The commenter is correct that the previous redfish exemption required that vessels submit the notification once the vessel has entered the redfish exemption area, which is also the intent of the new universal redfish exemption. We have updated the regulatory text to make it clear that vessels must enter the redfish exemption area before sending the notification.

Comment 6: The New England Council commented regarding the use of the term ''Northeast multispecies,'' rather than the term ''regulated multispecies and ocean pout,'' in the regulatory text. Specifically, the Council questioned which term was more appropriate in the paragraph at 648.85(e)(1)(ii)(C), which states ''No vessel may participate in the Redfish Exemption Program in any areas that are otherwise closed to fishing for Northeast multispecies or fishing with trawl gear, including but not limited to year-round closed areas, seasonal closed areas, or habitat closures.'' The Council expressed concern that this language could be misinterpreted to mean that the universal sector exemption for redfish could not be used in areas where fishing for silver, red, and offshore hake is not permitted, and therefore the use of this term would limit the redfish exemption to a smaller area than what was proposed by the Council in Framework 61.

Response 6: We disagree that a change to the regulatory text is needed, but agree with the Council's intent for the redfish exemption. The regulation that the Council cited is intended to prevent vessels from fishing in closed areas such as regulatory-defined seasonal and permanent closed areas. NMFS does not include regulatory references to such areas in the noted paragraph because doing so would be complex—there are several different sections and paragraphs where these closed areas are included in the regulations. The regulations very clearly distinguish between closed areas and areas where minimum mesh sizes and broad area-based restrictions on fishing apply. As such, NMFS does not agree with the Council's concern that restrictions in the regulations on small-mesh fisheries represent ''areas closed to Northeast multispecies fishing.'' Vessels that fish for silver, red, and offshore hake are regulated by a series of exemptions to the Northeast Multispecies FMP. These exemptions allow vessels to be exempt from the minimum mesh size, provided the vessels operate in specific management areas and comply with seasonal closures and possession limits. However, harvest of these stocks is not limited to trips that fall under the small-mesh exemption. It would not be accurate to describe the areas outside the small-mesh exemption areas as being closed for silver, red, and offshore hake, but instead those areas are not open for use of small-mesh gear (unless otherwise exempted, such as through the universal sector exemption to target redfish). Therefore, we do not believe the broader term of ''Northeast multispecies'' limits the use of the universal sector exemption to areas that are open to the small-mesh exemption.

Comment 7: CLF expressed concern about increased bycatch of GB cod in the universal exemption area relative to the 2020 sector exemption area and that there is an insufficient analysis of the impacts of the universal exemption on GB cod. Based on its concerns, CLF commented that NMFS should disapprove the universal exemption as proposed until it has fully analyzed its potential impact.

Response 7: The Council conducted a thorough review of the proposed universal exemption relative to the smaller-sized exemption NMFS implemented through sector operations plans in fishing year 2020. The Council used the best available information for its consideration, which is reflected in

the EA and appendices for Framework 61 (see **ADDRESSES**). Based on the available information, the impacts on groundfish species other than redfish resulting from the proposed universal exemption could be slightly negative compared to the current sector exemption. We expect GB cod catch in the universal exemption area to be very low based on the analysis, although possibly slightly higher than catch from the 2020 exemption area. All GB cod catch will still be attributed towards a sector's ACE and the total GB cod ACL. The analysis also notes a higher level of uncertainty with the annual sector exemption program (if NMFS were to disapprove the universal sector exemption in this action) as it could change from year to year and would use less restrictive performance measures to ensure targeting of redfish and reduced catch of other groundfish species. The universal exemption allows vessels to target the healthy redfish stock while maintaining controls to limit catch of other groundfish, including GB cod, to ensure that catch remains within the catch limits specified for each stock. NMFS has determined that the measure is consistent with the Magnuson-Stevens Act in part because it minimizes bycatch to the extent practicable while allowing opportunity to target a healthy groundfish stock. We therefore disagree that the measure should be disapproved.

Comment 8: CLF commented that if NMFS approves the universal sector exemption, it should require the Council to review the exemption after the next GB cod stock assessment rather than after the next redfish stock assessment. CLF noted that this review is necessary to be responsive to the state of the GB cod stock and to ensure that the exemption is not interfering with the ability to prevent overfishing and rebuild GB cod.

Response 8: We disagree that the redfish exemption should incorporate a review of the program following the next assessment of the GB cod stock rather than following the next redfish stock assessment. The review of the redfish exemption following the next redfish stock assessment will ensure that we are not allowing a directed fishery to target a stock with highly efficient gear if the stock is overfished or approaching an overfished condition, is experiencing overfishing, or is otherwise found to be in poor condition. We will evaluate the fishery based on performance standards and overall catch, including GB cod, on an ongoing basis through its monitoring of the fishery. Following assessments for all species and stocks, the Council and NMFS must consider all sources of fishing mortality. If the redfish exemption is a source of fishing mortality that needs to be addressed, the Council will need to consider modifications of the redfish exemption and any other sources of unacceptable fishing.

Comment 9: CLF commented that NMFS should require 100-percent at-sea monitoring on vessels taking redfish exemption trips to verify all catch—including discards.

Response 9: We disagree that trips taken using the universal sector exemption require 100-percent at-sea monitoring in fishing year 2021. We have set the at-sea monitoring coverage level for sectors to monitor their catch on sector trips including redfish exemption trips. The fishing year 2021 coverage level was set at the level that could be practicably achieved in 2021, while the Council continued work on Amendment 23. This coverage level provides data to monitor the sectors' performance in the universal exemption for both catch accounting and for the sectors to manage participating vessel's performance and catch. Amendment 23 proposes to increase the at-sea monitoring coverage level to 100 percent, and that action will undergo review and rulemaking beginning later this year.

8. Changes From the Proposed Rule

The proposed rule included sector and common pool sub-ACLs based on fishing year 2021 PSCs and final fishing year 2021 sector rosters, but did not include the PSCs and ACEs allocated to each sector. This rule includes this information at the sector level.

In the proposed rule, the regulatory text for Table 14 to Paragraph (e)(1)(ii) defined the latitude of point H as 42°20′ N. The latitude of point H has been updated to correctly specify 42°00′ N.

This rule makes a minor adjustment to the regulatory text of the reporting requirements for the universal redfish exemption to clarify that the redfish exemption fishing notification required prior to fishing under the new universal redfish exemption must be sent after a vessel has entered the redfish exemption area.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Northeast Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866. This final rule does not contain policies with federalism or takings implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

The Assistant Administrator for Fisheries finds that there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness of this action. This action relies on the best available science to set 2021 catch limits for groundfish stocks and adopts several other measures to improve the management of the groundfish fishery. This final rule must be in effect by August 1, 2021, to capture fully the conservation and economic benefits of Framework 61 and avoid adverse economic impacts.

The development of Framework 61 began in June 2020. In October 2020, the Council voted to revise the Council's 2020 priorities and include a universal sector exemption for targeting redfish in the Framework 61 measures. While the Council took final action on the other Framework 61 measures on December 2, 2020, it did not take final action on the universal sector exemption until January 26, 2021. The groundfish fishing year began on May 1, 2021, and the framework was not formally submitted to NMFS until June 14, 2021. Given the timing of the Council process, the earliest we were able to publish a proposed rule for Framework 61 was on June 24, 2021.

A delay in implementation of this rule increases negative economic effects for regulated entities. Five stocks (redfish, Gulf of Maine winter flounder, Southern New England winter flounder, ocean pout, and wolffish), as well as the eastern portions of the GB cod and haddock stocks, which are jointly managed with Canada, did not have 2021 quotas set by a previous framework. A separate action implemented a default quota (35 percent of the 2020 quota) for these stocks that will be in effect only through July 31, 2021, and will significantly constrain fishing unless Framework 61 is implemented before that date. After July 31, the default quotas expire, at which point vessels would be prohibited from fishing in the waters of the Northeast until Framework 61 is effective. The default quotas are especially constraining the fishery in the Eastern U.S./Canada Area. The majority of fishing in that region occurs during summer primarily due to the seasonal geographic distribution of the stocks. Providing timely access to these stocks is also a potential safety issue. Vessels fish in the summer in the Eastern U.S./Canada Area (approximately 150–200 miles offshore) to avoid extremely

dangerous weather in the winter, spring, and fall.

The 30-day delay in implementation for this rule is unnecessary because this rule contains no new measures (*e.g.,* requiring new nets or equipment) for which regulated entities need time to prepare or revise their current practices. Fishermen who are subject to this action expect and need timely implementation to avoid adverse economic impacts. This action is similar to the process used to set quotas every 1–2 years, approves all items as proposed, and contains only quotas and minor adjustments to the management plan that were discussed at multiple noticed meetings where the public was provided opportunity to learn about the action, ask questions, and provide input into the development of the measures. Affected parties and other interested parties participated in this public process to develop this action and expect implementation as close to the beginning of the fishing year on May 1 as possible. In fact, we received a comment from the Northeast Sector Service Network urging the agency to waive the 30-day delay. While this action replaces the current annual sector exemption to target redfish with the universal sector redfish exemption, the universal sector exemption was developed in close collaboration with the industry. The additional operational flexibility and fishing opportunities that fishermen have become accustomed to and rely on remain in place under the universal sector exemption, without requiring changes to fishing practices.

Overall, a delay in implementation of this action would greatly diminish the benefits of these specifications and other approved measures. For these reasons, a 30-day delay in the effectiveness of this rule is impracticable and contrary to the public interest.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration, during the proposed rule stage, that this action would not have a significant economic impact on a substantial number of small entities. The factual determination for this determination was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping, and reporting requirements.

Dated: July 23, 2021.

Carrie Robinson,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.14, add paragraph (k)(21) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(k) * * *

(21) *Universal sector exemption programs*—(i) *Redfish Exemption Program.* (A) While fishing under the provisions of the Redfish Exemption Program, it is unlawful for any person to:

(*1*) Fish with a codend of mesh smaller than 5.5-inch (14.0-cm) diamond or square,

(*2*) Fish outside of the Redfish Exemption Area specified in § 648.85(e)(1)(ii),

(*3*) Fish in the Redfish Exemption Area Cod Closure specified in § 648.85(e)(1)(ii)(A) during the closure period,

(*4*) Fish in the Redfish Exemption Area Seasonal Closure II specified in § 648.85(e)(1)(ii)(B) during the closure period,

(*5*) Fail to comply with the declaration requirements of the Redfish Exemption Program specified in § 648.85(e)(1)(iv),

(*6*) Fail to comply with the reporting requirements of the Redfish Exemption Program specified in § 648.85(e)(1)(v), or

(*7*) Fail to comply with the gear requirements of the Redfish Exemption Program specified in § 648.85(e)(1)(vii), or fish with any gear other than trawl.

(B) It is unlawful for any person to fish under the provisions of the Redfish Exemption Program when prohibited from doing so by the Regional Administrator under § 648.85(e)(1)(viii)(C), or when ineligible or prohibited for any other reason.

(ii) [Reserved]

* * * * *

■ 3. In § 648.85, add paragraph (e) to read as follows:

§ 648.85 Special management programs.

* * * * *

(e) *Universal exemption programs for sector vessels*—(1) *Redfish Exemption Program*—(i) *Eligibility.* Any vessel enrolled in a NMFS approved Northeast multispecies sector and issued a limited access Northeast multispecies permit that allows the use of trawl gear consistent with paragraph (e)(1)(vii) of this section may fish in compliance with the provisions of the Redfish Exemption Program described in paragraphs (e)(1)(ii) through (viii) of this section, except those vessels enrolled in a sector whose members have been prohibited from doing so by the Regional Administrator under paragraph (e)(1)(viii)(C) of this section, or those vessels ineligible or prohibited for any other reason. Letters of authorization issued pursuant to § 648.87(c)(2) shall authorize or prohibit participation in the program by sector vessels consistent with paragraph (e)(1)(viii)(C) of this section.

(ii) *Redfish Exemption Area.* The Redfish Exemption Area is the area defined by straight lines connecting the following points in the order stated (a chart depicting this area is available from the Regional Administrator upon request):

TABLE 14 TO PARAGRAPH (e)(1)(ii)

Point	N Lat.	W Long.
A	43°00′	69°55′
B	43°00′	69°30′
C	43°20′	69°30′
D	43°20′	(1)
E	42°53.24′	67°44.55′
F	42°20′	(2)
G	42°20′	67°40′
H	42°00′	67°40′
I	42°00′	69°37′
J	42°20′	69°55′
A	43°00′	69°55′

[1] US EEZ longitude, approximately 67°35.07′.
[2] US EEZ longitude, approximately 67°18.17′.

(A) *Redfish Exemption Area Cod Closure.* No vessel may participate in the Redfish Exemption Program inside the Redfish Exemption Area Cod Closure from February 1 through March 31 of each year. The Redfish Exemption Area Cod Closure is the area defined by straight lines connecting the following points in the order stated:

TABLE 15 TO PARAGRAPH (e)(1)(ii)(A)

Point	N Lat.	W Long.
A	43°00′	69°55′
B	43°00′	69°30′
K	42°30′	69°30′
L	42°30′	69°55′
A	43°00′	69°55′

(B) *Redfish Exemption Area Seasonal Closure II.* No vessel may participate in

the Redfish Exemption Program inside the Redfish Exemption Area Seasonal Closure II from September 1 through December 31 of each year. The Redfish Exemption Area Seasonal Closure II is the area defined by straight lines connecting the following points in the order stated:

TABLE 16 TO PARAGRAPH (e)(1)(ii)(B)

Point	N Lat.	W Long.
M	42°47.17′	67°40′
F	42°20′	(1)
G	42°20′	67°40′
M	42°47.17′	67°40′

[1] US EEZ longitude, approximately 67°18.17′.

(C) No vessel may participate in the Redfish Exemption Program in any areas that are otherwise closed to fishing for Northeast multispecies or fishing with trawl gear, including but not limited to year-round closed areas, seasonal closed areas, or habitat closures.

(iii) *Season.* An eligible vessel as described in paragraph (e)(1)(i) of this section may participate in the Redfish Exemption Program from May 1 through April 30 of each year as authorized in the vessel's letter of authorization issued pursuant to § 648.87(c)(2), unless otherwise prohibited in the letter of authorization under paragraph (e)(1)(viii)(C) of this section.

(iv) *Declaration.* To participate in the Redfish Exemption Program on a sector trip, an eligible vessel must declare its intent to do so through the VMS prior to leaving the dock, in accordance with instructions provided by the Regional Administrator.

(A) *Pre-trip notification.* For the purposes of selecting vessels for observer deployment or electronic monitoring, a vessel participating in the Redfish Exemption Program must comply with all pre-trip notification requirements at § 648.11(l).

(B) [Reserved]

(v) *Reporting*—(A) *Daily catch reporting.* The owner or operator of a vessel that has declared into the Redfish Exemption Program as required in paragraph (e)(1)(iv) of this section must submit catch reports via VMS, for each day of the fishing trip. Vessels subject to the daily reporting requirement must report daily for the entire fishing trip, including any portion fished outside of the Redfish Exemption Area. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2359 hr, and must be submitted by 0900 hr of the following day, or as instructed by the Regional Administrator. The reports must include at least the following information:

(*1*) VTR serial number or other universal ID specified by the Regional Administrator;

(*2*) Date fish were caught and statistical area in which fish were caught; and

(*3*) Total pounds of each regulated Northeast multispecies and ocean pout kept (in pounds, live weight) as well as the total pounds of other kept catch (in pounds, live weight) in each statistical area, as instructed by the Regional Administrator.

(B) *Redfish exemption fishing notification.* After the vessel has entered the Redfish Exemption Area, the owner or operator of a vessel must submit a redfish exemption fishing notification before switching to a smaller mesh codend allowed under the Redfish Exemption Program. This notification is provided with an additional catch report submitted via VMS, reporting all catch on board and indicating that the vessel is switching to a smaller mesh codend. This notification indicates that the vessel is now fishing under the provisions of the Redfish Exemption Program. Vessels that fail to declare into the Redfish Exemption Program as required in paragraph (e)(1)(iv) of this section may not fish under the Redfish Exemption Program even if this notification is sent. The notification must include at least the following information:

(*1*) VTR serial number or other universal ID specified by the Regional Administrator;

(*2*) Date fish were caught and statistical area in which fish were caught;

(*3*) Total pounds of each regulated Northeast multispecies and ocean pout kept (in pounds, live weight) as well as the total pounds of other kept catch (in pounds, live weight) in each statistical area, as instructed by the Regional Administrator; and

(*4*) Indication that the vessel is now switching to a smaller mesh codend.

(vi) *Area fished.* (A) A vessel that has declared its intent to fish under the Redfish Exemption Program consistent with paragraph (e)(1)(iv) of this section may conduct the first part of its trip outside the provisions of the Redfish Exemption Program, subject to all other Northeast multispecies regulations including codend mesh size, prior to sending a redfish exemption fishing notification as described in paragraph (e)(1)(v)(B) of this section.

(B) Once a vessel has sent a redfish exemption fishing notification as described in paragraph (e)(1)(v)(B) of this section, the vessel is prohibited from fishing outside of the Redfish Exemption Area for the remainder of its trip.

(vii) *Gear requirements.* Vessels may only use trawl gear when declared into and fishing in the Redfish Exemption Program. Vessels may fish in the Redfish Exemption Program with any trawl gear, including, but not limited to, otter trawl, haddock separator trawl, flounder trawl, or Ruhle trawl.

(A) *Minimum codend mesh size.* The minimum codend mesh size for vessels fishing in the Redfish Exemption Program is 5.5-inch square or diamond mesh. All other trawl net restrictions listed in § 648.80(a)(3)(i) and (a)(4)(i), including minimum mesh sizes for the net body and extensions, still apply.

(B) *Gear stowage.* Codends with mesh smaller than otherwise permitted by regulation at § 648.80(a)(3)(i) and (a)(4)(i), or § 648.87(c)(2)(ii)(D), must be stowed during transit to and from the Redfish Exemption Area, and when not in use under the Redfish Exemption Program. Any non-trawl fishing gear must be stowed for the duration of any trip for which a vessel declared its intent to fish under the Redfish Exemption Program consistent with paragraph (e)(1)(iv) of this section. Stowed gear must be not available for immediate use consistent with definitions in § 648.2

(viii) *Catch Thresholds*—(A) *Monthly Performance Thresholds.* (*1*) Monthly Redfish Landings Threshold—Monthly redfish landings by a sector whose member vessels fish under the provisions of the Redfish Exemption Program may not be less than 50 percent of all the allocated Northeast multispecies stocks landed each month while fishing under the provisions of the Redfish Exemption Program.

(*2*) Monthly Discards Threshold—Monthly observed discards of regulated Northeast multispecies and ocean pout by a sector whose member vessels fish under the provisions of the Redfish Exemption Program may not exceed 5 percent of total observed kept catch, for those portions of trips fished each month under the provisions of the Redfish Exemption Program.

(B) *Annual Performance Thresholds.* (*1*) Annual Redfish Landings Threshold—Annual fishing year redfish landings by a sector whose member vessels fish under the provisions of the Redfish Exemption Program may be no less than 55 percent of all the allocated Northeast multispecies stocks landed while fishing under the provisions of the Redfish Exemption Program.

(C) *Administration of Thresholds.* (*1*) If a sector fails to meet the monthly redfish landings threshold or the monthly discards threshold described in

paragraphs (e)(1)(viii)(A)(*1*) and (*2*) of this section for four or more months total, or three or more consecutive months, in a fishing year, the Regional Administrator shall prohibit all vessels in that sector from fishing under the provisions of the Redfish Exemption Program for the remainder of the fishing year, and place the sector and its vessels in a probationary status for one fishing year beginning the following fishing year.

(*2*) If a sector fails to meet the annual redfish landings threshold described in paragraph (e)(1)(viii)(B)(*1*) of this section in a fishing year, the Regional Administrator shall place the sector and its vessels in a probationary status for one fishing year beginning the following fishing year.

(*3*) While in probationary status as described in paragraph (e)(1)(viii)(C)(*1*) or (*2*) of this section, if the sector fails to meet the monthly redfish landings threshold or the monthly discards threshold described in paragraphs (e)(1)(viii)(A)(*1*) and (*2*) of this section for four or more months total, or three or more consecutive months, in that fishing year, the Regional Administrator shall prohibit all vessels in that sector from fishing under the provisions of the Redfish Exemption Program for the remainder of the fishing year and the following fishing year.

(*4*) If a sector fails to meet the annual redfish landings threshold in (e)(1)(viii)(B)(*1*) of this section for any fishing year during which the sector is in a probationary status as described in paragraph (e)(1)(viii)(C)(*1*) or (*2*) of this section, the Regional Administrator shall prohibit all vessels in that sector from fishing under the provisions of the Redfish Exemption Program for the following fishing year.

(*5*) The Regional Administrator may determine a sector has failed to meet required monthly or annual thresholds described in paragraphs (e)(1)(viii)(A) and (B) of this section using available information including, but not limited to, vessel declarations and notifications, vessel trip reports, dealer reports, and observer and electronic monitoring records.

(*6*) The Regional Administrator shall notify a sector of a failure to meet the required monthly or annual thresholds and the sector's vessels prohibition or probation status consistent with the provisions in paragraphs (e)(1)(viii)(C)(*1*) through (*5*) of this section. The Regional Administrator shall also make administrative amendments to the approved sector operations plan and issue sector vessel letters of authorization consistent with the provisions in paragraphs (e)(1)(viii)(C)(*1*) through (*5*) of this section. These administrative amendments may be made during a fishing year or during the sector operations plan and sector contract approval process.

(*7*) A sector may request in writing that the Regional Administrator review and reverse a determination made under the provisions of this section within 30 days of the date of the Regional Administrator's determination. Any such request must be based on information showing the sector complied with the required thresholds, including, but not limited to, landing, discard, observer or electronic monitoring records. The Regional Administrator will review and maintain or reverse the determination and notify the sector of this decision in writing. Any determination resulting from a review conducted under this provision is final and may not be reviewed further.

(ix) *Program review.* The Council will review the Redfish Exemption Program after the first peer-reviewed redfish stock assessment following implementation of the program. The Council will prepare a report, which may include, but is not limited to, an evaluation of threshold performance, vessel-level performance, bycatch of non-redfish stocks, and changes in catch selectivity, and will consider the goals and objectives of the Redfish Exemption Program and the FMP. The Council may decide, as needed, to conduct additional reviews following the review outlined in this section.

(2) [Reserved]

■ 4. Amend § 648.87 by revising paragraphs (c)(2)(ii)(B) through (D) and adding paragraph (c)(2)(ii)(E) to read as follows:

§ 648.87 Sector allocation.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) The GOM Cod Protection Closures IV and V specified in § 648.81(d)(4)(iv) and (v);

(C) NE multispecies DAS restrictions other than those required to comply with effort controls in other fisheries, as specified in §§ 648.92 and 648.322;

(D) The minimum codend mesh size restrictions for trawl gear specified in § 648.80(a)(4)(i) when using a haddock separator trawl defined in § 648.85(a)(3)(iii) or the Ruhle trawl defined in § 648.85(b)(6)(iv)(J)(*3*) within the GB RMA, as defined in § 648.80(a)(2), provided sector vessels use a codend with 6-inch (15.2-cm) minimum mesh; and

(E) The minimum codend mesh size restrictions for trawl gear specified in § 648.80(a)(3)(i) or (a)(4)(i) when fishing in compliance with the provisions of the Redfish Exemption Program defined in § 648.85(e)(1).

* * * * *

[FR Doc. 2021–16070 Filed 7–27–21; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 86, No. 142
Wednesday, July 28, 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 AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 327, 351, 354, 355, 381, 500, and 592

[Docket No. FSIS 2019–0001]

RIN 0583–AD76

Establishing a Uniform Time Period Requirement and Clarifying Related Procedures for the Filing of Appeals of Agency Inspection Decisions or Actions; Correction

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the Regulation Identifier Number that appeared in a proposed rule published in the **Federal Register** on July 15, 2021, regarding establishing a uniform time period requirement and clarifying related procedures for the filing of appeals of agency inspection decisions or actions.

DATES: July 28, 2021.

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development by telephone at (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Correction

In proposed rule FR Doc. 2021–14947, beginning on page 37251 in the issue of July 15, 2021, make the following correction: On page 37251, in the first column, the Regulation Identifier Number is corrected to read ''RIN 0583–AD76''.

Done at Washington, DC.

Paul Kiecker,

Administrator.

[FR Doc. 2021–16058 Filed 7–27–21; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 355

[Docket No. FSIS–2020–0013]

RIN 0583–AD83

Certified Products for Dogs, Cats, and Other Carnivora; Inspection, Certification, and Identification as to Class, Quality, Quantity, and Condition

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to end the program under which FSIS inspectors provide fee-for-service certification that certain foods for dogs, cats and other carnivora (pet food) are produced under sanitary conditions and meet compositional and labeling requirements. The certified pet food regulations are outdated, and no firms are currently paying for FSIS certification services for pet food. Further, the fact that both USDA and the Food and Drug Administration (FDA) inspect pet food has led to industry and consumer confusion, and both agencies agree that stakeholders will benefit from the simplification of Federal jurisdiction over pet food.

DATES: Submit comments on or before September 27, 2021.

ADDRESSES: FSIS invites interested persons to submit comments on the proposed rule. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to *https://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *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–2020–0013. 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) 720–5627 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development; Telephone: (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

Under the Federal Food, Drug, and Cosmetic Act (FFDCA), FDA is responsible for ensuring that pet food is safe for animals, produced under sanitary conditions, contains no harmful substances, and is truthfully labeled. FDA has had authority to regulate pet food since the FFDCA was passed in 1938. FDA does not charge pet food producers a fee for any FDA activities related to pet food. Individual States also regulate and inspect pet food.

Since 1958, under the Agricultural Marketing Act at 7 U.S.C. 1622(h), USDA also has provided for the certification of pet food as having been produced under sanitary conditions and meeting compositional and labelling requirements.[1] Under the regulations at 9 CFR part 355, participating facilities pay for this certification. The regulations governing FSIS certification services for pet food have not been substantively amended since the 1960's; therefore, the requirements are outdated (*e.g.,* requirements regarding pet food ingredients and the submission of firm blueprints). Additionally, the regulations allow for certification only of certain categories of pet food (*i.e.,* canned or semi-moist maintenance food, canned or fresh frozen certified supplemental animal foods, and canned certified variety meats). Many types of pet foods developed in the last few decades are thus not eligible for FSIS certification (*e.g.,* pet jerky, pet treats, pet rawhides, raw pet food, freeze-dried

[1] See 23 FR 10107: *https://www.govinfo.gov/content/pkg/FR-1958-12-23/pdf/FR-1958-12-23.pdf#page=1.*

pet food, and prescription pet food). Likely for these reasons, as of June 2020, no firms were participating in the FSIS certified pet food program.

FSIS is proposing to remove 9 CFR part 355 from the regulations because the certified pet food regulations are outdated, no companies use the voluntary service, and the regulations have led to industry and consumer confusion. FSIS and FDA agree that stakeholders will benefit from a single set of Federal pet food safety regulations under FDA jurisdiction.

Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated a ''non-significant'' regulatory action under section 3(f) of E.O. 12866. Accordingly, this proposed rule has not been reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

Expected Costs and Benefits of the Proposed Rule

The proposed rule (*i.e.,* removing 9 CFR part 355) would clarify that FDA has sole Federal jurisdiction over pet food inspection, benefiting industry and consumers by reducing confusion. As described above, the certified pet food regulations are outdated and unnecessary. As of June 2020, no firms were using FSIS' certified pet food program. As such, the proposed rule is not expected to increase industry or Agency costs or have a negative public health impact.

Regulatory Flexibility Act Assessment

The FSIS Administrator has made a preliminary determination that this proposed rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The proposed rule is not expected to increase costs to the industry.

Paperwork Reduction Act

There are no new paperwork or recordkeeping requirements associated with this proposed rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

E-Government Act

FSIS and the U.S. Department of Agriculture (USDA) are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication and officially notify the World Trade Organization's Committee on Sanitary and Phytosanitary Measures (WTO/SPS Committee) in Geneva, Switzerland, of this proposal on-line through the FSIS web page located at: *https://www.fsis.usda.gov/federal-register.*

FSIS also will make copies of this publication available 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. Constituent Updates are available on the FSIS web page. Through the web page, FSIS is able to 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 *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all 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.

List of Subjects in 9 CFR Part 355

Certified Pet Food.

PART 355—[REMOVED]

■ Accordingly, under the authority 7 U.S.C. 1622, 1624; 7 CFR 2.17 (g) and (i), 255, the Food Safety and Inspection Service proposes to amend 9 CFR chapter III by removing part 355.

Paul Kiecker,

Administrator.

[FR Doc. 2021–15438 Filed 7–27–21; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0570; Project Identifier 2019–SW–091–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 AW169 helicopters. This proposed AD was prompted by a report of a broken adjustable device that is part of the pilot and co-pilot yaw pedal assemblies. This proposed AD would require modification of the pilot and co-pilot yaw pedal assemblies, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 13, 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 the 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 the 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–2021–0570.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0570; 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: Jacob Fitch, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–4130; email *jacob.fitch@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–2021–0570; Project Identifier 2019–SW–091–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 Jacob Fitch, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–4130; email *jacob.fitch@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 2019–0252, dated October 10, 2019 (EASA AD 2019–0252), to correct an unsafe condition for Leonardo S.p.A. (formerly Finmeccanica S.p.A and AgustaWestland S.p.A) Model AW169 helicopters, all serial numbers. Although EASA AD 2019–0252 applies to all Model AW169 helicopters, this proposed AD would apply to helicopters with an affected part installed instead.

This proposed AD was prompted by a report of a broken adjustable device that is part of the pilot and co-pilot yaw pedal assemblies. The results of the investigations determined that a modification of the pilot and co-pilot yaw pedal assemblies is required to prevent this kind of failure. The modification includes installing additional end stroke stops on the yaw pedal assemblies by replacing the existing bolts with bolts having a longer grip to house a wider washer that acts as an additional stop in case of a yaw pedal adjuster failure. The FAA is proposing this AD to address failure of a yaw pedal adjuster, which could result in reduced yaw control of the helicopter. See EASA AD 2019–0252 for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2019–0252 requires modification (rework) of the affected pilot and co-pilot assemblies and re-identification of each affected part after it has been modified. EASA AD 2019–0252 also provides an option to replace an affected part with a non-affected part instead of doing the modification.

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 helicopter has been approved by EASA and is 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 the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2019–0252, 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 2019–0252 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2019–0252 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 2019–0252 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 2019–0252. Service information specified in EASA AD 2019–0252 that is required for compliance with it will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0570 after the FAA final rule is published.

Interim Action

The FAA considers this proposed AD would be an interim action. If final action is later identified, the FAA might consider further rulemaking then.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 7 helicopters of U.S. Registry. The FAA estimates the following costs to comply with this proposed AD.

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modify and re-identify affected parts	2 work-hours × $85 per hour = $170	$510	$680	$4,760

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some 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–2021–0570; Project Identifier 2019–SW–091–AD.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 13, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Leonardo S.p.a. Model AW169 helicopters, certificated in any category, with an affected part as identified in European Union Aviation Safety Agency (EASA) AD 2019–0252, dated October 10, 2019 (EASA AD 2019–0252).

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6700, Rotorcraft Flight Control.

(e) Unsafe Condition

This AD was prompted by a report of a broken adjustable device that is part of the

pilot and co-pilot yaw pedal assemblies. The FAA is issuing this AD to address failure of a yaw pedal adjuster, which could result 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, EASA AD 2019–0252.

(h) Exceptions to EASA AD 2019–0252

(1) Where EASA AD 2019–0252 refers to flight hours (FH), this AD requires using hours time-in-service.

(2) Where EASA AD 2019–0252 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where the service information referenced in EASA AD 2019–0252 specifies to discard certain parts, this AD requires removing those parts from service.

(4) The ''Remarks'' section of EASA AD 2019–0252 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2019–0252 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Special Flight Permit

Special flight permits, as described in 14 CFR 21.197 and 21.199, are prohibited.

(k) 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 (l)(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.

(l) Related Information

(1) For EASA AD 2019–0252, 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–2021–0570.

(2) For more information about this AD, contact Jacob Fitch, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–4130; email *jacob.fitch@faa.gov.*

Issued on July 11, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–15950 Filed 7–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0568; Project Identifier MCAI–2021–00446–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A330–200, –200 Freighter, –300 and –900 series airplanes; and Model A340–200, –300, –500, and –600 series airplanes. This proposed AD was prompted by a report that during the frame of flight test clearance process, a detailed analysis of air data reference (ADR) failure scenarios led to the identification that compliance requirements for loads and handling qualities throughout the flight envelope could be impaired in case of dispatch with one ADR inoperative (master minimum equipment list (MMEL) item 34–10–01) during the maximum interval allowed by the current MMEL. This proposed AD would require revising the operator's existing FAA-approved minimum equipment list (MEL) for the air data/inertial reference system, 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 September 13, 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–2021–0568.

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–2021–0568; 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: Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax: 206–231–3229; email *vladimir.ulyanov@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–2021–0568; Project Identifier MCAI–2021–00446–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 Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax: 206–231–3229; email *vladimir.ulyanov@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 2021–0103, dated April 13, 2021 (EASA AD 2021–0103) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus SAS Model A330–200, –200 Freighter, –300 and –900 series airplanes; Model A340–200 and –300 series airplanes; and Model A340–541, –542, –642, and –643 airplanes. Model A340–542 and –643 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

This proposed AD was prompted by a report that during the frame of flight test clearance process, a detailed analysis of ADR failure scenarios led to the identification that compliance requirements for loads and handling qualities throughout the flight envelope could be impaired in case of dispatch with one ADR inoperative (MMEL item 34–10–01) during the maximum interval allowed by the current MMEL. The FAA is proposing this AD to address the possibility of in-flight loss of a second ADR combined with erroneous low speed data provided by the remaining functional ADR, which could result in loss of control of the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0103 describes procedures for revising the air data/inertial reference system for MMEL item 34–10–01. 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 2021–0103 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

EASA AD 2021–0103 requires operators to ''inform all flight crews'' of revisions to the MMEL, and thereafter to ''operate the aeroplane accordingly.'' However, this proposed AD would not specifically require those actions as they are already required by FAA regulations.

FAA regulations (14 CFR 121.628(a)(2)) require operators to provide pilots with access to all of the information contained in the operator's MEL.

Furthermore, 14 CFR 121.628(a)(5) requires airplanes to be operated under all applicable conditions and limitations contained in the operator's MEL. Therefore, including a requirement in this AD to operate the airplane according to the revised MEL would be redundant and unnecessary. Further, compliance with such a requirement in an AD would be impracticable to demonstrate or track on an ongoing basis; therefore, a requirement to operate the airplane in such a manner would be unenforceable.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA 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 2021–0103 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0103 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 2021–0103 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2021–0103. Service information specified in EASA AD 2021–0103 that is required for compliance with it will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0568 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 130 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	$22,100

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2021–0568; Project Identifier MCAI–2021–00446–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 13, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS airplanes specified in paragraphs (c)(1) through (8) of this AD, certificated in any category.

(1) Model A330–201, –202, –203, –223, and –243 airplanes.

(2) Model A330–223F and –243F airplanes.

(3) Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(4) Model A330–941 airplanes.

(5) Model A340–211, –212, and –213 airplanes.

(6) Model A340–311, –312, and –313 airplanes.

(7) Model A340–541 airplanes.

(8) Model A340–642 airplanes.

(d) Subject

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

(e) Reason

This AD was prompted by a report that during the frame of flight test clearance process, a detailed analysis of air data reference (ADR) failure scenarios led to the identification that compliance requirements for loads and handling qualities throughout the flight envelope could be impaired in case of dispatch with one ADR inoperative (master minimum equipment list (MMEL) item 34–10–01) during the maximum interval allowed by the current MMEL. The FAA is issuing this AD to address the possibility of in-flight loss of a second ADR combined with erroneous low speed data provided by the remaining functional ADR, which could result in 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 2021–0103, dated April 13, 2021 (EASA AD 2021–0103).

(h) Exceptions to EASA AD 2021–0103

(1) Where EASA AD 2021–0103 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2021–0103 specifies to implement certain information in ''the MMEL MER'' into the ''operational documentation,'' this AD requires revising the operator's existing FAA-approved minimum equipment list (MEL) to incorporate that information.

(3) Where EASA AD 2021–0103 specifies to ''inform all flight crews, and, thereafter, operate the aeroplane accordingly,'' this AD does not require those actions as those actions are already required by existing FAA operating regulations.

(4) The ''Remarks'' section of EASA AD 2021–0103 does not apply to this AD.

(i) 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 (j)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those

procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

(1) For information about EASA AD 2021–0103 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–2021–0568.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax: 206 231 3229; email *vladimir.ulyanov@faa.gov.*

Issued on July 21, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–15942 Filed 7–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0032; Project Identifier AD–2020–01314–P]

RIN 2120–AA64

Airworthiness Directives; Hamilton Sundstrand Corporation Propellers; Initial Regulatory Flexibility Analysis

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

ACTION: Initial regulatory flexibility analysis (IRFA); request for comment.

SUMMARY: The FAA is publishing and requesting comments on this IRFA for the previously published notice of proposed rulemaking (NPRM), Project Identifier AD–2020–01314–P, applicable to Hamilton Sundstrand Corporation 54H model propellers with a 54H60 model propeller hub installed. That NPRM proposed to supersede Airworthiness Directive (AD) 2020–12–07, which applies to certain Hamilton Sundstrand Corporation (Hamilton Sundstrand) 54H model propellers.

DATES: Comments on this IRFA for the NPRM published on February 25, 2021 (86 FR 11473), must be received on or before September 13, 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 *http://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 FURTHER INFORMATION CONTACT: Michael Schwetz, Aviation Safety Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7761; fax: (781) 238–7199; email: *michael.schwetz@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this IRFA. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0032; Project Identifier AD–2020–01314–P'' 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 we receive 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 Michael Schwetz, Aviation Safety Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2020–12–07, Amendment 39–21142 (85 FR 36145, June 15, 2020) (AD 2020–12–07) for certain Hamilton Sundstrand 54H model propellers. AD 2020–12–07 was prompted by a report of the separation of a 54H60 model propeller blade installed on a United States Marine Corps Reserve (USMCR) KC–130T airplane during a flight in July 2017. The USMCR investigation of this event revealed the Hamilton Sundstrand 54H60 model propeller blade separated due to corrosion pitting and a resultant intergranular radial crack that was not corrected at the last propeller overhaul. From this intergranular crack, a fatigue crack initiated and grew under service loading until the Hamilton Sundstrand 54H60 model propeller blade could no longer sustain the applied loads and ultimately the blade separated. The separation of the blade resulted in the loss of the airplane and 17 fatalities. The investigation further revealed that 54H60 model propeller blades manufactured before 1971 are susceptible to cracks of the propeller blade in the area of the internal taper bore. The applicability of AD 2020–12–07 was therefore limited to those Hamilton Sundstrand 54H60 model propellers blades with a blade serial number (S/N) below 813320, which are those propeller blades manufactured before 1971. AD 2020–12–07 required initial and repetitive eddy current inspections (ECIs) of the affected propeller blades and replacement of any propeller blade that fails inspection. The agency issued AD 2020–12–07 to detect cracking in the propeller blade taper bore.

Actions Since AD 2020–12–07 Was Issued

Since the FAA issued AD 2020–12–07, the manufacturer determined that all propeller blades installed on Hamilton Sundstrand 54H model propellers with a 54H60 model propeller hub are susceptible to intergranular corrosion cracking in the blade taper bore. As a result, the manufacturer published Hamilton Sundstrand Alert Service Bulletin (ASB) 54H60–61–A154, Revision 1, dated May 29, 2020, to expand the effectivity of the ASB to include propeller blades with a blade S/N below 813320, all propeller blades if the propeller contains a propeller blade with a blade S/N below 813320, and all propeller blades that have not been overhauled within ten years.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.

To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act. Based on the comments received following publication of the NPRM, the FAA has completed an IRFA and requests comments from affected small entities. The purpose of this analysis is to identify the number of small entities affected, assess the economic impact of the proposed regulation on them, and consider less burdensome alternatives and still meet the agency's statutory objectives.

Initial Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) of 1980, Public Law 96–354, 94 Stat. 1164 (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857, Mar. 29, 1996) and the Small Business Jobs Act of 2010 (Pub. L. 111–240, 124 Stat. 2504, Sept. 27, 2010), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and small organizations that are independently owned and operated and are not dominant in their fields, and small governmental jurisdictions with populations of less than fifty thousand (50,000).

The FAA is publishing this Initial Regulatory Flexibility Analysis (IRFA) to aid the public in commenting on the potential impacts to small entities from this proposal. The FAA invites interested parties to submit data and information regarding the potential economic impact that would result from the proposal. The FAA will consider comments when making a determination or when completing a Final Regulatory Flexibility Assessment.

Under Sections 603(b) and (c) of the RFA, the initial regulatory flexibility analysis for a proposed rule must: Contain the following:

(1) A description of the reasons why the action by the agency is being considered;

(2) A succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(5) An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule; and

(6) A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

1. Reasons the Action Is Being Considered

AD 2020–12–07 was prompted by a report of the separation of a 54H60 model propeller blade installed on a USMCR KC–130T airplane during a flight in July 2017. The subsequent NPRM proposed to retain certain requirements of AD 2020–12–07 and proposed to require initial and repetitive ECIs of all propeller blades installed on Hamilton Sundstrand 54H model propellers with a propeller hub, model 54H60, installed. Additionally, the NPRM proposed to require replacement of any propeller blade that fails inspection.

2. Objectives and Legal Basis of the Proposed Rule

The FAA issued NPRM, Project Identifier AD–2020–01314–P, under the authority described in Title 49, Subtitle VII, Part A, Subpart III, Section 44701, General requirements. Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing minimum safety standards required in the interest of safety. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on the propellers identified in the NPRM.

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.

3. All Federal Rules That May Duplicate, Overlap, or Conflict

There are no relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

4. Description and Estimate of the Number of Small Entities

FAA used the definition of small entities in the RFA for this analysis. The RFA defines small entities as small businesses, small governmental jurisdictions, or small organizations. In 5 U.S.C. 601(3), the RFA defines ''small business'' to have the same meaning as ''small business concern'' under section 3 of the Small Business Act. The Small Business Act authorizes the Small Business Administration (SBA) to define ''small business'' by issuing regulations.

SBA (2019) has established size standards for various types of economic activities, or industries, under the North American Industry Classification System (NAICS).[1] These size standards generally define small businesses based on the number of employees or annual receipts.

The FAA identified fifty-three (53) airplanes with 54H model propellers having propeller hub, model 54H60,

[1] Small Business Administration (SBA). 2019. Table of Size Standards. Effective August 12, 2019. *https://www.sba.gov/document/support--table-size-standards.*

installed. These 53 airplanes are registered to twenty (20) entities. Twenty (20) airplanes are registered to the United States Government entities, including the U.S. Customs and Border Protection, which operates thirteen (13) of these airplanes. The FAA determined that these government entities are not small businesses or other forms of small entity.

The remaining thirty-three (33) airplanes are owned and operated by sixteen (16) private entities. All of these private entities fall under the 481112 NAICS Code (Scheduled Freight Air Transportation) with a small business size standard of a maximum of 1,500 employees to be considered small business.

Six (6) of these thirty-three (33) airplanes are registered to Lynden Air Cargo, LLC, affiliated with the Lynden Incorporated, which, with 2,500 employees on its payroll, is not a small entity per the SBA definition. The FAA considered all other entities that own and operate similar airplanes as small entities since they all employ less than 1,500 employees. Therefore, the FAA estimated that this proposed AD would impact fifteen (15) small entities.

5. Projected Reporting, Recordkeeping, and Other Compliance Requirements

There are no reporting or recordkeeping costs with this proposed AD. However, the FAA estimated that there would be compliance costs due to the proposed requirements as discussed below.

Using the compliance cost estimate that Lynden Air Cargo LLC provided in its public comment to the proposed AD ($9,190 to inspect all propeller blades installed on each propeller, or $36,760 to inspect an airplane with four (4) propellers), the FAA calculated the total compliance costs of this AD on fifteen (15) small businesses that own and operate twenty-seven (27) airplanes at $992,520 ($36,760 × 27). Eight (8) small businesses that own and operate one airplane would incur $36,760. The compliance costs of one small entity with five (5) airplanes would be $183,800. The average compliance costs of this AD on small entities would be $66,168 ($992,520/15).

The FAA estimated the revenue impact of complying with this proposed AD's requirements on these 15 small entities would vary from under 1 percent (0.12 percent) of affected companies' annual revenues to approximately 2 percent (1.69 percent) of their annual revenues.

To the extent that small entities provide more unique services or serve markets with less competition, they may also be able to pass on costs in the form of price increases. However, the FAA assumed that none of these small entities would be able to pass these compliance costs to their customers in terms of higher prices.

6. Significant Alternatives Considered

The FAA did not find any significant regulatory alternatives to the proposed AD that would still accomplish the safety objectives of this proposed AD.

Issued on July 21, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–15979 Filed 7–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0689; Product Identifier 2018–CE–016–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: The FAA is withdrawing a notice of proposed rulemaking (NPRM) that proposed to adopt a new airworthiness directive (AD) for certain Gulfstream Aerospace Corporation (Gulfstream) Models G–IV and GIV–X airplanes. The NPRM was prompted by reports of disbonding and surface cracking of the composite aft pressure bulkhead. The NPRM proposed to require inspecting the forward and aft surfaces of the pressure bulkhead composite panels for damage and repairing any damage found. Since issuance of the NPRM, the FAA has determined that there is not an unsafe condition. Accordingly, the NPRM is withdrawn.

DATES: As of July 28, 2021, the proposed rule, which published in the **Federal Register** on July 27, 2018 (83 FR 35568), is withdrawn.

ADDRESSES:

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0689; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD action, 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: William O. Herderich, Aviation Safety Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5547; fax: (404) 474–5605; email: *william.o.herderich@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued an NPRM that proposed to amend 14 CFR part 39 by adding an AD that would apply to certain serial-numbered Gulfstream Models G–IV and GIV–X airplanes. The NPRM published in the **Federal Register** on July 27, 2018 (83 FR 35568). The NPRM was prompted by reports of disbonding and accompanying surface cracking of the composite aft pressure bulkhead. The NPRM stated that this condition, if not addressed, could result in structural failure of the aft pressure bulkhead and loss of cabin pressure.

In the NPRM, the FAA proposed to require a one-time inspection of the forward and aft surfaces of the pressure bulkhead composite panels for damage and repairing any damage found.

Actions Since the NPRM Was Issued

After issuance of the NPRM, the FAA reviewed a Gulfstream safety assessment and determined that a bulkhead with disbonding is still capable of carrying operational loads. If the affected airplanes are capable of carrying operational loads without failure, then there is no unsafe condition.

Based on the above information, the FAA has determined that AD action is not warranted and the proposal should be withdrawn.

Comments

The FAA received comments from Gulfstream, the European Union Aviation Safety Agency (EASA), and an individual commenter.

Requests

Gulfstream requested that the FAA clarify language throughout the preamble and unsafe condition statement. EASA requested the FAA add a requirement to repeat the inspection. The individual commenter requested the FAA clarify the affected serial numbers.

The FAA acknowledges these comments. However, because the NPRM

is being withdrawn, the commenters' requests are no longer necessary.

Withdrawal of the NPRM constitutes only such action and does not preclude the FAA from further rulemaking on this issue, nor does it commit the FAA to any course of action in the future.

Regulatory Findings

Since this action only withdraws an NPRM, it is neither a proposed AD nor a final rule. This action, therefore, is not covered under Executive Order 12866 or the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Withdrawal

■ Accordingly, the notice of proposed rulemaking, which published in the **Federal Register** on July 27, 2018 (83 FR 35568), is withdrawn.

Issued on July 21, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–15952 Filed 7–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0157; Project Identifier AD–2020–00483–T]

RIN 2120–AA64

Airworthiness Directives; Learjet Inc.

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 Learjet Inc. (Learjet) Model 45 airplanes. This proposed AD was prompted by reports of corrosion found on the upper surface of the lower center wing mid spar splice plate. This proposed AD would require repetitively inspecting the center wing area for corrosion and deterioration of protective treatments, removing any corrosion, and treating any deteriorated areas. 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 September 13, 2021.

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

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Learjet Inc., One Learjet Way, Wichita, KS 67209; phone: (316) 946–2000; email: *ac.ict@aero.bombardier.com;* website: *https://businessaircraft.bombardier.com/en/aircraft/Learjet.html.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0157; 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: Tara Shawn, Aviation Safety Engineer, Wichita ACO Branch, FAA, 1801 Airport Road, Wichita, KS 67209; phone: (316) 946–4141; fax: (316) 946–4107; email: *tara.shawn@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–2021–0157; Project Identifier AD–2020–00483–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *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 Tara Shawn, Aviation Safety Engineer, Wichita ACO Branch, FAA, 1801 Airport Road, Wichita, KS 67209. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

In December 2018, the FAA received a report from Learjet of corrosion found in the center wing area of a Model 45 (Learjet 45) airplane. Exfoliating corrosion was found on the upper surface of the lower center wing mid spar splice plate during unrelated maintenance. The corrosion appeared to extend half way through the thickness of the splice plate. Since the initial report, the FAA has received 23 additional reports of corrosion from Learjet. The FAA determined areas of the wing center section are not sealed against the elements; in addition, the fuselage has drain holes that allow condensation to drain into the center wing. The accumulation and retention of moisture in the center wing section may lead to corrosion. This condition, if not addressed, could result in failure of the wing centerline joint and lead to partial wing separation with consequent loss of control of the airplane.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or

develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following service documents proposed for compliance with this NPRM:

- Bombardier Learjet 40 Service Bulletin 40–57–06, Revision 1, dated October, 26, 2020;
- Bombardier Learjet 45 Service Bulletin 45–57–13, Revision 1, dated October, 26, 2020;
- Bombardier Learjet 70 Service Bulletin 70–57–02, Revision 1, dated October, 26, 2020; and
- Bombardier Learjet 75 Service Bulletin 75–57–01, Revision 2, dated April 19, 2021.

As applicable to the model configuration specified, each service bulletin contains procedures for inspecting for corrosion and deterioration of protective treatments of the center wing area from the front spar to the rear spar between wing stations 33.00L to 33.00R, treating deteriorated areas, and removing any corrosion. Bombardier Learjet 75 Service Bulletin 75–57–01, Revision 2, dated April 19, 2021, does not apply to newly-manufactured airplanes, since Learjet added this inspection to the Airworthiness Limitation Section, which will be delivered with new airplanes starting at S/N 45–597.

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**.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described. This proposed AD would also require reporting the inspection results to the FAA by email at *Wichita-COS@faa.gov.*

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 450 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	7.50 work-hours × $85 per hour = $637.50	Not applicable	$637.50	$286,875
Reporting to FAA	1 work-hour × $85 per hour = $85	Not applicable	85	38,250

The extent of corrosion and deterioration of protective treatments may vary significantly from airplane to airplane. The FAA has no way of determining how much damage may be found on each airplane, the cost to remove the corrosion or treat deteriorated areas (or replacing the part, if needed), or the number of airplanes that may require repair.

If corrosion is found and removed, the FAA estimates that it would take 2 work-hours per airplane to provide data to Learjet. With an average labor rate of $85 per work-hour, the FAA estimates a cost of $170 per airplane.

Paperwork Reduction Act

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 2120–0056. Public reporting for this collection of information is estimated to take up to 3 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. 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 Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

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:

Learjet Inc.: Docket No. FAA–2021–0157; Project Identifier AD–2020–00483–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 13, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Learjet Inc. Model 45 (Learjet 40), Model 45 (Learjet 45), Model 45 (Learjet 70), and Model 45 (Learjet 75) airplanes, serial numbers 45–002 through 45–596 and 45–2001 through 45–2146, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 5714, Wing, Center Box.

(e) Unsafe Condition

This AD was prompted by reports of corrosion found on the upper surface of the lower center wing mid spar splice plate. The FAA is issuing this AD to detect and correct corrosion or deterioration of protective treatments on the center wing area. The unsafe condition, if not addressed, could result in failure of the wing centerline joint and lead to partial wing separation with consequent loss of control of the airplane.

(f) Compliance

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

(g) Applicable Service Bulletins

Use the following service bulletins, as applicable to your airplane model configuration, to perform the actions required by paragraph (h) of this AD:

(1) Bombardier Learjet 40 Service Bulletin 40–57–06, Revision 1, dated October 26, 2020;

(2) Bombardier Learjet 45 Service Bulletin 45–57–13, Revision 1, dated October 26, 2020;

(3) Bombardier Learjet 70 Service Bulletin 70–57–02, Revision 1, dated October 26, 2020; and

(4) Bombardier Learjet 75 Service Bulletin 75–57–01, Revision 2, dated April 19, 2021.

(h) Wing Center Spar Inspection, Related Investigative Inspections, and Corrective Actions

At the applicable initial compliance time specified in paragraph (h)(1) or (2) of this AD and thereafter at intervals not to exceed 8 years, inspect the center wing area for corrosion and deterioration of protective treatments and perform all related corrective actions by following the Accomplishment Instructions, steps 3.A. and 3.B., of the applicable service bulletin listed in paragraph (g) of this AD.

(1) For airplanes with 8 or fewer years since the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever date is earlier: Before or upon accumulating 8 years or within 12 months after the effective date of this AD, whichever occurs later; or

(2) For airplanes that have accumulated more than 8 years since the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever date is earlier: Within 12 months after the effective date of this AD.

(i) Service Information Exception

Where Bombardier Learjet 40 Service Bulletin 40–57–06, Revision 1, dated October 26, 2020, Bombardier Learjet 45 Service Bulletin 45–57–13, Revision 1, dated October 26, 2020, Bombardier Learjet 70 Service Bulletin 70–57–02, Revision 1, dated October 26, 2020, and Bombardier Learjet 75 Service Bulletin 75–57–01, Revision 2, dated April 19, 2021, specify contacting Learjet Inc. for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(j) Reporting Requirement

Within 30 days after completing the initial inspection required by paragraph (h) of this AD or within 30 days after the effective date of this AD, whichever occurs later, submit a report of the findings (both positive and negative) of the inspection to: *Wichita-COS@faa.gov;* or Ann Johnson, Wichita ACO Branch, 1801 Airport Road, Wichita, KS 67209. This reporting requirement is limited to the initial inspection results only. The report must include: The name of the owner; the address of the owner; the name of the organization doing the actions required by this AD; the date the inspection was completed; the name of the person submitting the report; the address, telephone number, and email of the person submitting the report; the airplane serial number; the date of issuance of the original airworthiness certificate, or the date of issuance of the original export certificate of airworthiness (whichever date is earlier); whether protective treatments are deteriorated, and if so, the location of deteriorated areas; whether corrosion was detected, and if so, the location of corrosion; and a list of parts replaced if the level of corrosion required replacement of parts.

(k) Credit for Previous Actions

You may take credit for the initial wing spar inspection required by the introductory text to paragraph (h) of this AD if you performed the visual inspection before the effective date of this AD using Bombardier Learjet 40 Service Bulletin 40–57–06, Basic Issue, dated February 25, 2019; Bombardier Learjet 45 Service Bulletin 45–57–13, Basic Issue, dated February 25, 2019; Bombardier Learjet 70 Service Bulletin 70–57–02, Basic Issue, dated February 25, 2019; Bombardier Learjet 75 Service Bulletin 75–57–01, Basic Issue, dated February 25, 2019; or Bombardier Learjet 75 Service Bulletin 75–57–01, Revision 1, dated October 26, 2020.

(1) To take credit for the initial inspection, you must comply with paragraph (j) of this AD within 30 days after the effective date of this AD.

(2) You cannot take credit for the recurring inspections, only the initial inspection.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Wichita ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in Related Information.

(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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by a Learjet Inc. Designated Engineering Representative, or a Unit Member of the Learjet Organization Designation Authorization, that has been authorized by the Manager, Wichita ACO Branch, to make those findings. To be approved, the repair, modification, or alteration method must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(m) Related Information

(1) For more information about this AD, contact Tara Shawn, Aviation Safety Engineer, Wichita ACO Branch, FAA, 1801 Airport Road, Wichita, KS 67209; phone: (316) 946–4141; fax: (316) 946–4107; email: *tara.shawn@faa.gov*.

(2) For service information identified in this AD, contact Learjet Inc., One Learjet Way, Wichita, KS 67209; phone: (316) 946–2000; email: *ac.ict@aero.bombardier.com;* website: *businessaircraft.bombardier.com/en/aircraft/Learjet.html*. You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued on July 21, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–15953 Filed 7–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0604; Project Identifier 2019–CE–007–AD]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Limited 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 certain Pacific Aerospace Limited Model 750XL airplanes. This proposed AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as insufficient clearance between the engine mount, the Beta control rod, and the inter-turbine temperature (ITT) sensing probe that could lead to chafing damage. This proposed AD would require inspecting the engine mount, the temperature probe, and the reversing cable for damage, and taking any necessary corrective actions. 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 September 13, 2021.

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

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact the Civil Aviation Authority of New Zealand, Level 15, Asteron Centre, 55 Featherston Street, Wellington 6011; phone: +64 4 560 9400; fax: +64 4 569 2024; email: *info@caa.govt.nz.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0604; 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: Mike Kiesov, Aviation Safety Engineer, General Aviation & Rotorcraft Section, FAA, International Validation Branch, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@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–2021–0604; Project Identifier 2019–CE–007–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 Mike Kiesov, Aviation Safety Engineer, General Aviation & Rotorcraft Section, FAA, International Validation Branch, 901 Locust, Room 301, Kansas City, MO 64106. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The Civil Aviation Authority (CAA), which is the aviation authority for New Zealand, has issued AD DCA/750XL/35, effective date February 7, 2019 (referred to after this as ''the MCAI''), to correct an unsafe condition for certain Pacific Aerospace Limited Model 750XL airplanes. The MCAI states:

> DCA/750XL/35 is prompted by a review of the engine installation procedures, which identified that the clearance between the engine mount, the Beta control rod and the inter-turbine temperature (ITT) sensing probe could be insufficient and result in chafing damage. The [CAA] AD is issued to introduce the instructions in Pacific Aerospace Mandatory Service Bulletin (MSB) PACSB/XL/102 issue 2, dated 5 November 2018.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0604.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/102, Issue 2, dated November 5, 2018. This service information specifies procedures for removing support clamps if installed by following the prior version of the service bulletin; inspecting the engine mount, the temperature probe, and the reversing cable for signs of chafing or damage; installing anti-chafing blade tape onto the engine mount tube; and obtaining further guidance for corrective actions. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information referenced above. The FAA is issuing this NPRM after determining the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions in the service information described above, except as discussed under Differences Between

this Proposed AD and the Service Information.

Differences Between This Proposed AD and the Service Information

Where the service information states to contact Pacific Aerospace Limited if chafing or any damage is present on an engine mount, temperature probe, or reversing cable, this proposed AD would require contacting the CAA of New Zealand.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 23 airplanes of U.S. registry.

The FAA also estimates that it would take about 2 work-hours per airplane to comply with the inspection and install anti-chafing blade tape. The average labor rate is $85 per work-hour and required parts would cost about $10 per product for an estimated cost of $4,140 on U.S. operators, or $180 per airplane.

The damage found during the proposed inspection may vary from airplane to airplane. The FAA has no way of knowing how much damage each airplane may have or the cost to repair the damage for each airplane.

Contacting the CAA of New Zealand, if required, would take about 1 work-hour for an estimated cost of $85 per airplane.

The FAA has included all known costs in this cost estimate. According to the manufacturer, however, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Paperwork Reduction Act

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 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour 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. 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 Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

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:

Pacific Aerospace Limited: Docket No. FAA–2021–0604; Project Identifier 2019–CE–007–AD.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 13, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pacific Aerospace Limited Model 750XL airplanes, serial numbers 101 through 215, 220, 8001, and 8002, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 7100, Power Plant System.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as insufficient clearance between the engine mount, the Beta control rod, and the inter-turbine temperature (ITT) sensing probe that could lead to chafing damage. The FAA is issuing this AD to prevent damage to the engine mount, temperature probe, and the reversing cable. The unsafe condition, if not addressed, could result in chafing damage to the ITT system and binding of the Beta control rod.

(f) Actions and Compliance

(1) Unless already done, within 165 hours time-in-service after the effective date of this AD, inspect the engine mount, the temperature probe, and the reversing cable for damage, and, before further flight, take all necessary corrective actions and install anti-chafing blade tape onto the engine mount tube by following the Accomplishment Instructions in Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/102, Issue 2, dated November 5, 2018.

(2) Where the service information states to contact Pacific Aerospace Limited if chafing or any damage is present on an engine mount, temperature probe, or reversing cable, this AD requires instead that you contact the Civil Aviation Authority (CAA) of New Zealand at the contact information in paragraph (h)(3) of this AD.

(g) Alternative Methods of Compliance (AMOCs)

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

or by email at: *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.

(h) Related Information

(1) For more information about this AD, contact Mike Kiesov, Aviation Safety Engineer, General Aviation & Rotorcraft Section, FAA, International Validation Branch, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.*

(2) Refer to CAA of New Zealand AD DCA/750XL/35, effective date February 7, 2019, for more information. You may examine the CAA AD in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0604.

(3) For service information identified in this AD, contact the Civil Aviation Authority of New Zealand, Level 15, Asteron Centre, 55 Featherston Street, Wellington 6011; phone: +64 4 560 9400; fax: +64 4 569 2024; email: *info@caa.govt.nz.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued on July 21, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–15951 Filed 7–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0603; Project Identifier 2019–CE–006–AD]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Limited 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 certain Pacific Aerospace Limited Model 750XL airplanes. This proposed AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as chafing damage in the port wing skin caused by the fuel system finger filters. This proposed AD would require inspecting the wing internal skin for chafing and taking any necessary corrective actions. 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 September 13, 2021.

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

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact the Civil Aviation Authority of New Zealand, Level 15, Asteron Centre, 55 Featherston Street, Wellington 6011; phone: +64 4 560 9400; fax: +64 4 569 2024; email: *info@caa.govt.nz.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0603; 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 MCAI, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@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–2021–0603; Project Identifier 2019–CE–006–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 Mike Kiesov, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The Civil Aviation Authority (CAA), which is the aviation authority for New Zealand, has issued AD No. DCA/750XL/34, effective date February 7, 2019 (referred to after this as ''the MCAI''), to correct an unsafe condition for certain Pacific Aerospace Limited Model 750XL airplanes. The MCAI states:

DCA/750XL/34 is prompted by a report of finding chafing damage in the port wing skin caused by the fuel finger filters. The [CAA] AD is issued to introduce inspection and repair requirements with the issue of Pacific Aerospace Mandatory Service Bulletin (MSB)

PACSB/XL/099 issue 1, dated 16 January 2019.

The MCAI requires inspecting the wing internal skin for chafing and taking any necessary corrective actions. You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0603.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/099, Issue 1, dated January 16, 2019. The service information contains procedures for removing and modifying the inspection panel assembly, inspecting the wing internal skin for chafing, repairing any chafing damage and replacing the fuel filter as necessary, and reinstalling the inspection panel assembly. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information referenced above. The FAA is issuing this NPRM after determining the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 23 airplanes of U.S. registry. The FAA also estimates that it would take about 5 work-hours per airplane to do the inspection and modification requirements of this proposed AD, and no parts would be necessary. Based on these figures, the FAA estimates the cost of the inspection and modification for U.S. operators to be $9,725, or $425 per product.

In addition, the FAA estimates that any necessary follow-on actions for repair or replacement requirements of this proposed AD would take about 6 work-hours and require parts costing $150, for a cost of $660 per airplane. The FAA has no way of determining the number of airplanes that may need these actions.

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:

Pacific Aerospace Limited: Docket No. FAA–2021–0603; Project Identifier 2019–CE–006–AD.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 13, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pacific Aerospace Limited Model 750XL airplanes, serial numbers 100 through 205, 207 through 213, and 8001, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2800, Aircraft Fuel System.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and address an unsafe condition on an aviation product. The MCAI describes the unsafe condition as chafing damage in the port wing skin caused by the fuel system finger filters. The FAA is issuing this AD to detect and correct chafing in the left hand (LH) wing leading edge tank skin, which if not detected and corrected, could result in a port wing fuel leak and lead to engine failure or fire.

(f) Compliance

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

(g) Required Actions

Within 165 hours time-in-service after the effective date of this AD, modify the LH inspection panel assembly and inspect the LH wing and fuel tank for chafing, and then, before further flight, repair any chafing and install the panels in accordance with the Accomplishment Instructions in Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/099, Issue 1, dated January 16, 2019.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in Related Information or email: *9-AVS-AIR-730-AMOC@faa.gov*.

(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 Mike Kiesov, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.*

(2) Refer to Civil Aviation Authority (CAA) of New Zealand AD No. DCA/750XL/34, effective date February 7, 2019, for more information. You may examine the CAA AD in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0603.

(3) For service information identified in this AD, contact the Civil Aviation Authority of New Zealand, Level 15, Asteron Centre, 55 Featherston Street, Wellington 6011; phone: + 64 4 560 9400; fax: + 64 4 569 2024; email: *info@caa.govt.nz.* You may review this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued on July 21, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–15954 Filed 7–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0590; Airspace Docket No. 21–AWP–43]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Marana, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace extending upward from 700 feet above the surface at Marana Regional Airport, Marana, AZ. The FAA is proposing this action as the result of an airspace review conducted due to the decommissioning of the Marana non-directional beacon (NDB). The name of the airport would be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before September 13, 2021.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2021–0590/Airspace Docket No. 21–AWP–43, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace extending upward from 700 feet above the surface at Marana Regional Airport, Marana, AZ, to support instrument flight rule operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2021–0590/Airspace Docket No. 21–AWP–43.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed

in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by amending the Class E airspace extending upward from 700 feet above the surface to within a 6.7-mile (increased from a 6.6-mile) radius of Marana Regional Airport, Marana, AZ; adding an extension 3.8 miles each side of the 031° bearing from the airport extending from the 6.7-mile radius to 15.3 miles northeast of the airport; adding an extension 3.4 miles each side of the 330° bearing from the airport extending from the 6.7-mile radius to 12.7 miles northwest of the airport; updating the header of the airspace legal description to ''Marana, AZ'' (previously ''Marana Regional, AZ'') to coincide with the FAA's aeronautical database; updating the name of the airport (previously Marana Regional) to coincide with the FAA's aeronautical database; and removing the exclusionary language as it is no longer required.

This action is the result of an airspace review caused by the decommissioning of the Marana NDB which provided navigation information for the instrument procedures at this airport. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

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

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AWP AZ E5 Marana, AZ [Amended]

Marana Regional Airport, AZ
(Lat. 32°24′34″ N, long. 111°13′06″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Marana Regional Airport; and within 3.8 miles each side of the 031° bearing from the airport extending from the 6.7-mile radius from the airport to 15.3 miles northeast of the airport; and within 3.4 miles each side of the 330° from the airport extending from the 6.7-mile radius from the airport to 12.7 miles northwest of the airport.

Issued in Fort Worth, Texas, on July 22, 2021.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2021–15939 Filed 7–27–21; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2018–0026]

RIN 0960–AI27

Rules Regarding the Frequency and Notice of Continuing Disability Reviews; Withdrawal

AGENCY: Social Security Administration.

ACTION: Proposed rule; withdrawal.

SUMMARY: We are withdrawing the Notice of Proposed Rulemaking (NPRM), Rules Regarding the Frequency and Notice of Continuing Disability Reviews, published in the **Federal Register** on November 18, 2019.

DATES: The proposed rule, published at 84 FR 63588, November 18, 2019, identified in this document is withdrawn as of July 28, 2021.

ADDRESSES: Office of Regulations and Reports Clearance, Social Security Administration, 3100 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

FOR FURTHER INFORMATION CONTACT: Michael J. Goldstein, Director, Office of Medical Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: On November 18, 2019, we proposed to revise our regulations regarding when and how often we conduct continuing disability reviews (CDR), which are periodic reviews of eligibility required for benefit continuation.[1] The proposed rules would have added a category to the existing medical diary categories that we use to schedule CDRs, and would have revised the criteria for assigning each of the medical diary categories to cases. The proposed rules would also have changed the frequency with which we perform a CDR for claims involving permanent impairments.

In this proposed rule, we provided a 60-day comment period, which we extended for 15 days, concluding on January 31, 2020.[2] We received 125,552 comments during the comment cycle.[3]

[1] 84 FR 63588 (November 18, 2019).

[2] 84 FR 67394 (December 10, 2019).

[3] The comments are available for public viewing at *www.regulations.gov* by searching Docket No SSA–2018–0026.

The total comment count reflects electronic submissions through the eRulemaking portals at the Office of the Federal Register and *Regulations.gov*, as well as emailed, mailed, and faxed comments. We did not make 181 comments available. These 181 comments were submitted after the comment period closed; included personally identifiable information or profanity; were unrelated to the rulemaking subject matter; or were submitted by individuals commenting in their capacity as Social Security Administration (SSA) employees.

The Office of Management and Budget conducted 11 listening sessions under the authority of Executive Order (E.O.) 12866 during December 2020 and January 2021 for interested stakeholders, many of whom also provided thoughtful and relevant comments during the NPRM comment period. We appreciate all the commenters who provided thoughtful feedback on their analysis of, and concerns about, the proposed rule.

Withdrawal of the Proposed Rule

After considering the submitted comments and further feedback provided in the listening sessions, we are withdrawing the proposed rule, Rules Regarding the Frequency and Notice of Continuing Disability Reviews (84 FR 63588, November 18, 2019) (RIN 0960–AI27). We noted our intent to withdraw the proposed rule in our Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions.[4]

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security Disability Insurance; 96.002, Social Security Retirement Insurance; 96.004, Social Security Survivors Insurance; 96.006, Supplemental Security Income).

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and Disability insurance, Reporting and recordkeeping requirements, Social security.

20 CFR Part 416

Administrative practice and procedure, Reporting and recordkeeping requirements, Social security, Supplemental Security Income (SSI).

The Acting Commissioner of the Social Security Administration, Kilolo Kijakazi, having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for SSA, for purposes of publication in the **Federal Register**.

Faye I. Lipsky,

Federal Register Liaison, Office of Legislation and Congressional Affairs, Social Security Administration.

[FR Doc. 2021–15896 Filed 7–27–21; 8:45 am]

BILLING CODE P

[4] Our Unified Agenda of Regulatory and Deregulatory Actions is available on *Reginfo.gov* and can be accessed at *https://www.reginfo.gov/public/do/eAgendaMain.*

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2021–0332]

RIN 1625–AA09

Drawbridge Operation Regulation; Indiana Harbor Canal, East Chicago, IN

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the Indianapolis Boulevard Bridge, mile 2.59, over the Indiana Harbor Canal at East Chicago, IN. Indiana Department of Transportation, the owner and operator of the bridge, has requested to stop continual drawtender service to the bridge due to a lack of openings. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must reach the Coast Guard on or before September 27, 2021.

ADDRESSES: You may submit comments identified by docket number USCG–2021–0332 using Federal e-Rulemaking Portal at *https://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email If you have questions on this proposed rule, call or email: Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216–902–6085, email *Lee.D.Soule@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security FR Federal Register
IGLD85 International Great Lakes Datum of 1985 INDOT Indiana Department of Transportation
LWD Low Water Datum based on IGLD85
OMB Office of Management and Budget
NPRM Notice of Proposed Rulemaking (Advance, Supplemental)
§ Section USACE United States Army Corps of Engineers
U.S.C. United States Code
USEPA United States Environmental Protection Agency

II. Background, Purpose and Legal Basis

The Indianapolis Boulevard Bridge, mile 2.59, over the Indiana Harbor Canal is a double leaf bascule bridge that provides a horizontal clearance of 68-feet and a vertical clearance of 12-feet in the closed position with an unlimited vertical clearance in the open position. The Indianapolis Boulevard Bridge, mile 2.59, over the Indiana Harbor Canal is required to open on signal and there are no previous rulemakings for this bridge to discuss. The Indiana Harbor Canal is a 3-mile long commercial waterway that serves several industries near the city of East Chicago, Indiana including the largest integrated steelmaking facility in North America and the 1,400 acre Whiting Refinery that includes the former 1889 Standard Oil of Indiana refinery at the head of navigation. The Indianapolis Boulevard Bridge, mile 2.59, over the Indiana Harbor Canal is the last drawbridge before the head of navigation; once the 1889 Standard Oil of Indiana refinery was torn down the bridge lost its purpose for regular openings and the waterway silted in around the bridge preventing vessels from approaching. Approximately thirty years after the removal of the refinery the USEPA and USACE partnered to remove polluted sediments form the waterway and established a contaminated dredge spoils area above the bridge. The EPA and USACE contracted dredging company is working a few weeks each season and is the only commercial vessel requesting the bridge to open. There are no records of recreational vessels using the Indiana Harbor Canal.

III. Discussion of Proposed Rule

The only vessel that has requested an opening at the Indianapolis Boulevard Bridge, mile 2.59, over the Indiana Harbor Canal in thirty years has been the dredging contractor, and their work schedule is limited to a few weeks a year due to migratory wildlife concerns in the summer and ice formation in the winter. INDOT has agreed that a drawtender will be assigned to the bridge to accommodate vessel traffic if a 12-hour advance notice is provided.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on 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 NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability that vessels can still transit the bridge given advanced notice.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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 proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has 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 proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this proposed rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; DHS Delegation No. 0170.1.

■ 2. In § 117.400 add paragraph (c) to read as follows:

§ 117.400 Indiana Harbor Canal.

* * * * *

(c). The Indianapolis Boulevard Bridge, mile 2.59, at East Chicago, shall open on signal if at least twelve hours' notice is given.

M.J. Johnston,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 2021–15488 Filed 7–27–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0531]

RIN 1625–AA00

Safety Zone; Monongahela River Mile 96.0 to Mile 97.0, Maidsville, WV

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for mile 96.0 to mile 97.0 of the Monongahela River. This action is necessary to provide for the safety of the life on these navigable water near Maidsville, WV during a pipe and diffuser underwater installation from August 23, 2021 through August 25, 2021. This proposed rulemaking would prohibit persons and vessels from entering the safety zone unless authorized by the Captain of the Port Pittsburgh (COTP) or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before August 12, 2021.

ADDRESSES: You may submit comments identified by docket number USCG–2021–0531 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email MST3 Matthew Izso, Marine Safety Unit Pittsburgh, U.S. Coast Guard; telephone 412–221–0807, email *Matthew.R.Izso@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On July 6, 2021, the Brayman Construction Corporation notified the Coast Guard that it will be conducting an underwater pipe and diffuser installation for Longview Power from 6 a.m. to 9 p.m. on August 23, 2021 through August 25, 2021. The installation will take place at mile 96.5 on the Monongahela River near Maidsville, WV. Hazards associated with proposed operations present a hazard to navigation. The COTP Pittsburgh has determined that potential hazards associated with the installation work would be a safety concern for anyone transiting the river.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters before, during, and after the scheduled installation activity. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP Pittsburgh is proposing to establish a safety zone from 6 a.m. to 9 p.m. on August 23, 2021 through August 25, 2021. The safety zone would cover all navigable waters from mile 96.0 to mile 97.0 on the Monongahela River near Maidsville, WV. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled intallation project. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP Pittsburgh or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed 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 NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the safety zone. The safety zone will impact a 1-mile stretch of the Monongahela River for 3 days. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rulemaking would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental

jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

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 proposed rule. If the proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would 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 rulemaking 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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 proposed rule would not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed 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 made a preliminary determination 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 proposed rule involves a safety zone lasting from August 23, 2021 through August 25, 2021 from mile 96.0 to mile 97.0 on the Monongahela River near Maidsville, WV. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2021–0531 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0531 to read as follows:

§ 165.T08–0531 Safety Zone; Monongahela, Mile 96.0 to Mile 97.0, Maidsville, WV.

(a) *Location.* The following area is a safety zone: All navigable waters of the Monongahela River from mile 96.0 to mile 97.0.

(b) *Effective period.* This section is effective from August 23, 2021 through August 25, 2021.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry of persons and vessels into this zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh (COTP) or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the COTP Pittsburgh or a designated representative. The COTP's representative may be contacted at 412–221–0807.

(3) All persons and vessels shall comply with the instructions of the COTP Pittsburgh or a designated representative. Designated COTP representatives include United States Coast Guard commissioned, warrant, and petty officer.

(d) *Information broadcasts.* The COTP Pittsburgh or a designated representative will inform the public through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

Dated: 22 July 2021.

E.J. Velez,

Commander, U.S. Coast Guard, Captain of the Port Marine Safety Unit Pittsburgh.

[FR Doc. 2021–15928 Filed 7–27–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 60 and 63

[NPS–WASO–NHPA–32134; PPWONRADE2, PMP00EI05.YP0000]

RIN 1024–AE49

National Register of Historic Places; Withdrawal

AGENCY: National Park Service; Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The National Park Service withdraws the proposed rule that would have revised regulations governing the listing of properties in the National Register of Historic Places. The National Park Service no longer intends to prepare a final rule and has terminated the rulemaking process.

DATES: The March 1, 2019 proposed rule (84 FR 6996) is withdrawn as of July 28, 2021.

FOR FURTHER INFORMATION CONTACT: Joy Beasley, Associate Director, Cultural Resources Partnerships and Science & Keeper of the National Register of Historic Places, NPS (WASO), (202) 354–6991, *joy_beasley@nps.gov.*

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2021–15944 Filed 7–27–21; 8:45 am]

BILLING CODE 4312–52–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2019–0708; FRL–8711–01–R7]

Air Plan Approval; Iowa; Polk County; State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Iowa State Implementation Plan (SIP) to include recent changes to the Polk County Board of Health Rules and Regulations in addition to revisions from past submittals. The proposed revisions update definitions and references to the effective dates of Federal rules approved into the State's SIP, prohibit burning of demolished buildings, update references to methods and procedures for performance test/stack test and continuous monitoring systems, and revise permitting exemptions. These proposed revisions will not adversely impact air quality and will ensure consistency between the State and Federally approved rulemakings.

DATES: Comments must be received on or before August 27, 2021.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2019–0708 to *https://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Stephanie Doolan, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551–7719; email address *doolan.stephanie@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to the EPA.

Table of Contents

I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2019–0708 at *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. What is being addressed in this document?

The EPA is proposing to approve a submission from the State of Iowa to revise its SIP to incorporate recent updates to Chapter 10 of Polk County's Code of Regulation pertaining to air quality. The Clean Air Act (CAA) allows authorized States to delegate portions of the Act's implementation and enforcement to local governments such

as Polk County. The proposed revisions to the Iowa SIP incorporate Polk County's updated definitions and references to the effective dates of Federal rules approved into the State's SIP, update references to methods and procedures for performance test/stack test and continuous monitoring systems, prohibit burning of demolished buildings, and revise permitting exemptions. The proposed revisions to the Iowa SIP also include changes to Polk County's public notice and participation requirements to allow permit modifications to be published online rather than in area newspapers which is consistent with recent revisions to Iowa's SIP (83 FR 191, October 2, 2018).

The EPA is not acting on portions of Polk County Chapter V that amend Standards for Marijuana Production and Marijuana Processing (section 5–21), Permits for New and Existing Stationary Sources, and Chapter 10–59, Permit Fees, that pertain to Prevention of Significant Deterioration (PSD) regulations because Iowa has not delegated the PSD program authority to Polk County.

The EPA is also proposing to approve minor changes to the text of various ordinances that were previously submitted to the EPA, but were inadvertently omitted from previous actions. These revisions were contained in submittals dated December 3, 2007, September 1, 2009, September 19, 2011, April 15, 2014, and November 25, 2015.

III. What SIP revisions are being proposed by the EPA?

The EPA is proposing approval of the revisions to the Iowa SIP to incorporate revisions to Chapter V of the Polk County Board of Health Rules and Regulations listed below. A Technical Support Document (TSD) with a detailed description of the proposed revisions and the rationale for approval has been prepared by the EPA and is provided in the docket for this proposed action.

Article I, In General. The proposed rule changes update the references to effective dates and definitions. The rule changes are administrative updates that do not negatively impact air quality and ensure greater consistency with the Iowa regulations.

Article III, Incineration and Open Burning. Polk County amended this article to add a prohibition against burning demolished buildings. The addition of the prohibition on burning of demolished buildings will lead to reduced particulates and hazardous air pollutants (HAPs) thus improving air quality.

Article VI, Emission Of Air Contaminants From Industrial Processes. Section 5–16 is being amended to include a general provision referencing paragraph (n) which applies to New Source Performance Standards (NSPS). NSPS is delegated by Iowa to Polk County but not SIP-approved by the EPA. The EPA proposes to approve the general provision because it pertains to a delegated authority.

Article VII, Performance Test For Stack Emission Test. In section 5–18, paragraph (a)(2) the title and references to ''stack sampling'' are being revised to read ''performance test (stack test)'' and ''department'' is being changed to read ''local program.'' These minor changes in wording do not impact air quality. References to performance test methods and specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are being updated to be consistent with the currently approved references in Iowa code. Thus, for consistency, the EPA is proposing to approve these updates.

Article X, Permits, Division 1, Construction Permits. Section 5–28, Construction Permit Required, is being amended to add ''Air Quality Division (AQD)'' to the title. Subparagraphs (1) through (4) of paragraph (c) are not highlighted in Iowa's SIP revision request as new text. After consulting with Iowa, the State submitted an Addendum dated July 21, 2020, to request EPA approval of paragraphs (1) though (4) of section 5–28 into the SIP, and stated that section 5–28 has been submitted to EPA for approval in the past. The text of these paragraphs is substantively similar to that of Iowa 22.1 (455B) and 22.3 (b) which EPA has approved into Iowa's SIP; thus, the EPA recommends approval of Paragraphs (a) through (c), including subparagraphs (1) through (4) of paragraph (c), to ensure consistency between Polk County's and Iowa's air permitting regulations.

The title of article X, section 5–29, is being revised to add that the application is for a ''construction'' permit and the acronym ''AQD.'' The new title now reads ''Application for a Construction Permit (AQD).'' Also, this section is being revised to add a paragraph title, ''construction permit applications,'' to revise ''health officer'' to now read ''local program,'' to eliminate that the applications must be submitted ''in duplicate,'' and to add ''applications'' to the list of items to be submitted by entities seeking a construction permit. The EPA proposes to approve these changes into the Iowa SIP because they clarify the construction permitting process and reduce the number of hard copies that need to be submitted.

Polk County has added the acronym ''AQD'' representing the Air Quality Division to title X, sections 5–30, Processing of Applications for Construction Permits, section 5–31, Issuance of Construction Permits, and section 5–32, Denial of Permit. These additions represent minor clarifications. As such, the EPA proposes to approve them.

The acronym ''AQD'' has also been added to title X, section 5–33, Exemptions from Permit Requirements. In item (50), Production Welding, ''stationary source'' is replacing ''facility.'' Further, the equations used to calculate the exemption in item (50) are being revised. The calculations make item (50) more stringent than calculations set forth in the welding exemption in the EPA-approved Iowa SIP, section 22.1(2)(ff)(1).

Item (62) has been added to section 5–33. Item (62) exempts from construction permitting non-road diesel engines used for periodic testing and maintenance of natural gas compressor engines. The exemption is consistent with EPA-approved construction permitting requirements in Chapter 22.1(2) ''oo'' of the Iowa code. The EPA proposes to approve item (62) into the Iowa SIP as it makes Polk County's authorities consistent with Iowa's.

Article X, Permits, Division 2, Operating Permits. ''Annual Operating'' is being added to the title of section 5–37 to clarify the type of permit to which the section pertains. The acronym ''AQD'' is being added as well. The reference to ''department'' is being changed to ''Local Program.'' Also, this section is being updated to be consistent with Iowa code regarding public notice requirements. The State made revisions that address public participation requirements for its PSD permitting program to reflect updates to the Federal regulations, at 40 CFR part 51, subpart I, published October 18, 2016. The revision removes the requirements for advertisement in a newspaper of general circulation in each region in which the proposed source will be constructed and provides for posting of the public comment period on a website identified by the State. The language and intent of the revisions to the Polk County rules and regulations are consistent with the Federal regulations and the EPA-approved Iowa SIP. Thus, the EPA is proposing to approve these Polk County revisions into the Iowa SIP.

The title for section 5–39 is being revised to clarify that the listed exemptions are for ''Annual Operating'' Permits. Revisions to item (43) update the language from ''facility'' to ''stationary source(s)'' and correct the

equation for exemption from permitting for welding activities to agree with that in Iowa code. The EPA is proposing to approve these revisions because they clarify the permit exemptions.

Items (56), Equipment related to research and development activities at a stationary source, (57), Exemptions for non-road diesel combustion engines, and item (58), fuel burning equipment for indirect heating or cooling with a capacity less than one million Btu per hour input when burning No. 1 or No. 2 fuel oil, are consistent with previously approved exemptions in section 22.1(b) of the Iowa SIP. In paragraphs (57) and (58), Polk County has elected to be more stringent in its regulations than the EPA-approved Iowa code for similar operations. The EPA is proposing to approve items (56), (57) and (58) into the Iowa SIP.

Section 5–39, paragraph (b) was not highlighted as new language in Iowa's SIP revision request; however, following discussions with Iowa, the state indicated that this paragraph had been requested for approval in a previous submittal, and requested approval of this paragraph in its July 21, 2020, Addendum. This paragraph discusses exemptions from permitting for smaller liquified or natural gas fired heaters, residential wood or pellet heaters, cook stoves and fireplace, as well as jet engines, marine engines and locomotives. This paragraph is consistent with Iowa code section 22.1 which is EPA-approved; thus, the EPA is proposing to approve the same Polk County exemptions.

Revisions to sections 5–40, 5–42, 5–43 and 5–44 are clarifications that the permits discussed are ''Annual Operating'' permits issued by AQD. The EPA is proposing to approve these minor editorial changes, as there is no impact to air quality.

IV. Have the requirements for approval of a SIP been met?

The submittals met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfies the completeness criteria of 40 CFR part 51, appendix V. In addition, these proposed revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations. These proposed revisions are also consistent with applicable EPA requirements of title V of the CAA and 40 CFR part 70.

V. What actions are proposed?

The EPA is proposing to approve revisions to the Iowa SIP to incorporate the revisions to chapter 5, Air Pollution, of the Polk County Board of Health Rules and Regulations. The proposed revisions clarify rules, make revisions and corrections, and rescind portions of rules no longer relevant to the air program. The EPA has determined that approval of these proposed revisions will not adversely impact air quality and will ensure consistency between the local, State and federally-approved rules, and will ensure Federal enforceability of the State's revised air program rules.

VI. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Iowa Regulations described in the proposed amendments to 40 CFR 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- 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 the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

Dated: July 19, 2021.

Edward H. Chu,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart Q-Iowa

■ 2. In § 52.820, the table in paragraph (c) is amended by revising the entry ''Chapter V'' under the heading ''Polk County'' to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Explanation
Iowa Department of Natural Resources Environmental Protection Commission [567]				
*	*	*	*	* * *
Polk County				
Chapter V	Polk County Board of Health Rules and Regulations Air Pollution Chapter V.	11/30/18	[Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule].	Article I, Section 5–2, definition of ''anaerobic lagoon'' and ''variance;'' Article III, Incineration and Open Burning, Section 5–7(d) Variance Application; Article VI, Sections 5–16(n), (o) and (p); Article VIII; Article IX, Sections 5–27(3) and (4); Article X, Section 5–28, subsections (a) through (c), and Article X, Section 5–35(b)(5); Article XIII; Article XIV; and Article XVI, Section 5–75B are not part of the SIP.
*	*	*	*	* * *

* * * * *

[FR Doc. 2021–15733 Filed 7–27–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2021–0405; FRL–8708–01–R7]

Air Plan Approval; Approval of Missouri Air Quality Implementation Plans; Revisions to St. Louis 1997 $PM_{2.5}$ Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Missouri on November 12, 2019, revising the maintenance plan demonstrating continued maintenance of the 1997 $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS) in the St. Louis area. This revision states that the St. Louis area no longer needs to rely on the vehicle Inspection and Maintenance (I/M) program and the use of Reformulated Gasoline (RFG) for continued maintenance throughout the maintenance period for the 1997 $PM_{2.5}$ NAAQS. EPA is proposing to determine that this revision meets the requirements of the Clean Air Act.

DATES: Comments must be received on or before August 27, 2021.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2021–0405 to *https://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Steven Brown, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7718; email address: *brown.steven@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to the EPA.

Table of Contents

I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2021–0405, at *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. What is being addressed in this document?

The EPA is proposing to approve SIP revisions submitted by the State of Missouri on November 12, 2019, revising the 1997 $PM_{2.5}$ maintenance plan. This SIP revision demonstrates continued maintenance of the 1997 $PM_{2.5}$ NAAQS in the St. Louis area through the future year of 2025. The maintenance area boundary includes the Missouri counties of Franklin, Jefferson, St. Charles, and St. Louis along with the City of St. Louis.

Through this action, the Missouri Department of Natural Resources (MoDNR) is requesting EPA to approve

this maintenance plan into Missouri's SIP pursuant to Clean Air Act (CAA) Section 175A as a replacement to the maintenance plan previously approved by EPA on October 2, 2018 (83 FR 38033).

On August 3, 2018, EPA published in the **Federal Register** a final rulemaking approving the State of Missouri's request to redesignate the Missouri portion of the St. Louis nonattainment area to attainment and their demonstration for maintaining the 1997 $PM_{2.5}$ NAAQS through the ten-year maintenance period. The effective date for this approval was on October 2, 2018 (83 FR 38033).

The SIP revision we are acting on in this proposal, removes the reliance on the St. Louis vehicle Inspection and Maintenance (I/M) program and the use of Reformulated Gasoline (RFG) for continued maintenance of the 1997 $PM_{2.5}$ standard. To support this revision, Missouri utilized EPA's 2014 Motor Vehicle Emissions Simulator (MOVES2014b) emission modeling system to project revised mobile source emissions by removing emissions reductions related to I/M and RFG throughout the maintenance period to the future year of 2025.

Tables 1 and 2 below lists the total direct $PM_{2.5}$ and $PM_{2.5}$ precursor emissions for the attainment year 2008 and the projection year 2025 for point, area, onroad and nonroad source categories of the five counties in the St. Louis area. Because the area attained the standard in 2008, this represents a level of emissions suitable to maintain compliance with the 1997 $PM_{2.5}$ standard. By comparing the total emissions in Tables 1 and 2, Missouri's emissions analysis shows substantial decreases in mobile source emissions and decreases in total source category emissions through the maintenance period of 2025. These decreases in direct $PM_{2.5}$ and precursor pollutants demonstrate the area will continue to meet the 1997 $PM_{2.5}$ standard throughout the maintenance period without relying on the I/M program or RFG requirements in the Missouri portion of the maintenance area.

TABLE–1—ST. LOUIS AREA 2008 TOTAL EMISSIONS IN TONS PER YEAR

State	Source category	NH_3	NO_X	$PM_{2.5}$	SO_2	VOC
Missouri Area	Point Source	1,308.64	31,103.26	3,493.39	201,700.73	5,067.89
	Area Source	3,514.98	4,382.94	14,033.64	11,510.48	38,215.34
	Onroad Source	1,056.17	58,819.58	2,179.28	426.65	23,793.80
	Nonroad Source	15.68	20,722.57	1,199.82	544.3	11,545.53
Illinois Area	Point Source	208.31	16,608.41	2,438.05	49,895.15	4,270.41
	Area Source	3,354.13	1,638.36	4,749.40	246.67	7,796.35
	Onroad Source	304.71	17,965.82	524.49	60.26	6,741.77
	Nonroad Source	6.04	8,509.49	425.04	355.25	2,944.51
Total Emissions Tons/year.		9,768.66	159,750.43	29,043.11	264,739.49	100,375.60

TABLE–2—ST. LOUIS AREA 2025 TOTAL EMISSIONS IN TONS PER YEAR

State	Source category	NH_3	NO_X	$PM_{2.5}$	SO_2	VOC
Missouri Area	Point Source	1,431.04	17,051.11	1,945.67	94,687.19	3,106.68
	Area Source	3,232.53	4,937.54	6,756.09	247.98	26,637.27
	Onroad Source	624.33	11,718.99	481.94	103.27	6,569.16
	Nonroad Source	13.10	7,136.63	547.21	134.85	5,664.63
Illinois Area	Point Source	254.91	13,762.60	2,219.54	44,700.05	5,747.23
	Area Source	3,374.18	1,735.21	4,668.15	268.04	9,249.75
	Onroad Source	178.97	3,849.45	119.31	52.83	2,042.78
	Nonroad Source	8.16	8,687.02	303.26	400.33	1,585.08
Total Emissions Tons/year.		9,117.22	68,878.55	17,041.17	140,594.54	60,602.58

It is important to note approval of this maintenance plan revision does not remove the I/M program or the RFG program requirements from the SIP.

In addition, the motor vehicle emissions budgets (MVEBs) from the previously SIP approved Maintenance Plan for the $PM_{2.5}$ NAAQS [1] and this SIP submittal remain the same. Therefore, there are no new MVEBs being created for this SIP revision. Moreover, EPA has revoked the 1997 primary annual $PM_{2.5}$ NAAQS, which has been replaced by the more health protective 2012 primary annual $PM_{2.5}$ NAAQS and Missouri is currently in compliance with this standard (84 FR 36472). As a result, areas that have been redesignated to attainment for the 1997 annual $PM_{2.5}$ NAAQS (*i.e.,* maintenance areas for the 1997 annual $PM_{2.5}$ NAAQS) will no longer be required to make transportation conformity determinations for that NAAQS (81 FR 58010).

EPA is proposing approval of the revised maintenance plan based on information provided in the emissions projections, modeling results and an evaluation of quality assured air monitoring data submitted as part of this revision and in a previously reviewed analysis as part of the St. Louis Nonattainment Area 1997 $PM_{2.5}$ NAAQS Redesignation rulemaking published on August 3, 2018 (83 FR 38033). Current and future projections of air quality and emissions data for this revision demonstrates maintenance for the 1997 $PM_{2.5}$ NAAQS.

This revision only affects maintenance for the 1997 $PM_{2.5}$ standard, only removes the reliance upon the I/M and RFG programs for continued maintenance and therefore meets the requirements of the Clean Air Act.

The full text of the plan revisions including Missouri's technical

[1] 83 FR 38033, August 3, 2018 (effective date of October 2, 2018).

demonstration can be found in the State's submission, which is included in the docket for this action.

III. Have the requirements for approval of a SIP revision been met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from July 29, 2019 through September 13, 2019 and received one comment from the Missouri Petroleum Marketers and Convenience Store Association, one comment from Abel Realty, and thirteen comments from EPA. After receiving comments, the state revised the SIP prior to submitting the plan to EPA. In addition, as explained above and in more detail in the Missouri submittal document, which is part of the docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

IV. What action is the EPA proposing to take?

We are proposing to approve a SIP revision submitted by the State of Missouri on November 12, 2019, revising the 1997 $PM_{2.5}$ maintenance plan. EPA is proposing to determine that this revision would not interfere with attainment or maintenance of the NAAQS or with any other CAA requirement. We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

V. Statutory and Executive Order Reviews

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

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

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference.

Dated: July 19, 2021.

Edward H. Chu,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart AA—Missouri

■ 2. In § 52.1320, the table in paragraph (e) is amended by adding the entry ''(80)'' in numerical order to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(e) * * *

EPA-APPOVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
(80) Revisions to St. Louis 1997 $PM_{2.5}$ Maintenance Plan.	St. Louis Area: Missouri counties of Franklin, Jefferson, St. Charles, and St. Louis along with the City of St. Louis.	11/12/2019	[Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule].	This action replaces the Maintenance plan for the 1997 $PM_{2.5}$ (83 FR 38033) [EPA–R07–OAR–2017–0734; FRL 9981–29–Region 7].

[FR Doc. 2021–15730 Filed 7–27–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket No. 19–195, DA 21–853; FR ID 39982]

Comment Sought on Technical Requirements for the Mobile Challenge, Verification, and Crowdsource Processes Required Under the Broadband Data Act

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Wireless Telecommunications Bureau (WTB), the Office of Economics and Analytics (OEA), and the Office of Engineering and Technology (OET) (collectively, the Bureau and Offices) seek comment on proposed technical requirements to implement the mobile challenge, verification, and crowdsourcing processes required by the Broadband DATA Act.

DATES: Comments are due on or before August 27, 2021; reply comments are due on or before September 13, 2021.

ADDRESSES: You may submit comments, identified by WC Docket No. 19–195, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://www.fcc.gov/ecfs.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE. Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19.

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 & Government Affairs Bureau at 202–418–0530 (voice, 202–418–0432 (tty).

FOR FURTHER INFORMATION CONTACT: Will Holloway, *William.Holloway@fcc.gov,* Competition & Infrastructure Policy Division, (WTB), Jonathan McCormack at *Jonathan.McCormack@fcc.gov* (OEA), or Martin Doczkat at *Martin.Doczkat@fcc.gov* (OET).

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, *Public Notice,* in WC Docket No 19–195, DA 21–853, released on July 16, 2021. The full text of this document, including the Technical Appendix is available for public inspection and can be downloaded at *https://www.fcc.gov/document/input-sought-mobile-challenge-verification-technical-requirements* or by using the Commission's ECFS web page at *www.fcc.gov/ecfs.*

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 paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 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.

Paperwork Reduction Act

The rulemaking required under section 802(a)(1) of the Broadband DATA Act is exempt from review by OMB and from the requirements of the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. As a result, the Public Notice will not be submitted to OMB for review under section 3507(d) of the PRA.

Synopsis

I. Introduction

1. With this *Public Notice,* the Wireless Telecommunications Bureau (WTB), the Office of Economics and Analytics (OEA), and the Office of Engineering and Technology (OET) (collectively, the Bureau and Offices) take the next step in implementing the requirements of the Broadband DATA Act and improving the Commission's data on broadband availability as part of the Broadband Data Collection (BDC). To implement the Broadband DATA Act's requirements and obtain better mobile broadband availability data, the Commission delegated to the Bureau and Offices the obligation to develop: (1) Technical requirements for a challenge process that will enable consumers and other third parties to dispute service providers' coverage data; (2) a process to verify service providers' coverage data; and (3) a process to accept crowdsourced information from third parties. These measures will enable the Commission, Congress, other federal and state policy makers, Tribal entities, consumers, and other third parties to verify and supplement the data collected by the Commission on the status of broadband availability throughout the United States.

2. This *Public Notice* seeks comment on proposed technical requirements to implement the mobile challenge, verification, and crowdsourcing processes required by the Broadband DATA Act. These requirements include the metrics to be collected for on-the-ground test data and a methodology for determining the threshold for what constitutes a cognizable challenge requiring a provider response. The *Public Notice* also provides tentative

views and seeks comment on the types of data that likely will be probative in different circumstances for validating broadband availability data submitted by mobile service providers. The *Public Notice* and the detailed Technical Appendix, Appendix A, propose detailed processes and metrics for challengers to use to contest providers' broadband coverage availability, for providers to follow when responding to a Commission verification request, and for state, local, and Tribal governmental entities and other third parties to follow when submitting verified broadband coverage data. For purposes of this *Public Notice,* the Bureau and Offices generally refer to state, local, and Tribal entities as ''government entities'' or ''governmental entities.'' The *Public Notice* seeks comment on the technical requirements for these complex issues to assure that the broadband availability data collected in the challenge and other data verification and crowdsource processes serves the important broadband data verification purposes envisioned in the Broadband DATA Act.

3. The Broadband DATA Act requires the Commission to collect granular data from broadband internet access service providers on the availability and quality of broadband service and also to establish a challenge process, verify the accuracy and reliability of the broadband coverage data that providers are required to submit in their BDC filings, and improve data accuracy through a crowdsourcing process. The Broadband DATA Act also requires the Commission to develop ''a process through which it can collect verified data for use in the coverage maps from: (1) [s]tate, local, and Tribal governmental entities that are primarily responsible for mapping or tracking broadband internet access service coverage for a [s]tate, unit of local government, or Indian Tribe, as applicable; (2) third parties . . . ; and (3) other Federal agencies.'' In its *Second Order and Third Further Notice,* the Commission adopted some of the Broadband DATA Act's requirements for collection and reporting broadband data from providers, developed the framework for the BDC, established a process for verifying the broadband data it receives from providers in their BDC filings, and adopted a basic framework for collecting crowdsourced information. While the challenge process, crowdsource data, and other FCC efforts will all serve to validate the data submitted by providers, for purposes of this *Public Notice,* ''verification'' or ''verification process'' refers to the internal process the Commission sought comment on in section IV.D. of the *Third Further Notice* and adopted in section III.E. of the *Third Order.* In the *Third Order,* the Commission adopted additional requirements for collecting and verifying provider-submitted data and established the challenge process. The Commission directed the Bureau and Offices to design and develop the new BDC platform for mapping broadband availability, and to set forth the specifications and requirements for the mobile challenge, verification, and crowdsourcing processes. The Commission was able to begin development of the BDC systems and the proposed technical requirements to implement these processes after funding to implement the Act was appropriated in December 2020.

4. In the *Third Order,* the Commission determined that it should aggregate speed test results received from multiple consumer challenges in the same general area in order to resolve challenges in an efficient manner, mitigate the time and expense involved, and ensure that the mobile coverage maps are reliable and useful. When these aggregated results reach an appropriate threshold, they will constitute a cognizable challenge requiring a provider response. While the Commission acknowledged that consumers are likely to submit challenges in distinct, localized areas instead of expending the time and resources to test in a broader area or for extended periods, it also recognized that providers should not be subject to the undue cost of responding to a large number of challenges in very small areas. In response to the *Second Order and Third Further Notice,* providers argued that a requirement to respond to every consumer challenge would be a substantial burden. The Commission directed OEA, in consultation with WTB, to determine the threshold number of mobile consumer challenges within a specified area that will constitute a cognizable challenge triggering a provider's obligation to respond. In connection with that determination, the Commission also directed OEA, in consultation with WTB, to establish: (1) The methodology for determining this threshold; and (2) the methodology for determining the boundaries of a geographic area where the threshold for a cognizable challenge has been met.

5. Consistent with the approach it adopted for consumer challenges, the Commission stated that it would also aggregate speed test evidence received from multiple government and third-party challengers in the same general area. The Commission directed OEA to determine the threshold number of mobile governmental and third-party challenges within the same general area that will constitute a cognizable challenge that requires a provider response. Similar to the consumer challenges, the Commission directed OEA, in consultation with WTB, to establish the methodology for this threshold and the methodology for determining the boundaries of an area where the threshold has been met.

II. Discussion

A. Mobile Service Challenge Process

6. The Broadband DATA Act requires the Commission to ''establish a user-friendly challenge process through which consumers, [s]tate, local, and Tribal governmental entities, and other entities or individuals may submit coverage data to the Commission to challenge the accuracy of— (i) the coverage maps; (ii) any information submitted by a provider regarding the availability of broadband internet access service; or (iii) the information included in the Fabric.'' The Commission established requirements for challenges to mobile service coverage reporting in the *Third Order* and directed the Bureau and Offices to adopt additional implementation details.

7. At the outset, the Bureau and Offices note that coverage maps generated using propagation modeling are probabilistic due to the variability of mobile wireless service. The BDC coverage maps will be based on specifications adopted by the Commission to reflect where a mobile service provider's models predict a device has at least a 90% probability of achieving certain minimum speeds at the cell edge for the parameters and assumptions used in the modeling. But an individual speed test conducted in an area where a provider's propagation model predicts adequate coverage may not, by itself, be sufficient to establish the on-the-ground reality of service in that area. Throughout this *Public Notice* the Bureau and Offices use the term ''adequate coverage'' to refer to coverage where a device should achieve upload and download speeds meeting or exceeding the minimum values associated with the provider's map for a given technology. The Bureau and Offices have therefore designed the mobile challenge process to evaluate the on-the-ground truth of whether devices are able to achieve particular minimum speeds at least 90% of the time, measured at any point within the covered area and at any time during typical usage hours. This approach

strives to collect sufficient measurements to ensure the process is statistically valid, while at the same time meeting the statutory obligation to keep the challenge process ''user-friendly.'' The Bureau and Offices acknowledge that on-the-ground service can be measured and analyzed in ways other than the approach set forth herein, but the Bureau and Offices believe that their approach has the benefit of being both straightforward and consistent with the framework adopted by the Commission.

1. Cognizable Challenges

8. To implement the Commission's directives, the Bureau and Offices propose to evaluate the speed tests submitted by consumers in combination with the speed tests submitted by governmental and third-party challengers in the challenge process. Under this approach, the Bureau and Offices would combine such speed test evidence and apply a single methodology to determine whether the threshold for a cognizable challenge has been met and to establish the boundaries of the challenged area. Since the Bureau and Offices propose to require all entities submitting challenges to meet the same thresholds and follow similar procedures for submitting challenge data, the Bureau and Offices see little functional difference between consumer and governmental or third-party challenges. As such, the Bureau and Offices believe combining all challenges will result in more robust and accurate challenges.

9. In addition to combining consumer speed tests and governmental and third-party speed tests, the Bureau and Offices propose to validate each submitted speed test and exclude tests that are outside the scope of the challenge process, do not conform to the data specifications, or do not otherwise present reliable evidence. The Bureau and Offices propose to accept as valid speed tests only those tests conducted between the hours of 6:00 a.m. and 10:00 p.m. local time, so that speed tests are reflective of the hours that consumers typically use mobile broadband networks. The Bureau and Offices acknowledge that their proposal departs slightly from the time range proposed by the Commission, which would allow for tests to be conducted between 6:00 a.m. and 12:00 a.m. (midnight) local time. However, the Bureau and Offices believe that tests conducted after 10:00 p.m. may likely record network performance that is materially different than tests conducted earlier in the day due to reduced cell loading. The Bureau and Offices seek comment on this proposal and their assumptions about network traffic patterns. The Bureau and Offices also propose to compare each speed test against the relevant coverage map. Specifically, the Bureau and Offices propose to compare speed tests for a particular network technology (*e.g.,* 3G, 4G LTE, or 5G) to the coverage maps for the corresponding technology, to compare the environment of the speed test—stationary or in-vehicle mobile—to the coverage map of the corresponding modeled environment, and to treat as invalid and exclude any speed tests that fall outside the boundaries of the provider's most recent coverage data for the relevant technology and modeled environment. Additionally, because the Bureau and Offices do not believe there is a reliable way to evaluate mobile voice coverage using the speed test data which the Commission requires for submitting challenges, the Bureau and Offices propose not to permit challenges to the voice coverage maps submitted by mobile service providers. The Bureau and Offices seek comment on these proposals.

10. After excluding any speed tests that fail the validations proposed above, the Bureau and Offices propose to associate the location of each validated speed test with a particular underlying geography depicted as a specific hexagonal cell area based upon the H3 geospatial indexing system. H3 is an open-source project developed by Uber Technologies, Inc. that overlays the globe with hexagonal cells of different sizes at various resolutions, from zero to 15. The lower the resolution, the larger the area of the hexagonal cell. The H3 system is designed with a nested structure in which each hexagonal cell can be further subdivided into seven ''child'' hexagons at the next higher (*i.e.,* finer) resolution that approximately fit within the ''parent'' hexagon. Because of this nested structure, using the H3 system to group speed tests allows for challenges at multiple levels of granularity. The nested structure includes 16 total H3 resolutions of hexagons ranging in average area size from approximately 4.25 million square kilometers to 0.9 square meters. In the case where a test reports more than one pair of distinct geographic coordinates (*e.g.,* because the device was in motion), the Bureau and Offices propose to associate the test with the midpoint of the reported coordinates. The Bureau and Offices propose to use a system based upon hexagonal shapes instead of squares or rectangles because hexagons better enable them to evaluate challenges across multiple levels of granularity which can cover a significant area. The Bureau and Offices further propose that the smallest cognizable challenge would be to a single resolution 8 hexagonal cell, which has an area of approximately 0.7 square kilometers. The Bureau and Offices seek comment on this choice of geographical area, including their proposal to use the H3 geospatial indexing system, as well as the ideal resolution or minimum size of the area to consider a cognizable challenge.

11. As part of the proposed methodology, the Bureau and Offices would evaluate all valid challenger speed tests for a given technology within each hexagon to determine whether to create a cognizable challenge to the coverage in that area. In so doing, the Bureau and Offices propose to categorize each speed test as either a ''positive'' test or a ''negative'' test based upon whether the test is consistent or inconsistent with the provider's modeled coverage. The Bureau and Offices would consider a negative test to be a speed test that does not meet the minimum predicted download or upload speed based on the provider-reported technology-specific minimum speeds with the cell edge probability and cell loading factors modeled by the provider. The Bureau and Offices would consider a positive test to be a speed test that records speeds meeting or exceeding the minimum download and upload speeds the mobile service provider reports as available at the location where the test occurred. The Bureau and Offices seek comment on this proposal. Alternatively, rather than considering a speed test as ''negative'' when either the recorded download or upload speed fails to meet the minimum predicted speeds for that area, should the Bureau and Offices evaluate the download and upload portions of each test independently? The Bureau and Offices note that speed test applications (apps) typically measure download, upload, and latency metrics sequentially and not simultaneously, and thus evaluating these metrics independently may better account for geographic and/or temporal variability at the expense of adding complexity to their proposed approach. The Bureau and Offices seek comment on this alternative and also on whether the Bureau and Offices should consider any other methodologies to address the probabilistic nature of mobile wireless coverage and the potential for test results ''at the margins'' (either on the download speed or the upload speed) to either overrepresent or underrepresent coverage. Commenters proposing any

alternative methodologies should explain how their proposals are consistent with the requirements and standardized reporting parameters set forth by the Commission and in the Broadband DATA Act. By aggregating speed tests and requiring challenges to meet the thresholds described below, the Bureau and Offices tentatively conclude that the methodology the Bureau and Offices propose above would ensure that challenges are temporally and geographically diverse, and therefore reflect a robust and representative sample of user experience. As such, the Bureau and Offices anticipate that situations in which a mobile service provider has throttled speeds of consumers that exceed data limits will have little, if any, effect on the challenge process. The Bureau and Offices seek comment on their assumptions, tentative conclusions, and whether there are other ways to address the issue of throttling.

12. The Bureau and Offices propose to consider a provider's coverage for a given technology in a resolution 8 hexagon to be challenged when the set of valid speed tests meets three thresholds: (1) A geographic threshold, (2) a temporal threshold, and (3) a testing threshold. For the geographic threshold, the Bureau and Offices propose to require that at least four child hexagons (or ''point-hexes'') within the resolution 8 hexagon include two or more tests taken within each point-hex, and that at least one of the tests in each point-hex be negative. The Bureau and Offices define a point-hex as a resolution 9 child hexagon for a given resolution 8 hexagon. A resolution 9 hexagon has an area of approximately 0.1 square kilometers. The Bureau and Offices propose to require fewer than four point-hexes to include tests when there are fewer than four of the seven point-hexes of a resolution 8 hexagon that are ''accessible''—that is, where at least 50% of the point-hex overlaps with the provider's reported coverage data and a road runs through the point-hex. Setting these dual requirements will help to demonstrate that inadequate coverage occurs at multiple locations within the resolution 8 hexagon. For the temporal threshold, the Bureau and Offices propose to require at least two negative tests be conducted at different times of day, separated by at least four hours, to demonstrate persistent inadequate coverage. For the testing threshold, the Bureau and Offices propose to require at least five negative tests within the resolution 8 hexagon when 20 or fewer total challenge tests have been submitted within the hexagon. When more than 20 challenge tests have been submitted within the hexagon, the Bureau and Offices propose to require that the percentage of negative tests within the resolution 8 hexagon statistically demonstrate, using a 0.95 statistical confidence level, that the probability of a test achieving the minimum speeds reported for the provider's coverage is less than 90% and therefore warrants a challenge. The required percentage of negative tests would thus vary, from at least 24% when between 21 and 30 challenge tests have been submitted within the hexagon, to 16% when 100 or more tests have been submitted. The Bureau and Offices also propose that a larger, ''parent'' hexagon (at resolutions 7 or 6) be considered challenged if at least four of its child hexagons are considered challenged. Consistent with the Commission's direction to consider ''whether the tests were conducted in urban or rural areas,'' the Bureau and Offices propose to allow challenges that account for differences in areas. The proposal sets forth a different geographic threshold depending on the road density of each resolution 8 hexagon which the Bureau and Offices anticipate will make it easier for challengers to establish a challenge in less densely populated areas. Additionally, the proposal includes a process to trigger challenges to a parent or grandparent hexagon (at resolutions 7 and 6, respectively) that likewise takes into account this different geographic threshold, thus more easily allowing for challenges over large rural areas. The Bureau and Offices seek comment on this proposed methodology and the associated thresholds. Specifically, the Bureau and Offices seek comment on whether these thresholds are sufficient to adequately reflect the actual coverage in an area while maintaining a user-friendly challenge process. Should additional tests and testing at additional times of day be required in order to overcome typical variability in mobile wireless coverage? Alternatively, instead of the Bureau and Offices proposed temporal threshold, should the Bureau and Offices categorize tests into different temporal ranges (*e.g.,* 6:00 to 10:00 a.m., 10:00 a.m. to 2:00 p.m., 2:00 to 6:00 p.m., and 6:00 to 10:00 p.m.) and require tests in different time ranges to account for the temporal variability of mobile networks, such as variability due to cell loading? Should the Bureau and Offices consider other metrics that correlate with the availability of mobile broadband (*e.g.,* signal strength or other radiofrequency metrics) or that provide an indication of real-world conditions that impact throughput, such as cell loading, when determining the temporal or testing thresholds, and if so, how should the Bureau and Offices adjust these thresholds in relation to such metrics? Once the challenge process has been implemented, the Bureau and Offices anticipate that the Bureau and Offices may revisit and modify these thresholds, after notice and comment, if they are not sufficient to provide a clear determination of actual coverage conditions. Appendix A of the *Public Notice* provides a more detailed technical descriptions of these proposed thresholds.

13. Because mobile service providers are required to submit two sets of coverage data for a given technology—one map modeled to assume a device is in a stationary environment and one map modeled to assume a device is in-vehicle and in a mobile environment—the Bureau and Offices propose to evaluate all tests for a given technology against each map independently when determining whether to establish a cognizable challenge. That is, the Bureau and Offices would filter speed tests to exclude any stationary tests that fall outside of the provider's stationary coverage map and exclude any in-vehicle mobile tests that fall outside of the provider's in-vehicle mobile coverage map. The Bureau and Offices would then aggregate all of the remaining stationary and in-vehicle mobile tests and compare these tests against the coverage data for a given technology and modeled environment. If the aggregated tests in a resolution 8 hexagon meet all three thresholds proposed above, the Bureau and Offices would consider that map's coverage to be challenged for that hexagon. Because the two sets of coverage data may differ (especially at the edge of a provider's network), tests submitted as challenges against the same provider within the same hexagon may be sufficient to create a challenge against one of the maps and insufficient to create a challenge against the other. The Bureau and Offices seek comment on this proposed approach to evaluating challenges against stationary and in-vehicle mobile maps. The Bureau and Offices acknowledge that stationary tests and in-vehicle mobile tests may not be entirely homogeneous measurements of an on-the-ground experience. However, the Bureau and Offices believe that aggregating such tests when evaluating challenges would more closely align with the Broadband DATA Act requirement to develop a

''user-friendly'' challenge process and would thus outweigh any cost to accuracy in treating such tests as homogeneous. In the alternative, if the Bureau and Offices were to not aggregate such tests and only evaluate stationary tests against stationary maps and separately evaluate in-vehicle mobile tests against in-vehicle mobile maps, the Bureau and Offices anticipate that it may be significantly more difficult to establish a challenge to certain coverage data. For example, if most consumers conduct stationary tests while most government and third-party entities conduct in-vehicle mobile tests (*i.e.,* drive tests), segregating such tests when evaluating challenges would likely result in tests meeting all three proposed thresholds in fewer resolution 8 hexagons. Moreover, there is a higher likelihood that, after adjudicating the challenges, portions of a provider's coverage data may show a lack of coverage for one type of map, due to successful challenges, yet still show robust coverage for the other type of map due solely to an absence of one type of test and in ways that are inconsistent with mobile wireless propagation. The Bureau and Offices seek comment on this view and on any alternatives to reconciling challenges to these two sets of coverage data.

14. In the *Third Order,* the Commission required consumer challengers to use a speed test app approved by OET for use in the challenge process and provided the metrics that approved apps must collect for each speed test. The Commission directed OET, in consultation with OEA and WTB, to update the FCC Speed Test app as necessary or develop a new speed test app to collect the designated metrics, so that challengers may use it in the challenge process. For government and third-party entity challengers, the Commission did not require the use of a Commission-approved speed test app but instead set forth the information that all submitted government and third-party challenger speed test data must contain and directed OEA, WTB, and OET to adopt additional testing requirements if they determine it is necessary to do so. The Bureau and Offices propose to update the metrics that approved apps must collect for consumer challenges and that government and third party entity challenger speed test data must contain. Specifically, the Bureau and Offices propose that on-the-ground test data submitted by challengers meet the following testing parameters: (1) A minimum test length of 5 seconds and a maximum test length of 30 seconds; (2) test measurement results that have been averaged over the duration of the test (*i.e.,* total bits received divided by total test time); and (3) a restriction that tests must be conducted between the hours of 6:00 a.m. and 10:00 p.m. local time. The Bureau and Offices also propose that on-the-ground challenge test data shall include the following metrics for each test: (1) App name and version; (2) timestamp and duration of each test metric; (3) geographic coordinates measured at the start and end of each test metric with typical Global Positioning System (GPS) Standard Positioning Service accuracy or better; (4) device make and model; (5) cellular operator name; (6) location (*e.g.,* hostname or IP address) of server; (7) signal strength, signal quality, unique identifier, and radiofrequency (RF) metrics of each serving cell, if available; (8) download speed; (9) upload speed; (10) round-trip latency; (11) the velocity of the vehicle, if available, for in-vehicle tests; and (12) all other metrics required per the most-recent specification for mobile test data released by OEA and WTB. The Bureau and Offices propose to require challengers to collect these data using mobile devices running either a Commission-developed app (*e.g.,* the FCC Speed Test app) or another speed test app approved by OET to submit challenges. For government and third-party entity challengers, the Bureau and Offices would also allow these data to be collected using other software and hardware. The Bureau and Offices anticipate that updating these parameters will provide the Commission with reliable challenges, while assuring a user-friendly challenge process by allowing consumers to use a readily-downloadable mobile app and preserving flexibility for government and third-party entities to use their own software and hardware. The Bureau and Offices note, however, that certain technical network information and RF metrics are not currently available on Apple iOS devices, thus limiting the conclusions that the Bureau and Offices can draw from on-the-ground tests conducted using such devices. The Bureau and Offices therefore propose to require that, until such time as such information and metrics are available on iOS devices, government and third-party entity challenges must use a device that is able to interface with drive test software and/or runs the Android operating system. However, the Bureau and Offices do not propose this same restriction for challenges submitted by consumers to ensure that the challenge process remains user-friendly and encourage public participation, including by consumers that may use a device running the iOS operating system. The Bureau and Offices seek comment on these proposals.

2. Challenge Responses

15. Providers must either submit a rebuttal to the challenge or concede the challenge within a 60-day period of being notified of the challenge. Providers may rebut a challenge by submitting to the Commission either on-the-ground test data and/or infrastructure data, so that Commission staff can examine the provider's coverage in the challenged area and resolve the challenge, and may optionally include additional data or information in support of a response. When a mobile provider responds to a consumer challenge, the challengers who submitted the challenge data would be notified individually by the Bureau or Offices via the online portal and would be able to view the provider's response. The Commission directed OEA to ''develop a methodology and mechanism to determine if the data submitted by a provider constitute a successful rebuttal to all or some of the challenged service area and to establish procedures to notify challengers and providers of the results of the challenge.'' The Commission ''adopt[ed] the same challenge response process for government and third party-entities as [it] do[es] for consumer challenges in the mobile context,'' therefore the Bureau and Offices infer the notification process will occur in the same way for challenges made by governmental and other entities as it does for challenges made by consumers. The Bureau and Offices propose for mobile service providers and challengers to be notified monthly of the status of challenged areas. Parties would be able to see a map of the challenged area, and a notification about whether or not a challenge has been successfully rebutted, whether a challenge was successful, and if a challenged area was restored based on insufficient evidence to sustain a challenge. The Bureau and Offices also propose that any area in which the provider does not overturn the challenge but is otherwise no longer challenged (*e.g.,* because some challenger tests were subsequently considered to be invalid or unreliable evidence), the coverage area would be restored to its pre-challenge status and would be eligible for challenges against it in the future. The Bureau and Offices propose that any valid speed test in a hexagon that was challenged and then restored (but where the provider did not

overturn the challenge by demonstrating adequate coverage) may still be used for a future challenge (up to a year from the date the test was conducted). The Bureau and Offices seek comment on these proposals.

16. The Commission also directed OEA, in consultation with WTB, to establish procedures for notifying service providers of cognizable challenges filed against them. Accordingly, the Bureau and Offices propose that the challenged mobile service provider would be notified by the Bureau or Offices via the online portal of the challenged hexagons at the end of each calendar month. The Bureau and Offices seek comment on this proposal and note that this approach would allow challengers to submit additional evidence if desired and grant providers a standard set of deadlines rather than a rolling set of multiple deadlines. If the challenged provider concedes or fails to submit data sufficient to overturn the challenge within 60 days of notification, it must revise its coverage maps to reflect the lack of coverage in the successfully challenged areas.

a. Rebutting Challenges With On-the-Ground Data

17. The Commission directed OEA to resolve challenges based on a ''preponderance of the evidence'' standard with the burden on the provider to verify their coverage maps in the challenged areas. When the challenged mobile service provider chooses to submit on-the-ground speed test data to rebut a challenge, the Bureau and Offices propose to require the provider to meet analogous thresholds to those required of challengers, adjusted to reflect the burden on providers to demonstrate that sufficient coverage exists at least 90% of the time in the challenged hexagons. The Bureau and Offices also propose that mobile providers submit on-the-ground data consistent with the specific testing parameters and methodologies outlined above that the Bureau and Offices propose challengers use when submitting speed test data. The Bureau and Offices propose to require providers to collect these data using mobile devices running either a Commission-developed app (*e.g.,* the FCC Speed Test app), another speed test app approved by OET to submit challenges, or other software and hardware if approved by staff. As noted above, certain technical network information and RF metrics are not currently available on Apple iOS devices. Accordingly, until such time as these data are available on iOS devices, the Bureau and Offices propose to require providers to use a device that is able to interface with drive test software and/or runs the Android operating system. The Bureau and Offices seek comment on their proposals.

18. The Bureau and Offices propose that the test data that providers submit meet the same three thresholds required of challenger tests: (1) A geographic threshold; (2) a temporal threshold; and (3) a testing threshold. However, the Bureau and Offices propose somewhat different values (*i.e.,* the number of tests and percentages) for test data for each threshold. For the geographic threshold, the Bureau and Offices propose to require at least four point-hexes of a resolution 8 hexagon to include two tests taken within them, at least one of which must be positive, to demonstrate that adequate coverage occurs at multiple locations within the resolution 8 hexagon. Fewer point-hexes may be tested when not all seven point-hexes of a resolution 8 hexagon are within the coverage area or do not contain at least one road. For the temporal threshold, the Bureau and Offices also propose to require at least two positive tests be taken at times of day separated by at least four hours to demonstrate persistent adequate coverage. For the testing threshold, the Bureau and Offices propose to require at least 17 positive tests within the resolution 8 hexagon when 20 or fewer total response tests have been submitted within the hexagon. When more than 20 response tests have been submitted within the hexagon, the Bureau and Offices propose to require that the percentage of negative tests within the resolution 8 hexagon statistically demonstrate, using a 0.95 statistical confidence level, that the probability of a test achieving the minimum speeds reported in the provider's coverage is 90% or greater and therefore the area has adequate coverage. The required percentage of positive tests would thus vary, from at least 82% when between 21 and 34 response tests have been submitted within the hexagon to 88% when 100 or more tests have been submitted. As with the thresholds proposed for challengers, the Bureau and Offices seek comment on whether these thresholds are sufficient to adequately demonstrate the on-the-ground reality of coverage in an area while maintaining a user-friendly challenge process. The Bureau and Offices expect any future modifications to these thresholds would apply to both challengers and providers. The Bureau and Offices also propose that a provider may demonstrate sufficient coverage in a resolution 8 hexagon that was not challenged if that hexagon is the child of a lower resolution challenged hexagon. As discussed more fully in section 3.2.4 of the Technical Appendix of the *Public Notice,* for challenged hexagons at resolution 7 or 6, if the provider submits response data sufficient to demonstrate coverage in the hexagon's child hexagons such that fewer than four child hexagons would still be challenged, then the resolution 7 or 6 hexagon would no longer be challenged even if sufficient data were not submitted to rebut a challenge for the remaining child hexagons. If the provider can demonstrate sufficient coverage in a challenged hexagon, the provider would have successfully rebutted the challenge to that hexagon, and the challenge would be overturned. Conversely, if the provider is not able to demonstrate sufficient coverage in a challenged hexagon, the provider would be required to revise its coverage maps to reflect the lack of coverage in such areas. If the provider demonstrates sufficient coverage in some but not all child hexagons and the parent (or grandparent) hexagon remains challenged, we the Bureau and Offices propose that a provider would not be required to remove from its coverage map the portions of the challenged parent (or grandparent) hexagon where the provider demonstrated sufficient coverage in the child hexagons. However, the provider would be required to remove the remaining portion of the challenged parent (or grandparent) hexagon where it did not demonstrate sufficient coverage. The Bureau and Offices propose that any areas where the provider has demonstrated sufficient coverage would be ineligible for subsequent challenge until the first biannual BDC coverage data filing six months after the later of either the end of the 60-day response period or the resolution of the challenge. This is to avoid requiring a provider to repeatedly confirm the same area but also acknowledges that coverage may change over time due to changes in technology and infrastructure. The Bureau and Offices seek comment generally on this approach and as to whether this time period is too short or too long.

19. The Bureau and Offices seek comment on this methodology and invite commenters to propose alternative approaches that would allow for staff to adjudicate most challenges through an automated process. AT&T submitted a preliminary proposal for defining a challenge area based on the test data submitted by the challenger(s), and the Bureau and Offices considered

this proposal while developing the proposed methodology. The Bureau and Offices tentatively conclude that their proposed methodology is preferable to that submitted by AT&T, because it ensures the challenge process is both user-friendly and supported by sufficient data, while also targeting a more precise geographic area where broadband coverage is disputed and limiting the burden on providers in responding to challenges. AT&T recommends the Bureau and Offices adopt an approach in which the geographic location of speed tests would determine the size and shape of a polygon that would serve as the challenged area. Moreover, AT&T proposes the Commission adopt a tiered structure in which challenges are filed and adjudicated in a manner proportional to their likelihood of success based on a percentage of valid speed tests in a polygon. This could lead to significant challenged areas with few or no speed tests. The Bureau and Offices' approach differs in that challenged areas would be based on the H3 hexagonal indexing system. Under the Bureau and Offices proposed process, individual speed tests would be aggregated and evaluated collectively, and a hexagon would be classified as challenged once the aggregated speed tests have met geographic, temporal, and testing thresholds in that particular area. In addition to the on-the-ground data or infrastructure information submitted by mobile service providers, staff could also consider other relevant data submitted by challenged providers, request additional information from the challenged provider (including infrastructure data, if necessary), and take such other actions as may be necessary to ensure the reliability and accuracy of the rebuttal data. The Bureau and Offices propose such steps could include rejecting speed tests or requiring additional testing. The Bureau and Offices seek comment on these proposals.

b. Rebutting Challenges With Infrastructure Data

20. Providers may respond to challenges with infrastructure data rather than (or in addition to) on-the-ground speed test data. In cases where a challenged mobile service provider chooses to submit infrastructure data to rebut a challenge, the Bureau and Offices propose that the mobile service provider submit the same data as required when a mobile provider submits infrastructure information in response to a Commission verification request, which would include information on the cell sites and antennas used to provide service in the challenged area. Based on the Bureau and Offices' tentative conclusion below that such data may not be as probative in certain circumstances as on-the-ground speed tests, the Bureau and Offices propose to use these data, on their own, to adjudicate challenges in only a limited set of circumstances. Specifically, a challenged provider may use infrastructure data to identify tests within a challenger's speed test data that the provider claims are invalid or non-representative of network performance. Under the Bureau and Offices' proposal, a provider could claim a speed test was invalid, or non-representative, based on the following reasons: (1) Extenuating circumstances at the time and location of a given test (*e.g.,* maintenance or temporary outage at the cell site) caused service to be abnormal; (2) the mobile device(s) with which the challenger(s) conducted their speed tests do not use or connect to the spectrum band(s) that the provider uses to serve the challenged area; (3) speed tests were taken during an uncommon special event (*e.g.,* a professional sporting event) that increased traffic on the network; or (4) speed tests were taken during a period where cell loading exceeded the modeled cell loading factor. While providers may use infrastructure information with hourly cell loading data to rebut a challenge in this scenario to show sporadic or abnormally high cell loading, in the event a high number of challenges indicates persistent over-loading, the Bureau and Offices propose that staff may initiate a verification inquiry to investigate whether mobile providers have submitted coverage maps based on an accurate assumption of cell loading in a particular area. The Bureau and Offices propose to require that mobile providers respond to such a verification inquiry with on-the-ground data. Using this proposed approach, the Bureau and Offices would recalculate the challenged hexagons after removing any invalidated challenger speed tests and consider any challenged hexagons that no longer meet the thresholds required for a challenge to be restored to their status before the challenge was submitted. Challenged providers may also demonstrate sufficient coverage for any areas that remain challenged by submitting on-the-ground speed test data. The Bureau and Offices seek comment on this approach, including on whether there are other reasons or circumstances under which the Bureau and Offices should use infrastructure data alone to determine the outcome of a challenge.

21. The Bureau and Offices seek comment generally on other ways that infrastructure data could be used to automatically evaluate or rebut speed test data submitted by challengers. Where a challenged provider's submitted infrastructure data do not meet one of the processing rules proposed above, the Bureau and Offices propose that Commission staff consider any additional information submitted by the challenged provider or request additional information from the challenged provider. Such information would include on-the-ground speed test data, as specified in the *Third Order,* and staff would use this information to complete its adjudication of the challenge. The Bureau and Offices acknowledge there may be some scenarios in which a provider may not be able to respond to a challenge with on-the-ground test data due, for example, to the inability to collect on-the-ground data during certain months of the year or other unforeseen circumstances. The Bureau and Offices seek comment on the best approach to handle such situations. One approach would be to allow for providers to seek a waiver of the 60-day response deadline until the provider can make on-the-ground measurements, or a waiver of the requirement to submit either infrastructure or on-the-ground speed tests data in response to a challenge. Another approach would be to allow providers to submit infrastructure data, even if one of the four instances of particular probative value set forth above does not apply, with supplemental data that explain their inability to make on-the-ground measurements at that time. In such cases, the Commission could request that the on-the-ground test data be submitted at a time when such measurements would be more feasible, or that a possible substitute for such data—such as transmitter monitoring software data or third-party speed test data—be submitted instead. Commission staff could also use infrastructure data to do its own propagation modeling and generate its own predicted coverage maps using the data submitted by the provider including link budget parameters, cell-site infrastructure data, and the information provided by service providers about the types of propagation models they used, standard terrain and clutter data, as well as standard propagation models, to determine whether the provider should be required to update its maps. The Bureau and Offices seek comment on other approaches the Bureau and Offices

should take where on-the-ground testing is temporarily infeasible.

22. In instances where the Commission staff uses its own propagation modeling to adjudicate challenges, the Bureau and Offices seek comment on how staff should conduct such propagation modeling. What model or models should staff use in different conditions (*e.g.,* for what combinations of spectrum band and terrain)? What inputs and parameters should staff use beyond those supplied by providers (*e.g.,* what specific sources of terrain and clutter data in what areas)? What assumptions should the Commission make regarding carrier aggregation? How should staff calculate the throughput in a given area given propagation-model calculations for signal strength? Finally, how should the Commission calibrate its models or ensure their accuracy?

23. The Bureau and Offices also seek comment about how staff should adjudicate instances where the on-the-ground test data and infrastructure data disagree or where the provider-filed coverage and Commission-modeled coverage differ. Under what conditions should staff determine that a given hexagon has network coverage? Would the results of the Commission propagation modeling always be dispositive? For example, should the Bureau and Offices always find that an area has network coverage if so indicated by the Commission propagation model, despite any number of on-the-ground tests that indicated a lack of service at the required speeds? Should the Bureau and Offices incorporate other, related metrics, such as signal strength or cell loading data, when considering how to treat infrastructure data in the adjudication of challenges? And should staff always require providers to update their filings or submit additional data if the Commission's propagation modeling indicate a lack of network coverage? If the Commission propagation model indicates network coverage over part of a hexagon, how should staff adjudicate that area? Should the specific location of on-the-ground test measurements within a challenged hexagon, relative to the Commission-predicted coverage, matter? Are there other scenarios in which the Bureau and Offices should consider adjudicating challenges with only infrastructure data?

c. Other Data

24. In the *Third Order,* the Commission sought to adopt a flexible approach for providers to respond to challenges. Several commenters argued that the Commission should grant providers additional flexibility in responding to challenges, including allowing providers to respond with drive testing data collected in the ordinary course of business, third party testing data (such as speed test data from Ookla or other speed test app), and/or tower transmitter data collected from transmitter monitoring software. As discussed in the *Third Order,* providers may voluntarily submit these or other types of data to support their rebuttals, but they may not be used in lieu of on-the-ground testing or infrastructure data. Consistent with the Commission's direction, OEA staff will review such data when voluntarily submitted by providers in response to consumer challenges, and if any of the data sources are found to be sufficiently reliable, the Bureau and Offices will specify appropriate standards and specifications for each type of data and add them to the alternatives available to providers to rebut a consumer challenge via public notice.

25. The Bureau and Offices also seek comment regarding the conditions under which a provider's transmitter monitoring software can be relied upon by staff in resolving challenges. For example, in what ways would transmitter monitoring software data augment or reinforce the probative value of infrastructure or other data to rebut challenger speed test data? How precisely do such systems measure the geographic coordinates (longitude and latitude) of the end-user devices, and how does that precision compare to the information collected from on-the-ground testing? Would such software record instances of end-user devices not being able to connect to the network at all? If not, would that exclusion make the data less reliable and probative in the rebuttal process? What other information would staff need to determine how to make use of such data in the challenge process?

B. Collecting Verification Information From Mobile Providers

26. The Broadband DATA Act requires the Commission to ''verify the accuracy and reliability of the [broadband internet access service data that providers submit in their biannual BDC filings] in accordance with measures established by the Commission.'' In the *Third Order,* the Commission determined that OEA and WTB may request and collect verification data from a provider on a case-by-case basis where staff have a credible basis for verifying the provider's coverage data. The *Third Order* specifies that, in response to an OEA and WTB inquiry to verify a mobile service provider's coverage data, the provider must submit either infrastructure information or on-the-ground test data for the specified area(s). A mobile provider has the option of submitting additional data, including but not limited to on-the-ground test data or infrastructure data (to the extent such data are not the primary option chosen by the provider), or other types of data that the provider believes support its reported coverage. The Commission further directed OEA and WTB to implement this data collection and adopt the methodologies, data specifications, and formatting requirements that providers must follow when collecting and reporting such data. Below, the Bureau and Offices propose processes and methodologies for determining areas subject to verification and for the collection of on-the-ground test data and infrastructure information, as well as information from transmitter monitoring systems and other data. The Bureau and Offices seek comment on each of these proposals, including the additional details and specifications set forth in the Technical Appendix of the *Public Notice.*

1. Area Subject to Verification

27. The Bureau and Offices propose to identify the portion(s) of a mobile provider's coverage map for which the Bureau and Offices would require verification data—referred to as the targeted area(s)—based upon all available evidence, including submitted speed test data, infrastructure data, crowdsourced and other third-party data, as well as staff evaluation and knowledge of submitted coverage data (including maps, link budget parameters, and other credible information). The Bureau and Offices seek comment on this proposal and on any alternative methodologies for determining where staff have a credible basis for verifying a mobile provider's coverage data.

28. Within the targeted area, the Bureau and Offices propose to require verification data covering a statistically valid sample of areas for which the mobile service provider must demonstrate sufficient coverage in order to satisfy the verification request. The Bureau and Offices propose to start the sampling with the division of the targeted area into unique components called ''units.'' The complete list of units within the targeted area is called the ''frame.'' The Bureau and Offices propose to first subdivide the targeted area into units based upon the same hexagonal geography the Bureau and Offices propose to use for grouping challenger speed tests (*i.e.,* H3

geospatial indexing system at resolution 8). To create the frame, the Bureau and Offices propose to include all resolution 8 hexagons that are within the targeted area or, for those resolution 8 hexagons that are only partially within the boundary of the targeted area, its centroid falls within or on the boundary of the targeted area. The Bureau and Offices next propose to group the hexagonal units that comprise the frame into non-overlapping, mutually exclusive groups (one ''stratum'' or multiple ''strata''). The Bureau and Offices propose to define each stratum based upon one or more variables that are correlated with a particular mobile broadband availability characteristic, such as population, road miles, and/or variation in terrain, and seek comment on what variables the Bureau and Offices should consider. The Bureau and Offices propose to exclude any hexagons that are not accessible by roads from the strata. If an area is unable to be sampled because there are too few hexagons accessible by road, the Bureau and Offices propose to include the minimum number of non-accessible hexagons within the strata as necessary to create a sufficient sample. The Bureau and Offices seek comment on these proposals, and on other methods that can be used to verify the part of the targeted area that cannot be drive tested.

29. Next, the Bureau and Offices propose to select a random sample of hexagons independently within each stratum and to require that a service provider conduct on-the-ground testing within these randomly selected hexagons or else submit infrastructure data sufficient for staff to reproduce coverage for these randomly selected hexagons. When evaluating on-the-ground test data, the Bureau and Offices propose that a sample meet two of the three thresholds proposed for evaluating tests in a challenged hexagon in the challenge process, specifically the geographic and temporal thresholds. The Bureau and Offices also propose to require a minimum of five speed tests in each selected hexagon. The Bureau and Offices would then evaluate the entire set of speed tests to determine the probability that the targeted area has been successfully verified. Under the Bureau and Offices' proposal, for the targeted area to be successfully verified, the probability of adequate coverage must be greater than or equal to 0.9 assessed using a one sided 95% confidence interval. When evaluating infrastructure data, the Bureau and Offices propose that staff review all available data and staff propagation modeling to demonstrate adequate coverage for all hexagonal units in a sample for the targeted area to be successfully verified. Where the data submitted by the provider in response to a verification request are not by themselves sufficient to demonstrate adequate coverage, the Bureau and Offices may request additional information to complete the verification process. The Bureau and Offices seek comment on these proposals.

30. Several commenters supported the Bureau and Offices' proposal in the *Second Order and Third Further Notice* to verify broadband availability data by requiring providers to submit tests and information on sampled areas, and agreed that it would be an efficient and less burdensome approach than having providers perform annual drive tests or regularly submit infrastructure information. The Bureau and Offices agree that sampling will require lower costs and fewer resources than collecting data from a provider's entire network coverage area. In particular, the proposed approach for sampling the targeted area is designed to minimize the cost and burden placed on service providers while ensuring staff have access to sufficient data to verify coverage in a reliable way. Without such a sampling plan, providers would need to submit substantially more data to demonstrate broadband availability.

31. In response to the *Second Order and Third Further Notice,* some providers expressed concerns that sampling would not mitigate the costs associated with performing testing and would still be a burden on providers, as it would require a minimum number of tests at different locations. However, compared to requiring providers to regularly drive test their networks or submit large amounts of infrastructure data in response to a verification request, the Bureau and Offices anticipate that their proposal to require providers to submit speed test results or infrastructure information on a case-by-case basis would minimize the time and resources associated with responding to the Commission's verification requests. The proposed stratification methodology would ensure that variation in broadband availability would be as small as possible within hexagons in the same stratum. The Bureau and Offices anticipate this methodology would reduce the sample size (*e.g.,* the number of test locations), the cost of data collection, and the variance in the estimate of the variable interest (meaning the percentage, P-hat, of positive tests indicating broadband availability), and, in turn, would increase the precision of the final estimate. The Bureau and Offices seek comment on this proposed methodology.

32. In addition, the Bureau and Offices seek comment on other variables which correlate with broadband availability and upon which stratification should be based. The Bureau and Offices also seek comment on the tradeoffs of setting a higher or lower confidence level for this verification process than the thresholds established for the challenge process. Under the Bureau and Offices' proposed methodology, if the provider fails to verify its coverage data, the provider would be required to submit revised coverage maps that reflect the lack of coverage in targeted areas failing the verification. Where a provider fails to verify its coverage and submits revised coverage data, the Bureau and Offices propose to re-evaluate the data submitted by the provider during the verification process against its revised coverage data for the targeted area. If the targeted area still cannot be successfully verified, the Bureau and Offices propose to require the provider to submit additional verification data or further revise its coverage maps until the targeted area is successfully verified. The Bureau and Offices seek comment on this proposal and invite commenters to propose alternative methodologies for generating a statistically valid sample of areas for which the mobile service provider must demonstrate sufficient coverage in response to a verification request.

33. Alternatively, the Bureau and Offices seek comment on the use of available spatial interpolation techniques, such as Kriging, that could be used to evaluate and verify the accuracy of coverage maps based on available measurements. Spatial interpolation techniques can be an alternative or complementary approach to specifying an exact testing threshold since spatial interpolation techniques require fewer data to compare with predictions using propagation models. Although spatial interpolation techniques can readily verify whether or not a hexagonal cell has coverage with speeds at or above the minimum values reported in the provider's submitted coverage data, the incremental benefit over testing thresholds may be minimal because spatial interpolation techniques provide better results as more data is collected. The Bureau and Offices seek comment on the costs and benefits of using spatial interpolation techniques either in addition to or as an alternative to the testing thresholds proposed above for verifying the accuracy of coverage maps.

2. On-the-Ground Test Data

34. To submit on-the-ground test data in response to a verification inquiry, the Bureau and Offices propose to require that mobile providers conduct on-the-ground tests consistent with the testing parameters and test metrics that the Bureau and Offices propose to require for provider-submitted test data in the challenge process. As described above, the Bureau and Offices propose to require verification data covering a statistically valid sample of areas for which the mobile service provider must demonstrate sufficient coverage in order to satisfy the verification request. To verify coverage with on-the-ground speed test data, the Bureau and Offices propose that the provider submit on-the-ground speed tests within a hexagonal area based upon the H3 geospatial indexing system at resolution 8. The Bureau and Offices would require that these tests meet a threshold percentage of positive tests (*i.e.,* those recording download and upload speeds at or above the minimum speeds the provider reports in its BDC submission as available at the location where the test occurred). The tests would be evaluated to confirm, using a 95% statistical confidence interval, that the cell coverage percentage is 0.9 or higher. In addition, the Bureau and Offices propose to require that tests meet the same geographic, temporal, and testing thresholds as proposed for evaluating provider rebuttals to challenges. The Bureau and Offices envision that the specific thresholds and the confidence interval proposed would provide balance between the costs to providers associated with verifying maps and the need for the Commission to acquire a significant enough sample to accurately verify mobile broadband availability. The Bureau and Offices seek input from commenters on the costs and benefits associated with these proposed threshold numbers and confidence intervals.

35. The Bureau and Offices propose that if the service provider is able to show sufficient coverage in the selected resolution 8 hexagon, the provider would have successfully demonstrated coverage to satisfy the verification request in that hexagon. The Bureau and Offices seek comment on this proposed methodology and invite commenters to propose alternative approaches that would allow for staff to automatically adjudicate speed test data submitted during the verification process. Staff may consider other relevant data submitted by providers, may request additional information from the provider (including infrastructure data, if necessary), and may take other actions as may be necessary to ensure the reliability and accuracy of the verification process. The Bureau and Offices seek comment on these proposals.

3. Infrastructure Information

36. In the *Third Order,* the Commission found that infrastructure information can provide an important means for the Commission to fulfill its obligation to independently verify the accuracy of provider coverage propagation models and maps and provided examples of the infrastructure information that mobile providers may be required to submit as part of a verification inquiry. The Commission further concluded that collecting such data will enable the Commission to satisfy the Broadband DATA Act's requirement that the Commission verify the accuracy and reliability of submitted coverage data.

37. If a mobile service provider chooses to submit infrastructure data in response to a verification request, the Bureau and Offices propose to require the provider to submit such data for all cell sites and antennas that provide service to the targeted area. The Bureau and Offices propose that the Commission staff then evaluate whether the provider has demonstrated sufficient coverage for each selected hexagon using standardized propagation modeling. Under this approach, staff engineers would generate their own predicted coverage maps using the data submitted by the provider (including link budget parameters, cell-site infrastructure data, and the information provided by service providers about the types of propagation models they used). Using these staff-generated maps, the Bureau and Offices would evaluate whether each selected hexagon has predicted coverage with speeds at or above the minimum values reported in the provider's submitted coverage data. In generating the Bureau and Offices' own coverage maps, they propose to use certain standard sets of clutter and terrain data. The Bureau and Offices seek comment on this proposal and seek comment generally on other ways that infrastructure data could be used to evaluate the sufficiency of coverage in their proposed verification process. Staff may also consider other relevant data submitted by providers during the verification process, may request additional information from the provider (including on-the-ground speed test data, if necessary), and may take steps to ensure the accuracy of the verification process. The Bureau and Offices seek comment on these proposals.

38. Alternatively, the Bureau and Offices could use the submitted infrastructure and link budget data, along with available crowdsourced data, to perform initial verification of the claimed coverage within the selected hexagons using standard propagation models as well as appropriate terrain and clutter data. The Bureau and Offices could evaluate the provider's link budgets and infrastructure data for accuracy against other available data, such as Antenna Structure Registration and spectrum licensing data. Under this approach, if the Bureau and Offices' projection of speeds, along with the available crowdsourced data at the challenged locations, does not predict speeds at or above the minimum values reported in the provider's submitted coverage data, the Bureau and Offices propose that Commission staff would consider any additional information submitted by the provider or request additional information from the provider. Such information would include on-the-ground speed test data and staff would use this information to complete its verification of the targeted area. The Commission could also leverage spatial interpolation techniques to evaluate and verify the accuracy of coverage maps based on available crowdsourcing and on-the-ground data. The Bureau and Offices seek comment on this approach and other ways that infrastructure data could be used to verify a provider's coverage in the targeted area.

39. Consistent with the authority the Commission delegated to OEA and WTB in the *Third Order* to ''adopt the methodologies, data specifications, and formatting requirements'' that providers must follow when collecting and reporting mobile infrastructure data, and to help ensure that infrastructure information submissions are useful, the Bureau and Offices seek comment on adding additional input fields to the list of infrastructure information providers should include when responding to a verification request. In addition to the types of infrastructure information listed as examples in the *Third Order,* the Bureau and Offices propose that providers submit the following additional parameters and fields: (1) Geographic coordinates of each transmitter; (2) per site classification (*e.g.,* urban, suburban, or rural); (3) elevation above ground level for each base station antenna and other transmit antenna specifications, including the make and model, beamwidth, and orientation (*i.e.,* azimuth and any electrical and/or mechanical down-tilt)

at each cell site; (4) operate transmit power of the radio equipment at each cell site; (5) throughput and associated required signal strength and signal to noise ratio; (6) cell loading distribution; (7) areas enabled with carrier aggregation and a list of band combinations (including the percentage of handset population capable of using this band combination); and (8) all other metrics required per the most-recent specification for infrastructure data released by OEA and WTB. The Bureau and Offices anticipate the Bureau and Offices will need all of this infrastructure information to use as inputs for Commission engineers to generate their own predicted coverage maps. While the Bureau and Offices recognize that several commenters recommended limiting the scope of infrastructure data in response to the *Second Order and Third Further Notice,* the Bureau and Offices anticipate that collecting additional infrastructure data based on the data specifications listed above will be necessary in order for such data to be useful in verifying providers' biannual data submissions. The Bureau and Offices seek comment on these proposals and tentative conclusions.

4. Additional Data

40. Mobile service providers may supplement their submission of infrastructure information or on-the-ground test data required by verification inquiry with ''other types of data that the provider believes support its coverage.'' In addition, OEA and WTB may require the submission of additional data when necessary to complete a verification inquiry. The Bureau and Offices seek comment on what types of other data, besides infrastructure information and on-the-ground test data, will be useful to verifying mobile service providers' coverage data and whether such data should be submitted in a specific format.

41. For example, in the *Third Order,* the Commission stated that it will allow mobile broadband service providers to supplement their submission of either infrastructure information or on-the-ground test data with additional data that the provider believes support its coverage, such as data collected from its transmitter monitoring systems and software. The Commission found that such data currently have not been shown to be a sufficient substitute for either on-the-ground testing or infrastructure data in response to a verification investigation. However, the Commission directed OEA and WTB to accept and review transmitter data to the extent they are voluntarily submitted by providers in response to verification requests from staff. These data could be especially helpful to the extent that they support potential reasons for service disruptions during the time interval in which measurements were performed, or to describe remedial improvements to network quality. To that end, the Commission delegated authority to OEA and WTB to specify appropriate standards and specifications for such data and add them to the alternatives available to providers to respond to verification requests if staff concludes that such methods are sufficiently reliable.

42. In the absence of any experience with this process it is premature to propose specifications and standards to receive voluntary data collected from a provider's transmitter monitoring systems and software. However, mobile service providers may submit transmitter data in addition to the infrastructure or on-the-ground data they submit in response to a verification investigation. The Bureau and Offices propose that OEA and WTB analyze transmitter data submitted by mobile service providers to determine whether such data accurately depict coverage by a mobile service provider. The Bureau and Offices seek comment on this proposal.

C. Collecting Verified Broadband Data From Governmental Entities and Third Parties

43. The Broadband DATA Act requires the Commission to develop a process through which it can collect verified data for use in the coverage maps from: (1) State, local, and Tribal government entities primarily responsible for mapping or tracking broadband internet access service coverage in their areas; (2) third parties, if the Commission determines it is in the public interest to use their data in the development of the coverage maps or in the verification of data submitted by providers; and (3) other federal agencies. In the *Third Order,* the Commission directed OEA to collect verified mobile on-the-ground data from governmental entities and third parties through a process similar to that established for providers making their semiannual Broadband Data Collection filings.

44. In accordance with the Commission's direction in the *Third Order* and to ensure the Commission receives verified and reliable data, the Bureau and Offices propose that governmental entities and third parties should submit on-the-ground test data using the same metrics and testing parameters as the Bureau and Offices propose above for mobile providers to use in submitting on-the-ground test data. While the Massachusetts Department of Telecommunications and Cable asks the Commission to adopt a ''minimum standard'' and avoid ''strict submission methodology guidelines'' on data submissions by states and other third parties, the Bureau and Offices do not propose standards that are lower than or differ from those the Bureau and Offices propose for mobile providers. As discussed, these data can be used to verify service providers' coverage maps, similar to the data submitted by mobile providers. The Bureau and Offices therefore anticipate that assigning consistent, standardized procedures for governmental entities and third parties to submit on-the-ground data will be both appropriate and necessary to ensure the broadband availability maps are as accurate and precise as possible.

45. The Bureau and Offices also propose that, to the extent the Commission has verified on-the-ground data submitted by governmental entities and third parties, such data may be used when the Commission conducts analyses as part of the verification processes and would be treated as crowdsourced data. Governmental entities and third parties may also choose to use these data to submit a challenge, provided it meets the requirements for submission of a challenge under the Commission's rules. The Bureau and Offices invite comment on both of these proposals and also on whether stakeholders would benefit from additional guidance regarding when the Commission will consider data from government entities and third parties.

D. Probative Value

46. The Commission directed OEA and WTB to provide guidance on the types of data that will likely be more probative in validating broadband availability data submitted by mobile service providers in different circumstances. The Bureau and Offices believe that on-the-ground test data that reflects actual on-the-ground tests as opposed to predictive modeling and other techniques will generally be more accurate reflections of user experience and thus more probative than infrastructure or other sources of information in most but not all circumstances. The Bureau and Offices recognize that on-the-ground test data can be more costly to obtain and may not be necessary in every instance, and therefore describe below at least four circumstances where the Bureau and

Offices tentatively conclude that infrastructure information will likely be of probative value comparable to on-the-ground data. The Bureau and Offices seek comment on these conclusions and whether there are any other circumstances where the Bureau and Offices can draw such a conclusion. The Bureau and Offices further seek comment on the probative value of potentially less burdensome testing techniques using aerial drones or other technologies for collecting test data.

47. First, the Bureau and Offices propose to find that infrastructure information will be of comparable probative value when extenuating circumstances at the time and location of a given test (*e.g.,* maintenance or temporary outage at the cell site) caused service to be abnormal. In such cases, the Bureau and Offices propose for providers to submit coverage or footprint data for the site or sectors that were affected and information about the outage, such as bands affected, duration, and whether the outage was reported to the Network Outage Reporting System (NORS), along with a certification about the submission's accuracy. The Bureau and Offices would then remove measurements in the reported footprint in the relevant band(s) made during the outage and, as appropriate, recalculate the statistics.

48. Second, the Bureau and Offices propose to find that infrastructure or other information will be of comparable probative value when measurements that led to the verification request or challenge rely on devices that lack a band that the provider uses to make coverage available in the area in question. In such cases, the Bureau and Offices propose for providers to submit band-specific coverage footprints and information about which specific device(s) lack the band. The Bureau and Offices would then remove measurements from the listed devices in the relevant footprint and recalculate the statistics.

49. Third, the Bureau and Offices propose to find that infrastructure information will be of comparable probative value when speed tests were taken during an uncommon special event (*e.g.,* a professional sporting event) that increased traffic on the network. The Bureau and Offices recognize that mobile service providers would not have the same throughput they would in normal circumstances given the high volume of traffic on networks during these types of events, so demonstrating the existence of coverage in the area by submitting infrastructure information would be persuasive for why speed tests were negative in such a scenario.

50. Fourth, the Bureau and Offices propose to find that infrastructure information will be of comparable probative value when challenger speed tests were taken during a period where cell loading exceeded the modeled cell loading factor. The Bureau and Offices recognize speed tests taken during a period when cell loading is higher than usual can result in negative speed tests. However, as discussed, the Bureau and Offices anticipate infrastructure information will be useful to rebut challenges in this situation, but if a high number of challenges show persistent over-loading, the Bureau and Offices propose that staff may initiate a verification inquiry to investigate whether mobile providers have submitted coverage maps based on an accurate assumption of cell loading in a particular area, and mobile providers should respond to such a verification request with on-the-ground data in order to assess the experience of users in that area.

E. Crowdsourced Data

51. The Broadband DATA Act requires the Commission to ''develop a process through which entities or individuals . . . may submit specific information about the deployment and availability of broadband internet access service . . . on an ongoing basis . . . to verify and supplement information provided by providers.'' In the *Second Order,* the Commission adopted a crowdsourcing process to allow individuals and entities to submit such information.

52. The Commission instructed OET, OEA, WTB, and the Wireline Competition Bureau (WCB) to develop a process to prioritize the consideration of crowdsourced data submitted through data collection apps used by consumers and other entities that are determined to be ''highly reliable'' and that ''have proven methodologies for determining network coverage and network performance.'' The Commission further directed OET, OEA, WCB, and WTB to consider ''(1) whether the application uses metrics and methods that comply with current Bureau and Office requirements for submitting network coverage and speed data in the ordinary course; (2) whether the speed application has enough users that it produces a dataset to provide statistically significant results for a particular provider in a given area; and (3) whether the application is designed so as not to introduce bias into test results.'' The Bureau and Offices propose to find that the Commission's speed test app is a reliable and efficient method for entities to use in submitting crowdsourced mobile coverage data to the Commission. The Commission's speed test app allows users to submit specific information about the deployment and availability of mobile broadband service and meets the requirements outlined in the Commission's *Second Order.* To the extent that OET, in consultation with OEA and WTB, determines that other apps used by consumers or other entities are ''highly reliable'' and ''have proven methodologies for determining mobile broadband network coverage and network performance,'' the Bureau and Offices propose to allow consumers and other entities to use such an app to submit crowdsourced information. The Bureau and Offices also propose to consider as crowdsourced information speed tests taken with an authorized app that do not meet the criteria needed to create a cognizable challenge or are otherwise not intended to be used to challenge the accuracy of a mobile service providers' map.

53. To the extent consumers and governmental or other entities choose to submit on-the-ground crowdsourced mobile speed test data in the online portal, the Bureau and Offices propose that such data be collected using a similar measurement methodology as the Commission's speed test app and submitted in a similar format to that which the Bureau and Offices propose for challengers and providers to use when submitting speed tests. However, because crowdsourced data will not automatically require a response from a provider, and Commission staff will use crowdsourced data for identifying individual instances or patterns of potentially inaccurate or incomplete deployment or availability data that warrants further review and will only initiate an inquiry when a ''critical mass of'' crowdsourced filings suggest that a provider has submitted inaccurate or incomplete data, the Bureau and Offices propose for some speed test metrics to be optional. For example, the Bureau and Offices propose to allow entities submitting crowdsourced data to submit tests that include any combination of the download speed, upload speed, or round-trip latency test metrics rather than requiring all three as with challenge data. The Bureau and Offices seek comment on their proposal. Should the Bureau and Offices adopt a more or less stringent standard for consumers and other entities to submit crowdsourced data? If so, what metrics and methods should consumers and other entities be required to meet when

submitting crowdsourced data? How should the Bureau and Offices ensure that a speed app has enough users to provide statistically significant results for a mobile provider in a specific geographic area? How should the Bureau and Offices ensure apps do not introduce bias into test results?

54. In the *Third Order,* the Commission directed OET, in consultation with OEA and WTB, to update the FCC Speed Test app as necessary or develop a new speed test app to collect the metrics and include the requisite functionalities so that challengers may use it in the challenge process. The Commission also directed OET to approve additional third-party speed test apps that collect all necessary data and include these required functionalities for use in the challenge process. The Bureau and Offices propose that OET issue a public notice inviting proposals for designation of third-party speed test data collection apps as acceptable for use for submission of crowdsourced and challenge data. In submitting proposals, parties would be required to include information indicating how the app complies with the requirements for crowdsourced data collection and challenge data collection requirements as set forth in applicable Commission orders. OET would provide an opportunity for comments and replies regarding the proposals. OET would then review all of the proposals, comments, and replies, and evaluate the functionalities before designating apps as acceptable for use for submission of crowdsourced and challenge data. The Bureau and Offices also propose that OET would provide periodic review and offer guidance for designated third party apps to ensure continued compliance with all technical and program requirements. The Bureau and Offices seek comment on their proposed process.

55. The Commission found it appropriate to establish and use an online portal for crowdsourced data filings and use the same portal for challenge filings. In adopting this approach, the Commission directed the Bureaus and Offices to implement the crowdsourced data collection and create a portal for the receipt of crowdsourced data. The Commission also directed OET, OEA, WCB, and WTB to ''issue specific rules by which [the Commission] will prioritize the consideration of crowdsourced data in advance of the time that the online portal is available.'' The Bureau and Offices seek comment on ways to implement this directive. Specifically, the Bureau and Offices ask commenters to recommend methodologies for submitting mobile crowdsourced data prior to the creation of the online portal that are efficient for consumers and other entities, protect consumers' privacy, and are feasible for the Bureaus and Offices to implement. For example, data submitted by consumers and other entities that do not follow any specific metrics or methodologies may be less likely to yield effective analysis and review by the Commission of providers' mobile broadband availability. Therefore, the Bureau and Offices propose to require consumers and other entities to submit any preliminary crowdsourced data using the same metrics that providers would use when submitting on-the-ground data in response to a Commission verification request. Do commenters agree?

56. As discussed in the *Second Order,* the Commission declined to establish specific thresholds to use when deciding whether to evaluate providers' filings where crowdsourced data suggest potential inaccuracies. Instead, the Commission found that staff should initiate inquiries when a ''critical mass of'' crowdsourced filings suggest that a provider has submitted inaccurate or incomplete information. The Commission directed OET, OEA, WCB, and WTB to provide guidance to providers when inquiries based on crowdsourced filings could be initiated. Commenters generally agreed that the crowdsourcing process could be used to highlight problems with the coverage maps' accuracy and trigger further review by the Commission. The Bureau and Offices propose to evaluate mobile crowdsourced data through an automated process to identify potential areas that would trigger further review using a methodology similar to the mobile verification process proposed above, with certain simplifications. The Bureau and Offices propose that the outcome of this methodology may provide staff with a credible basis for verifying a provider's coverage data. Under the Bureau and Offices proposed approach, they therefore propose that areas identified from crowdsourced data using this methodology would be subject to verification inquiry consistent with the proposed mobile verification process. The Bureau and Offices seek comment on this proposed framework for evaluating crowdsourced data.

57. More specifically, the methodology the Bureau and Offices propose would first exclude any anomalous or otherwise unusable tests submitted as crowdsourced data, and the Bureau and Offices seek comment generally on how to identify such tests. From the remaining crowdsourced tests, the Bureau and Offices propose to use data clustering to identify potential targeted areas where crowdsourced tests indicate a provider's coverage map is inaccurate. The Bureau and Offices seek comment on their proposal and on any alternative methods for determining when a ''critical mass'' of crowdsourced filings suggest a provider has submitted inaccurate or incomplete information.

58. In the *Second Order,* the Commission determined that all information submitted as part of the crowdsourcing process will be made public, with the exception of personally identifiable information and any data required to be confidential under § 0.457 of the Commission's rules, and directed OEA to make crowdsourced data publicly available as soon as practicable after submission and to establish an appropriate method for doing so. Accordingly, the Bureau and Offices propose to make all crowdsourced data available via the Commission's public-facing website. Such information will depict coverage data and other associated information and will not include any personally identifiable information. The Bureau and Offices propose to update the public crowdsourced data biannually. The Bureau and Offices seek comment on their proposals and on any alternative methods for making crowdsourced data available to the public. The Bureau and Offices also seek comment on ways to ensure personally identifiable and other sensitive information is kept secure and private.

59. Finally, the Commission directed OET, OEA, WCB, and WTB to modify the process for the collection of fixed and mobile crowdsourced data over time as determined to be necessary by the Bureaus and Offices. The Bureaus and Offices seek comment on the proposals herein and will modify the process for collecting mobile crowdsourced data in the future as necessary.

F. Supplemental Initial Regulatory Flexibility Analysis

60. *Supplemental Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Bureau and Offices have prepared this Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on a substantial number of small entities by the proposed rules and policies contained in this *Public Notice* to supplement the Commission's Initial and Final Regulatory Flexibility Analyses completed in the *Digital*

Opportunity Data Collection Report and Order and Further Notice of Proposed Rulemaking, Second Order and Third Further Notice, and *Third Order.* Written public comments are requested on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the same deadline for comments specified on the first page of this *Public Notice.* The Commission will send a copy of this *Public Notice,* including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, this *Public Notice* and Supplemental IRFA (or summaries thereof) will be published in the **Federal Register**.

61. *Need for, and Objectives of, the Proposed Rules.* In this *Public Notice,* WTB, OEA, and OET take the next step to obtain better coverage data and implement the requirements under the Broadband DATA Act which tasks the Commission with collection of granular data from providers on the availability and quality of broadband internet access service and verification of the accuracy and reliability of broadband coverage data submitted by providers. Following the December 27, 2020, Congressional appropriation of funding for the implementation of the Broadband DATA Act, the Commission began to implement challenge, verification, and crowdsourcing processes involving broadband data coverage submissions.

62. The Commission has delegated to its staff the responsibility to develop technical requirements for verifying service providers' coverage data, a challenge process that will enable consumers and other third parties to dispute service providers' coverage data, and a process for third parties and other entities to submit crowdsourced data on mobile broadband availability. These measures will help the Commission, Congress, federal and state policy makers, and consumers to evaluate the status of broadband deployment throughout the United States. The *Public Notice* proposes and seeks comment on technical requirements to implement the mobile challenge, verification, and crowdsourcing processes required by the Broadband DATA Act, such as metrics for on-the-ground test data and a methodology for determining the threshold for what constitutes a cognizable challenge requiring a provider response. It also provides initial guidance and seeks comment on what types of data will likely be more probative in different circumstances. The Bureau and Offices propose detailed processes and metrics for providers to follow when responding to a Commission verification request, for government entities and other third parties to follow when submitting verified broadband coverage data, and for challengers to follow when contesting providers' broadband coverage availability. The Bureau and Offices believe this level of detail is necessary to allow providers, consumers and other third parties with robust opportunities to comment, provide input and help formulate the processes and procedures to enable better evaluation of the status of broadband deployment throughout the United States.

63. *Legal Basis.* The proposed action is authorized pursuant to sections 1–5, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 641–646 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 641–646.

64. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* 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.

65. As noted above, Regulatory Flexibility Analyses were incorporated into the *Digital Opportunity Data Collection Report and Order and Further Notice of Proposed Rulemaking, Second Order and Third Further Notice,* and *Third Order.* In those analyses, the Bureau and Offices described in detail the small entities that might be affected. In this *Public Notice,* for the Supplemental IRFA, the Bureau and Offices hereby incorporate by reference the descriptions and estimates of the number of small entities from the previous Regulatory Flexibility Analyses in the *Digital Opportunity Data Collection Report and Order and Further Notice of Proposed Rulemaking, Second Order and Third Further Notice,* and *Third Order.*

66. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The granular data collection for the challenge and verification processes proposed in the *Public Notice* would, if adopted, impose some new reporting, recordkeeping, or other compliance requirements on some small entities. Specifically, the Bureau and Offices propose that mobile providers of broadband internet access service submit coverage data in the form of on-the-ground test data or infrastructure information on a case-by-case basis in response to a Commission request to verify mobile broadband providers biannual BDC data submissions. Additionally, the Bureau and Offices propose a methodology for state, local, and Tribal government entities and third parties to follow when submitting verified mobile on-the-ground data to the Commission for use in the coverage maps. The Bureau and Offices also establish a methodology for mobile broadband providers to follow when responding to or rebutting consumer challenges of broadband availability. The Bureau and Offices also seek comment on other types of data that will likely have more probative value when used to either verify coverage maps or respond to a consumer challenge. Finally, the Bureau and Offices propose details and seek comment on how third parties and other entities may submit crowdsourced data and how this information may be put to best use. If adopted, any of these requirements could impose additional reporting, recordkeeping, or other compliance obligations on small entities.

67. The challenge and verification process proposals and issues raised for consideration and comment in the *Public Notice* may require small entities to hire attorneys, engineers, consultants, or other professionals. At this time, however, the Commission cannot quantify the cost of compliance with any potential rule changes and compliance obligations for small entities that may result from the *Public Notice.* The Bureau and Offices expect their requests for information on potential burdens, costs and cost minimization and alternative approaches associated with matters raised in the *Public Notice* will provide them with information to assist with their evaluation of the cost of compliance for small entities of any reporting, recordkeeping, or other compliance requirements the Bureau and Offices adopt.

68. *Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered.* 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 and 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.''

69. The Bureau and Offices anticipate the proposals set forth in the *Public Notice* will balance the need for the Commission to generate more precise and granular mobile broadband availability maps with any associated costs and burdens on mobile broadband providers. In implementing the requirements of the Broadband DATA Act in orders preceding this *Public Notice,* the Commission sought comment on the burdens associated with the potential requirements discussed in collecting broadband internet access service data and how such burdens can be minimized for small entities. For example, in the *Second Order and Third Further Notice,* the Commission sought comment on the potential burdens on small providers associated with: (1) Requiring providers to submit on-the-ground data to validate mobile broadband coverage; and (2) encouraging small providers to participate in the challenge process. In part, the comments received in response to the *Second Order and Third Further Notice* helped shape the proposals, approaches and steps taken in this *Public Notice.*

70. Consistent with the Commission's recognition in the *Third Order* that providers should not be subject to the undue cost of responding to a large number of challenges to very small areas, for the mobile service challenge process, the Bureau and Offices have proposed in this *Public Notice* to jointly evaluate speed tests submitted by consumers and governmental and third-party challengers. The Bureau and Offices have also proposed data specifications that all submitted challenger speed test data must meet. After combining consumer speed tests and governmental and third-party speed tests, the Bureau and Offices propose to validate each speed test and exclude tests that do not present reliable evidence. Under the Bureau and Offices' proposed approach, they would combine such speed test evidence and apply a single methodology to determine whether the threshold for a cognizable challenge has been met and to establish the boundaries of the challenged area. After determining the full set of combined, valid challenger speed tests, the Bureau and Offices would then associate each speed test with the proposed standardized geographical area discussed in the *Public Notice.* For each area that includes valid challenger speed tests, the Bureau and Offices would then evaluate whether several thresholds have been met in order to determine whether the challenger evidence demonstrates a cognizable challenge requiring a provider response. Adopting a process to determine whether there is a cognizable challenge to which a provider is required to respond rather than requiring a provider to respond to any and all submitted challenges will minimize the economic impact for small providers to the extent they are subject to challenges.

71. The proposed mobile service challenge process metrics for mobile providers to follow when responding to a Commission verification request seek to balance the need for the Commission to establish valuable methods for verifying coverage data with the need to reduce the costs and burdens associated with requiring mobile providers to submit on-the-ground test data and infrastructure information. For example, in order to ensure the challenge process is user-friendly for challengers and workable for mobile providers to respond to and rebut challenges, the Bureau and Offices have proposed that challenged mobile service providers who choose to submit on-the-ground speed test data will be held to the same standard as the challengers to demonstrate that the challenged areas have sufficient coverage. Providers would be required to submit on-the-ground data consistent with the metrics the Bureau and Offices propose for verifying coverage with on-the-ground data and meet the same three threshold tests as the challengers. The Bureau and Offices considered but declined a proposal to define a challenge area based on the test data submitted by the challengers on their belief that the Bureau and Offices' proposal is both user-friendly and supported by sufficient data while also targeting a more precise geographic area where broadband coverage is disputed and limits the burden on providers in responding to challenges. The *Public Notice* seeks comment on the specifics of the Bureau and Offices' proposed methodology and invites commenters to propose alternative approaches that would allow for staff to automatically adjudicate most challenges.

72. Our proposals for collection of verification information recognize that some types of test data such as on-the-ground test data can be more costly for small entities and others to obtain and therefore the Bureau and Offices have proposed to identify the portion of a provider's coverage map (target area) for which the Bureau and Offices would require verification data based upon all available evidence, including submitted speed test data, infrastructure data, crowdsourced and other third-party data, as well as staff evaluation and knowledge of submitted coverage data (including maps, link budget parameters, and other credible information). Using all available evidence will enable providers to choose options in line with their specific economic situations. Further, to minimize the cost and burden placed on service providers, while ensuring Commission staff have access to sufficient data to demonstrate coverage, the Bureau and Offices have proposed to use sampling of the target area. Mobile service providers would be required to provide verification data which covers a statistically valid sampling of areas for which sufficient coverage must be demonstrated to satisfy the verification request. The sample would also be required to meet the same thresholds for adequate coverage as defined in the challenge process using either infrastructure data or on-the-ground speed tests for the targeted area to be successfully verified. The proposed use of a sampling plan to demonstrate broadband availability will allow small and other providers to avoid submission of considerably more data and the associated costs.

73. In crafting the challenge and verification process proposals in the *Public Notice,* the Bureau and Offices also considered the appropriate verification data requirements for government entities and third parties and the probative value of other types of data. To ensure consistency, reliability, comparability, and verifiability of the data the Commission receives the Bureau and Offices declined to propose different or lower standards than those that would be applicable to providers. Requiring government entities and third parties to submit on-the-ground test data using the same metrics and testing parameters proposed for mobile providers will ensure that the Commission implements a standardized process resulting in the broadband availability maps that are as accurate and precise as possible. The Bureau and Offices' consideration of appropriate verification data sources took into consideration both the usefulness and costs of on-the-ground

test data which can be more costly to obtain and may not be needed in every situation versus the use of infrastructure information. Based on the Bureau and Offices' analysis they propose to find that infrastructure information will likely be of comparable probative value to on-the-ground test data in situations when cell sites or sectors had a temporary malfunction during measurements, when measurements that led to a verification request or challenge rely on devices that lack a band that the provider uses to make coverage available in the area in question, when speed tests were taken during an uncommon special event (*e.g.,* a professional sporting event) that increased traffic on the network, or when challenger speed tests were taken during a period where cell loading exceeded the modeled cell loading factor. The *Public Notice* seeks comment on this proposal, on whether there are any other circumstances where infrastructure data will be greater than, equal to, or comparable to, on-the-ground data, and on whether there are other types of data that will be probative in other circumstances.

74. To assist in the further evaluation of the economic impact on small entities of proposals in this *Public Notice,* and to identify any additional options and alternatives for such entities that the Commission can pursue while also achieving its objectives of improving accuracy and reliability of its data collections, the Bureau and Offices have sought comment on these matters. Before reaching any final conclusions and taking final action in this proceeding, the Bureau and Offices expect to review the comments filed in response to the *Public Notice* and more fully consider the economic impact on small entities and how any impact can be minimized.

75. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.* None.

List of Subjects in 47 CFR Part 1

Broadband, Broadband Mapping, Communications, internet, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Amy Brett,

Acting Chief of Staff, Wireless Telecommunications Bureau.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission, under delegated authority, proposes to amend 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

■ 2. Amend § 1.7001 by adding paragraph (a)(20) to read as follows:

§ 1.7001 Scope and content of filed reports.

(a) * * *

(20) *H3 standardized geospatial indexing system.* A system developed by Uber that overlays the Earth with hexagonal cells of different sizes at various resolutions. The smallest hexagonal cells are at resolution 15, in which the average hexagonal cell has an area of approximately 0.9 square meters, and the largest are at resolution 0, in which the average hexagonal cell has an area of approximately 4.3 million square kilometers. Hexagonal cells across different resolutions are referred to as a ''hex-n'' cell, where n is the resolution (*e.g.,* ''hex-15'' for the smallest size hexagonal cell). The H3 geospatial indexing system employs a nested cell structure wherein a lower resolution hexagonal cell (the ''parent'') contains approximately contains seven hexagonal cells at the next highest resolution (its ''children''). That is, a hex-1 cell is the ''parent'' of seven hex-2 cells, each hex-2 cell is the parent of seven hex-3 cells, and so on.

■ 3. Amend § 1.7006 by:

■ a. Redesignating paragraphs (b)(2) through (4) as paragraphs (b)(3) through (5) and adding new paragraph (b)(2);

■ b. Revising the newly redesignated paragraphs (b)(3) through (b)(5);

■ c. Revising paragraph (c);

■ d. Revising paragraph (e)(1)(iii);

■ e. Adding paragraphs (e)(2)(i) through (iii),

■ f. Revising paragraphs (e)(4) and (e)(6);

■ g. Adding paragraph (e)(7), and

■ h. Revising paragraphs (f)(1)(i) through (3) and (f)(5).

The revisions and additions read as follows:

§ 1.7006 Data verification.

* * * * *

(b) * * *

(2) On-the-ground crowdsourced data shall include the same metrics described in paragraph (c)(1) of this section.

(3) The online portal shall notify a provider of a crowdsourced data filing against it, but a provider is not required to respond to a crowdsourced data filing.

(4) If, as a result of crowdsourced data, the Commission determines that a provider's coverage information is not accurate, then the provider shall be subject to a verification inquiry consistent with the mobile verification process described in paragraph (c)(1) of this section.

(5) All information submitted as part of the crowdsourcing process shall be made public via the Commission's website, with the exception of personally identifiable information and any data required to be confidential under § 0.457 of this chapter.

(c) *Mobile service verification process for mobile providers.* Mobile service providers shall submit either infrastructure information or on-the-ground test data in response to a request by Commission staff as part of its inquiry to independently verify the accuracy of the mobile provider's coverage propagation models and maps. In addition to submitting either on-the-ground data or infrastructure data, a provider may also submit data collected from transmitter monitoring software. The Office of Economics and Analytics and the Wireless Telecommunications Bureau may require the submission of additional data when necessary to complete a verification inquiry. A provider must submit its data, in the case of both infrastructure information and on-the-ground data, within 60 days of receiving a Commission staff request. Regarding on-the-ground data, a provider must submit evidence of network performance based on a sample of on-the-ground tests that is statistically appropriate for the area tested.

(1) When a mobile service provider chooses to demonstrate mobile broadband coverage availability by submitting on-the-ground data, the mobile service provider shall provide valid on-the-ground tests within a Commission-identified statistically valid and unbiased sample of its network, and shall demonstrate that the sampled area meets a threshold percentage of positive tests, which are defined as tests that show speeds that meet or exceed the minimum download and upload speeds the mobile service provider reports as available at the location where the test occurred.

(i) On-the-ground test data shall meet the following testing parameters:

(A) A minimum test length of 5 seconds and a maximum test length of 30 seconds;

(B) Reporting measurement results that have been averaged over the duration of the test (*i.e.,* total bits received divided by total test time); and

(C) Conducted outdoors between the hours of 6:00 a.m. and 10:00 p.m. local time.

(ii) On-the-ground test data shall include the following metrics for each test:

(A) Testing app name and version;

(B) Timestamp and duration of each test metric;

(C) Geographic coordinates at the start and end of each test metric measured with typical Global Positioning System (GPS) Standard Positioning Service accuracy or better;

(D) Velocity of vehicle, if applicable and available, for in-vehicle tests;

(E) Device make and model;

(F) Cellular operator name;

(G) Location of server (*e.g.,* hostname or IP address);

(H) Available signal strength, signal quality, and radiofrequency metrics of each serving cell;

(I) Download speed;

(J) Upload speed;

(K) Round-trip latency; and

(L) All other metrics required per the most-recent specification for mobile test data released by the Office of Economics and Analytics and the Wireless Telecommunications Bureau.

(2) When a mobile service provider chooses to demonstrate mobile broadband coverage availability by submitting infrastructure data, the mobile service provider must submit such data for all cell sites that provide service for the targeted area.

(i) Infrastructure data shall include the following information for each cell site that the provider uses to provide service for the area subject to the verification inquiry:

(A) Geographic coordinates of the site measured with typical GPS Standard Positioning Service accuracy or better;

(B) A unique site ID for the site;

(C) The ground elevation above mean sea level of the site;

(D) Frequency band(s) used to provide service for each site being mapped including channel bandwidth (in megahertz);

(E) Radio technologies used on each band for each site;

(F) Capacity (Mbps) and type of backhaul used at each cell site;

(G) Number of sectors at each cell site;

(H) Effective Isotropic Radiated Power (EIRP);

(I) Geographic coordinates of each transmitter;

(J) Per site classification (*e.g.,* urban, suburban, or rural);

(K) Elevation above ground level for each base station antenna and other transmit antenna specifications (*i.e.,* the make and model, beamwidth (in degrees), and orientation (azimuth and any electrical and/or mechanical down-tilt in degrees) at each cell site);

(L) Operate transmit power of the radio equipment at each cell site;

(M) Throughput and associated required signal strength and signal to noise ratio;

(N) Cell loading distribution; and

(O) Areas enabled with carrier aggregation and a list of band combinations (including the percentage of handset population capable of using this band combination);

(P) Any additional parameters and fields that are listed in the most-recent specifications for wireless infrastructure data released by the Office of Economics and Analytics and the Wireless Telecommunications Bureau.

* * * * *

(e) * * *

(1) * * *

(iii) Speed test data. Consumer challenges shall include the test metrics described in paragraph (c)(1) of this section, and shall:

(A) Be performed outdoors;

(B) Indicate whether each test was taken in an in-vehicle mobile or outdoor pedestrian environment; and

(C) Be conducted using a speed test app that has been designated by the Office of Engineering and Technology, in consultation with the Office of Economics and Analytics and the Wireless Telecommunications Bureau, for use in the challenge process;

(2) * * *

(i) A hexagon at resolution 8 from the H3 standardized geospatial indexing system shall be classified as challenged if it satisfies the following criteria.

(A) *Geographic threshold.* At least two valid speed tests, at least one of which is a ''negative'' test, are recorded in a minimum number of ''point-hexes'' of the resolution 8 hexagon, where:

(*1*) A test shall be defined as negative when the test does not meet the minimum predicted speeds based on the highest technology-specific minimum download and upload speeds reported for that area by the provider in its most recent coverage data;

(*2*) A point-hex shall be defined as one of the seven nested hexagons at resolution 9 from the H3 standardized geospatial indexing system of a resolution 8 hexagon;

(*3*) A point-hex shall be defined as accessible where at least 50% of the point-hex overlaps with the provider's reported coverage data and the point-hex overlaps with any primary, secondary, or local road from the most recent U.S. Census Bureau's road data; and

(*4*) The minimum number of point-hexes in which tests must be recorded shall be equal to the number of accessible point-hexes or four, whichever number is lower. If there are no accessible point-hexes within a resolution 8 hexagon, the geographic threshold shall not need to be met.

(B) *Temporal threshold.* The difference in time of day between two negative tests is at least four hours irrespective of calendar day; and

(C) *Testing threshold.* At least five speed tests are negative within a hex-8 cell when a challenger has submitted 20 or fewer tests. When a challenger has submitted more than 20 tests, a certain minimum percentage of the total number of tests in the cell must be negative;

(*1*) When a challenger has submitted 21–29 tests, at least 24% must be negative;

(*2*) When a challenger has submitted 30–45 tests, at least 22% must be negative;

(*3*) When a challenger has submitted 46–60 tests, at least 20% must be negative;

(*4*) When a challenger has submitted 61–70 tests, at least 18% must be negative;

(*5*) When a challenger has submitted 71–99 tests, at least 17% must be negative;

(*6*) When a challenger has submitted 100 or more tests, at least 16% must be negative;

(ii) In addition, a larger, ''parent'' hexagon (at resolutions 7 or 6) shall be considered challenged if at least four of its child hexagons are considered challenged. The smallest challengeable hexagonal cell is a hexagon at resolution 8 from the H3 standardized geospatial indexing system.

(iii) Mobile service providers shall be notified of all cognizable challenges to their mobile broadband coverage maps at the end of each month. Challengers shall be notified when a mobile provider responds to the challenge. Mobile service providers and challengers both shall be notified monthly of the status of challenged areas.

* * * * *

(4) To dispute a challenge, a mobile service provider must submit on-the-ground test data, consistent with the metrics and methods described in paragraph (c)(1) of this section, or infrastructure data to verify its coverage map(s) in the challenged area. To the extent that a mobile service provider believes it would be helpful to the Commission in resolving a challenge, it may choose to submit other data in addition to the data initially required, including but not limited to either infrastructure or on-the-ground testing (to the extent such data are not the primary option chosen by the provider)

or other types of data such as data collected from network transmitter monitoring systems or software, or spectrum band-specific coverage maps. Such other data must be submitted at the same time as the primary on-the-ground testing or infrastructure rebuttal data submitted by the provider. If needed to ensure an adequate review, the Office of Economics and Analytics may also require that the provider submit other data in addition to the data initially submitted, including but not limited to either infrastructure or on-the-ground testing data (to the extent not the option initially chosen by the provider) or data collected from network transmitter monitoring systems or software (to the extent available in the provider's network). If a mobile provider is not able to demonstrate sufficient coverage in a challenged hexagon, the mobile provider shall revise its coverage maps to reflect the lack of coverage in such areas.

(i) A mobile service provider that chooses to rebut a challenge to their mobile broadband coverage maps with on-the-ground speed test data shall confirm that a challenged area has sufficient coverage using speed tests that were conducted during the 12 months prior to submitting a rebuttal. A provider may confirm coverage in any hex-8 cell within the challenged area. This includes any hex-8 cell that is challenged, and also any non-challenged hex-8 cell that is a child of a challenged hex-7, hex-6, or hex-5 cell. Confirming non-challenged hex-8 cells can be used to confirm the challenged hex-7, hex-6, or hex-5 cell. To confirm a hex-8 cell, a provider must submit on-the ground speed test data that meets the following criteria:

(A) *Geographic threshold.* Two speed tests, at least one of which is a positive test, are recorded within a minimum number of point-hexes within the challenged area, where:

(*1*) A test shall be defined as positive when the test meets both the minimum predicted speeds based on the highest technology-specific minimum download and upload speeds reported for that area by the provider in its most recent coverage data;

(*2*) A point-hex shall be defined as one of the seven nested hexagons at resolution 9 from the H3 standardized geospatial indexing system of a resolution 8 hexagon;

(*3*) A point-hex shall be defined as accessible where at least 50% of the point-hex overlaps with the provider's reported coverage data and the point-hex overlaps with any primary, secondary, or local road from the most recent U.S. Census Bureau's road data; and

(*4*) The minimum number of point-hexes in which tests must be recorded shall be equal to the number of accessible point-hexes or four, whichever number is lower. If there are no accessible point-hexes within a resolution 8 hexagon, the geographic threshold shall not need to be met.

(B) *Temporal threshold.* The difference in time of day between at least two positive tests is at least 4 hours irrespective of calendar day; and

(C) *Testing threshold.* At least 17 positive tests within a hex-8 cell in the challenged area when the provider has submitted 20 or fewer tests. When the provider has submitted more than 20 tests, a certain minimum percentage of the total number of tests in the cell must be positive;

(*1*) When a provider has submitted 21–34 tests, at least 82% must be positive;

(*2*) When a provider has submitted 35–49 tests, at least 84% must be positive;

(*3*) When a provider has submitted 50–70 tests, at least 86% must be positive;

(*4*) When a provider has submitted 71–99 tests, at least 87% must be positive;

(*5*) When a provider has submitted 100 or more tests, at least 88% must be positive;

(D) Using a mobile device running either a Commission-developed app (*e.g.,* the FCC Speed Test app), another speed test app approved by OET to submit challenges, or other software and hardware if approved by staff;

(E) Using a device that is engineering-capable and able to interface with drive test software and/or runs on the Android operating system.

(ii) A mobile service provider that chooses to rebut a challenge to their mobile broadband coverage maps with infrastructure data may only do so in order to identify invalid, or non-representative, speed tests within the challenged speed test data. A provider may claim challenge speed tests were invalid, or non-representative, if:

(A) Extenuating circumstances at the time and location of a given test (*e.g.,* maintenance or temporary outage at the cell site) caused service to be abnormal;

(B) The mobile device(s) with which the challenger(s) conducted their speed tests do not use or connect to the spectrum band(s) that the provider uses to serve the challenged area;

(C) The challenge speed tests were taken during an uncommon special event (*e.g.,* professional sporting event) that increased traffic on the network; or

(D) The challenge speed tests were taken during a period where cell loading exceeded the modeled cell loading factor.

(iii) If the Commission determines, based on the infrastructure data submitted by providers, that challenge speed tests are invalid, such challenge speed tests shall be ruled void, and the Commission shall recalculate the challenged hexagons after removing any invalidated challenger speed tests and consider any challenged hexagons that no longer meet the challenge creation threshold to be restored to their status before the challenge was submitted.

(iv) Aside from the scenarios discussed in paragraph (e)(4)(ii)(A)–(D), the Commission shall only use infrastructure data, on their own, to adjudicate a challenge upon a showing by the provider that collecting on-the-ground or other data (not in infrastructure information) would be infeasible or unlikely to show an accurate depiction of network coverage. In such a situation, the Commission shall evaluate infrastructure data using the same process the Commission uses to verify providers coverage maps.

* * * * *

(6) After a challenged provider submits all responses and Commission staff determines the result of a challenge and any subsequent rebuttal have been determined:

(i) In such cases where a mobile service provider successfully rebuts a challenge, the area confirmed to have coverage shall be ineligible for challenge until the first time a mobile service provider files its biannual filing information six months after the end of the 60-day response period.

(ii) A challenged area may be restored to an unchallenged state, if, as a result of data submitted by the provider, there is no longer sufficient evidence to sustain the challenge to that area, but the provider's data fall short of confirming the area. A restored hexagon would be subject to challenge at any time in the future as challengers submit new speed test data.

(iii) In cases where a mobile service provider concedes or loses a challenge, the provider must file, within 30 days, geospatial data depicting the challenged area that has been shown to lack sufficient service. Such data will constitute a correction layer to the provider's original propagation model-based coverage map, and Commission staff will use this layer to update the broadband coverage map. In addition, to the extent that a provider does not later improve coverage for the relevant technology in an area where it conceded

or lost a challenge, it must include this correction layer in its subsequent filings to indicate the areas shown to lack service.

(7) Commission staff are permitted to consider other relevant data to support a mobile service provider's rebuttal of challenges, including on-the-ground data or infrastructure data, to the extent it was not previously submitted by a mobile service provider. The Office of Economics and Analytics will review such data when voluntarily submitted by providers in response to consumer challenges, and if it concludes that any of the data sources are sufficiently reliable, it will specify appropriate standards and specifications for each type of data and add it to the alternatives available to providers to rebut a consumer challenge.

(f) * * *

(1)

(i) Government and other entity challengers may use their own software to collect data for the challenge process. When they submit their data they must meet the test metrics described in paragraph (c)(1)(i)–(ii) of this section. Additionally, their data must contain the following metrics for each test:

(2) Challengers must conduct speed tests using a device advertised by the challenged service provider as compatible with its network and must take all speed tests outdoors. Challengers must also use a device that is engineering-capable and able to interface with drive test software and/or runs on the Android operating system.

(3) For a challenge to be considered a cognizable challenge, thus requiring a mobile service provider response, the challenge must meet the same threshold specified in paragraph (e)(2)(i) of this section.

* * * * *

(5) To dispute a challenge, a mobile service provider must submit on-the-ground test data or infrastructure data to verify its coverage map(s) in the challenged area based on the methodology set forth in paragraph (e)(4) of this section. To the extent that a service provider believes it would be helpful to the Commission in resolving a challenge, it may choose to submit other data in addition to the data initially required, including but not limited to either infrastructure or on-the-ground testing (to the extent such data are not the primary option chosen by the provider) or other types of data such as data collected from network transmitter monitoring systems or software or spectrum band-specific coverage maps. Such other data must be submitted at the same time as the primary on-the-ground testing or infrastructure rebuttal data submitted by the provider. If needed to ensure an adequate review, the Office of Economics and Analytics may also require that the provider submit other data in addition to the data initially submitted, including but not limited to either infrastructure or on-the-ground testing data (to the extent not the option initially chosen by the provider) or data collected from network transmitter monitoring systems or software (to the extent available in the provider's network).

* * * * *

■ 4. Amend § 1.7008 by revising paragraph (d)(2) to read as follows:

§ 1.7008 Creation of broadband internet access service coverage maps.

* * * * *

(d)(1) * * *

(2) To the extent government entities or third parties choose to file verified data, they shall follow the same filing process as providers submitting their broadband internet access service data in the data portal. Government entities and third parties that file on-the-ground test data shall submit such data using the same metrics and testing parameters the Commission requires of mobile service providers when responding to a Commission request to verify mobile providers' broadband network coverage with on-the-ground data (*see* 47 CFR 1.7006(c)(1)).

* * * * *

[FR Doc. 2021–16071 Filed 7–27–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 12–375, FCC 21–60; FRS 35679]

Rates for Interstate Inmate Calling Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this Fifth Further Notice of Proposed Rulemaking, the Commission seeks to obtain detailed comment to enable it to make further progress toward ensuring that the rates, charges, and practices for and in connection with interstate and international inmate calling services meet applicable statutory standards. The Commission seeks comment about the provision of functionally equivalent communications services to incarcerated people with hearing and speech disabilities and whether the Commission should expand inmate calling services providers' reporting requirements to include all accessibility-related calls. The Commission also seeks comment on issues regarding the setting permanent interstate and international rate caps for calling services to incarcerated people; potential reforms to the treatment of site commission payments, including whether the Commission should preempt state and local laws imposing legally-mandated site commission payments; on providers' costs to serve different types of facilities; on how it should reform its rules permitting certain types of ancillary service charges in connection with interstate or international calling services and on how it should refine its methodology for setting international rate caps; on whether it should adopt an on-going periodic data collection and, if so, whether it should impose specific recordkeeping on providers; and on the characteristics of the bidding market for inmate calling services contracts and the optimal regulatory regime for inmate calling services in view of those characteristics.

DATES: Comments are due August 27, 2021. Reply Comments are due September 27, 2021.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Scott, Disability Rights Office of the Consumer and Governmental Affairs Bureau, at (202) 418–1264 or via email at *michael.scott@fcc.gov* regarding portions of the Fifth Further Notice of Proposed Rulemaking relating specifically to the provision of communications services to incarcerated people with hearing and speech disabilities and Katherine Morehead, Pricing Policy Division of the Wireline Competition Bureau, at (202) 418–0696 or via email at *katherine.morehead@fcc.gov* regarding other portions of the Fifth Further Notice of Proposed Rulemaking.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fifth Further Notice of Proposed Rulemaking, FCC 21–60, released May 24, 2021. This summary is based on the public redacted version of the document, the full text of which can be obtained from the following internet address: *https://docs.fcc.gov/public/attachments/FCC-21-60A1.pdf.*

I. Introduction

1. Unlike virtually everyone else in the United States, incarcerated people

have no choice in their telephone service provider. Instead, their only option typically is to use a service provider chosen by the correctional facility, and once chosen, that service provider typically operates on a monopoly basis. Egregiously high rates and charges and associated unreasonable practices for the most basic and essential communications capability—telephone service—impedes incarcerated peoples' ability to stay connected with family and loved ones, clergy, and counsel, and financially burdens incarcerated people and their loved ones. Never have such connections been as vital as they are now, as many correctional facilities have eliminated in-person visitation in response to the COVID–19 pandemic.

2. The Commission adopts a Fifth Further Notice of Proposed Rulemaking (FNPRM) to obtain evidence necessary to make further progress toward accomplishing the critical work that remains. To that end, this document seeks more detailed comments from stakeholders, including but not limited to, about the provision of communications services to incarcerated people with hearing and speech disabilities; the methodology to be employed in setting permanent interstate and international rate caps; general reform of the treatment of site commission payments in connection with interstate and international calls; the adoption of an on-going periodic cost data collection to ensure rates are just and reasonable; and additional reforms to its ancillary service charges rules.

3. The Commission expects today's actions to have immediate meaningful and positive impacts on the ability of incarcerated people and their loved ones to satisfy our universal, basic need to communicate. Although the Commission uses various terminology throughout this item to refer to the intended beneficiaries of the actions herein, unless context specifically indicates otherwise, these beneficiaries are broadly defined as the people placing and receiving inmate calling services (ICS) calls, whether they are incarcerated people, members of their family, or other loved ones and friends. The Commission also may refer to them, generally, as consumers.

II. Background

4. Access to affordable communications services is critical for everyone in the United States, including incarcerated members of our society. Studies have long shown that incarcerated people who have regular contact with family members are more likely to succeed after release and have lower recidivism rates. Because correctional facilities generally grant exclusive rights to service providers, incarcerated people must purchase service from ''locational monopolies'' and subsequently face rates far higher than those charged to other Americans.

A. Statutory Background

5. The Communications Act of 1934, as amended (Communications Act or Act) divides regulatory authority over interstate, intrastate, and international communications services between the Commission and the states. Section 2(a) of the Act empowers the Commission to regulate ''interstate and foreign communication by wire or radio.'' This regulatory authority includes ensuring that ''[a]ll charges, practices, classifications, and regulations for and in connection with'' interstate or international communications services are ''just and reasonable'' in accordance with section 201(b) of the Act. Section 201(b) also provides that ''[t]he Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out'' these provisions.

6. Section 2(b) of the Act preserves states' jurisdiction over ''charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service.'' The Commission is thus ''generally forbidden from entering the field of intrastate communication service, which remains the province of the states.'' Stated differently, section 2(b) ''erects a presumption against the Commission's assertion of regulatory authority over intrastate communications.''

7. Section 276 of the Act directs the Commission to prescribe regulations that ensure that payphone service providers, including inmate calling services providers, ''are fairly compensated for each and every completed intrastate and interstate call using their payphone.'' Although the Telecommunications Act of 1996 (1996 Act) amended the Act and ''chang[ed] the FCC's authority with respect to some intrastate activities,'' with respect to section 276, the U.S. Court of Appeals for the District of Columbia Circuit has held that ''the strictures of [section 2(b)] remain in force.'' Accordingly, that court concluded that section 276 does not authorize the Commission to determine ''just and reasonable'' rates for intrastate calls, and that the Commission's authority under that provision to ensure that providers ''are fairly compensated'' both for intrastate and interstate calls does not extend to establishing rate caps on intrastate services.

B. History of Commission Proceedings Prior to 2020

8. In 2003, Martha Wright and her fellow petitioners, current and former incarcerated people and their relatives and legal counsel (Wright Petitioners), filed a petition seeking a rulemaking to address ''excessive'' inmate calling services rates. The petition sought to prohibit exclusive inmate calling services contracts and collect-call-only restrictions in correctional facilities. In 2007, the Wright Petitioners filed an alternative petition for rulemaking in which they emphasized the urgency of the need for Commission action due to ''exorbitant'' inmate calling services rates. The Wright Petitioners proposed benchmark rates for interstate long distance inmate calling services calls and reiterated their request that providers offer debit calling as an alternative option to collect calling. The Commission sought and received comment on both petitions.

9. In 2012, the Commission commenced an inmate calling services rulemaking proceeding by releasing a document seeking comment on, among other matters, the proposals in the Wright Petitioners' petitions and whether to establish rate caps for interstate inmate calling services calls.

10. In the *2013 ICS Order,* in light of record evidence that rates for calling services used by incarcerated people greatly exceeded the reasonable costs of providing those services, the Commission adopted interim interstate rate caps of $0.21 per minute for debit and prepaid calls and $0.25 per minute for collect calls. These interim interstate rate caps were first adopted in 2013 and remain in effect as a result of the vacatur, by the D.C. Circuit, of the permanent rate caps adopted in the *2015 ICS Order.* Under the Commission's rules, ''Debit Calling'' means ''a presubscription or comparable service which allows an Inmate, or someone acting on an Inmate's behalf, to fund an account set up [through] a Provider that can be used to pay for Inmate Calling Services calls originated by the Inmate.'' ''Prepaid Calling'' means ''a presubscription or comparable service in which a Consumer, other than an Inmate, funds an account set up [through] a Provider of Inmate Calling Services. Funds from the account can then be used to pay for Inmate Calling Services, including calls that originate with an Inmate.'' ''Collect Calling'' means ''an arrangement whereby the called party takes affirmative action

clearly indicating that it will pay the charges associated with a call originating from an Inmate Telephone.'' In the First Mandatory Data Collection, the Commission required all inmate calling services providers to submit data on their underlying costs so that the agency could develop permanent rate caps. In 2014, the Commission sought comment on reforming charges for services ancillary to the provision of inmate calling services and on establishing rate caps for both interstate and intrastate calls. Ancillary service charges are fees that providers assess on calling services used by incarcerated people that are not included in the per-minute rates assessed for individual calls.

11. The Commission adopted a comprehensive framework for interstate and intrastate inmate calling services in the *2015 ICS Order,* including limits on ancillary service charges and permanent rate caps for interstate and intrastate inmate calling services calls in light of ''egregiously high'' rates for inmate calling services calls. Because of continued growth in the number and dollar amount of ancillary service charges that inflated the effective price paid for inmate calling services, the Commission limited permissible ancillary service charges to only five types and capped the charges for each: (1) Fees for Single-Call and Related Services—billing arrangements whereby an incarcerated person's collect calls are billed through a third party on a per-call basis, where the called party does not have an account with the inmate calling services provider or does not want to establish an account; (2) Automated Payment Fees—credit card payment, debit card payment, and bill processing fees, including fees for payments made by interactive voice response, web, or kiosk; (3) Third-Party Financial Transaction Fees—the exact fees, with no markup, that providers of calling services used by incarcerated people are charged by third parties to transfer money or process financial transactions to facilitate a consumer's ability to make account payments via a third party; (4) Live Agent Fees—fees associated with the optional use of a live operator to complete inmate calling services transactions; and (5) Paper Bill/Statement Fees—fees associated with providing customers of inmate calling services an optional paper billing statement. The Commission relied on sections 201(b) and 276 of the Act to adopt rate caps for both interstate and intrastate inmate calling services. The Commission set tiered rate caps of $0.11 per minute for prisons; $0.14 per minute for jails with average daily populations of 1,000 or more; $0.16 per minute for jails with average daily populations of 350 to 999; and $0.22 per minute for jails having average daily populations of less than 350. The Commission calculated these rate caps using industry-wide average costs based on data from the First Mandatory Data Collection and stated that this approach would allow providers to ''recover average costs at each and every tier.'' The Commission did not include site commission payments in its permanent rate caps, finding these payments were not costs reasonably related to the provision of inmate calling services. The Commission also readopted the interim interstate rate caps it had adopted in 2013, and extended them to intrastate calls, pending the effectiveness of the new rate caps, and sought comment on whether and how to reform rates for international inmate calling services calls. At the same time, the Commission adopted a Second Mandatory Data Collection to identify trends in the market and form the basis for further reform as well as an annual filing obligation requiring providers to report information on their current operations, including their interstate, intrastate, and international rates as well as their ancillary service charges.

12. In the *2016 ICS Reconsideration Order,* the Commission reconsidered its decision to entirely exclude site commission payments from its 2015 permanent rate caps. The Commission increased those permanent rate caps to account for claims that certain correctional facility costs reflected in site commission payments are directly and reasonably related to the provision of inmate calling services. The Commission set the revised rate caps at $0.13 per minute for prisons; $0.19 per minute for jails with average daily populations of 1,000 or more; $0.21 per minute for jails with average daily populations of 350 to 999; and $0.31 per minute for jails with average daily populations of less than 350.

C. Judicial Actions

13. In January 2014, in response to providers' petitions for review of the *2013 ICS Order,* the D.C. Circuit stayed the application of certain portions of the *2013 ICS Order* but allowed the Commission's interim rate caps to remain in effect. Later that year, the court held the petitions for review in abeyance while the Commission proceeded to set permanent rates. In March 2016, in response to providers' petitions for review of the *2015 ICS Order,* the D.C. Circuit stayed the application of the *2015 ICS Order*'s permanent rate caps and ancillary service charge caps for Single Call Services while the appeal was pending. Single-Call Services mean ''billing arrangements whereby an Inmate's collect calls are billed through a third party on a per-call basis, where the called party does not have an account with the Provider of Inmate Calling Services or does not want to establish an account.'' Later that month, the court stayed the application of the Commission's interim rate caps to intrastate inmate calling services. In November 2016, the D.C. Circuit also stayed the *2016 ICS Reconsideration Order,* pending the outcome of the challenge to the *2015 ICS Order.*

14. In 2017, in *GTL* v. *FCC,* the D.C. Circuit vacated the permanent rate caps adopted in the *2015 ICS Order.* First, the panel majority held that the Commission lacked the statutory authority to cap intrastate calling services rates. The court explained that the Commission's authority over intrastate calls is, except as otherwise provided by Congress, limited by section 2(b) of the Act and nothing in section 276 of the Act overcomes this limitation. In particular, section 276 ''merely directs the Commission to 'ensure that all providers [of calling services to incarcerated people] are fairly compensated' for their inter- and intrastate calls,'' and it ''is not a 'general grant of jurisdiction' over intrastate ratemaking.'' The court noted that it ''need not decide the precise parameters of the Commission's authority under § 276.''

15. Second, the D.C. Circuit concluded that the ''Commission's categorical exclusion of site commissions from the calculus used to set [inmate calling services] rate caps defie[d] reasoned decision making because site commissions obviously are costs of doing business incurred by [inmate calling services] providers.'' The court noted that some site commissions were ''mandated by state statute,'' while others were ''required by state correctional institutions'' and were thus also a ''condition of doing business.'' The court directed the Commission to ''assess on remand which portions of site commissions might be directly related to the provision of [inmate calling services] and therefore legitimate, and which are not.'' The court did not reach the providers' remaining arguments ''that the exclusion of site commissions denies [them] fair compensation under [section] 276 and violates the Takings Clause of the Constitution because it forces providers to provide services below cost.'' Instead, the court stated

that the Commission should address these issues on remand when revisiting the categorical exclusion of site commissions. Judge Pillard dissented from this view, noting that site commissions are not legitimate simply because a state demands them.

16. Third, the D.C. Circuit held that the Commission's use of industry-wide averages in setting rate caps was arbitrary and capricious because it lacked justification in the record and was not supported by reasoned decision making. Judge Pillard also dissented on this point, noting that the Commission has ''wide discretion'' under section 201 of the Act to decide ''which costs to take into account and to use industry-wide averages that do not necessarily compensate 'each and every' call.'' More specifically, the court found the Commission's use of a weighted average per-minute cost to be ''patently unreasonable'' given that such an approach made calls with above-average costs unprofitable and thus did ''not fulfill the mandate of § 276 that 'each and every' '' call be fairly compensated. Additionally, the court found that the *2015 ICS Order* ''advance[d] an efficiency argument—that the larger providers can become profitable under the rate caps if they operate more efficiently—based on data from the two smallest firms,'' which ''represent[ed] less than one percent of the industry,'' and that the *Order* did not account for conflicting record data. The court therefore vacated this portion of the *2015 ICS Order.*

17. Finally, the court remanded the ancillary service charge caps. The D.C. Circuit held that ''the Order's imposition of ancillary fee caps in connection with interstate calls is justified'' given the Commission's ''plenary authority to regulate interstate rates under § 201(b), including 'practices . . . for and in connection with' interstate calls.'' The court held that the Commission ''had no authority to impose ancillary fee caps with respect to intrastate calls.'' Because the court could not ''discern from the record whether ancillary fees can be segregated between interstate and intrastate calls,'' it remanded the issue so the Commission could determine whether it could segregate ancillary fee caps on interstate calls (which are permissible) and on intrastate calls (which are impermissible). The court also vacated the video visitation annual reporting requirements adopted in the *2015 ICS Order.*

18. In December 2017, after it issued the *GTL* v. *FCC* opinion, the D.C. Circuit in *Securus* v. *FCC* ordered the *2016 ICS Reconsideration Order* ''summarily vacated insofar as it purports to set rate caps on inmate calling service'' because the revised rate caps in that *2016 ICS Reconsideration Order* were ''premised on the same legal framework and mathematical methodology'' rejected by the court in *GTL* v. *FCC.* The court remanded ''the remaining provisions'' of that *Order* to the Commission ''for further consideration . . . in light of the disposition of this case and other related cases.'' As a result of the D.C. Circuit's decisions in *GTL* and *Securus,* the interim rate caps that the Commission adopted in 2013 ($0.21 per minute for debit/prepaid calls and $0.25 per minute for collect calls) remain in effect for interstate inmate calling services calls.

D. 2020 Rates and Charges Reform Efforts

19. In February 2020, the Wireline Competition Bureau (Bureau or WCB) issued a document seeking to refresh the record on ancillary service charges in light of the D.C. Circuit's remand in *GTL* v. *FCC.* This document was published in the **Federal Register**. In the *Ancillary Services Refresh Public Notice,* the Bureau sought comment on ''whether each permitted [inmate calling services] ancillary service charge may be segregated between interstate and intrastate calls and, if so, how.'' The Bureau also sought comment on any steps the Commission should take to ensure, consistent with the D.C. Circuit's opinion, that providers of interstate inmate calling services do not circumvent or frustrate the Commission's ancillary service charge rules. The Bureau also defined jurisdictionally mixed services as '' '[s]ervices that are capable of communications both between intrastate end points and between interstate end points' '' and sought comment on, among other issues, how the Commission should proceed if any permitted ancillary service is ''jurisdictionally mixed'' and cannot be segregated between interstate and intrastate calls.

20. In August 2020, the Commission responded to the court's remands and took action to comprehensively reform inmate calling services rates and charges. First, the Commission addressed the D.C. Circuit's directive that the Commission consider whether ancillary service charges—separate fees that are not included in the per-minute rates assessed for individual inmate calling services calls—can be segregated into interstate and intrastate components for the purpose of excluding the intrastate components from the reach of the Commission's rules. The Commission found that ancillary service charges generally are jurisdictionally mixed and cannot be practicably segregated between the interstate and intrastate jurisdictions except in the limited number of cases where, at the time a charge is imposed and the consumer accepts the charge, the call to which the service is ancillary is clearly an intrastate call. As a result, the Commission concluded that inmate calling services providers are generally prohibited from imposing any ancillary service charges other than those permitted by the Commission's rules, and providers are generally prohibited from imposing charges in excess of the Commission's applicable ancillary service fee caps.

21. Second, the Commission proposed rate reform of the inmate calling services within its jurisdiction. As a result of the D.C. Circuit's decisions, the interim interstate rate caps of $0.21 per minute for debit and prepaid calls and $0.25 per minute for collect calls that the Commission adopted in 2013 remain in effect today. Commission staff performed extensive analyses of the data it collected in the Second Mandatory Data Collection as well as the data in the April 1, 2020, annual reports. In the *2015 ICS Order,* the Commission directed that the Second Mandatory Data Collection be conducted ''two years from publication of Office of Management and Budget (OMB) approval of the information collection.'' The Commission received OMB approval in January 2017, and **Federal Register** publication occurred on March 1, 2017. Accordingly, on March 1, 2019, inmate calling services providers submitted their responses to the Second Mandatory Data Collection. WCB and the Office of Economics and Analytics (OEA) undertook a comprehensive analysis of the Second Mandatory Data Collection responses, and conducted multiple follow-up discussions with providers to supplement and clarify their responses, in order to conduct the data analysis upon which the proposals in the August 2020 document are based. Based on that analysis, the Commission proposed to lower the interstate rate caps to $0.14 per minute for debit, prepaid, and collect calls from prisons and $0.16 per minute for debit, prepaid, and collect calls from jails. In so doing, the Commission used a methodology that addresses the flaws underlying the Commission's 2015 and 2016 rate caps (which used industry-wide averages to set rate caps) and that is consistent with the mandate in section 276 of the Act that inmate calling services providers be fairly compensated for each and every

completed interstate call. The Commission's methodology included a proposed 10% reduction in GTL's costs to account, in part, for seemingly substantially overstated costs. The Commission also proposed to adopt a waiver process that would permit providers to seek waivers of the proposed rate caps on a facility-by-facility or contract basis if the rate caps would prevent a provider from recovering the costs of providing interstate inmate calling services at a facility or facilities covered by a contract. The Commission also proposed ''to adopt a rate cap formula for international inmate calling services calls that permits a provider to charge a rate up to the sum of the inmate calling services provider's per-minute interstate rate cap for that correctional facility plus the amount that the provider must pay its underlying international service provider for that call on a per-minute basis (without a markup).'' The Commission explained that this cap ''would enable inmate calling services providers to account for widely varying costs,'' be consistent with the ''just and reasonable' standard in section 201(b) of the Act, and comport with the ''fair compensation'' provision of section 276 of the Act.

22. In response to the 2020 ICS document, the Commission received over 90 comments and reply comments and 9 economic studies. Filers included providers of calling services to incarcerated people, public interest groups and advocates for the incarcerated, telecommunications companies, organizations representing individuals who are deaf or hard of hearing, and providers of telecommunications relay service.

23. *Intrastate Rate Reform Efforts.* By April 1 of each year, inmate calling services providers file annual reports with the Commission that include rates, ancillary service charges, and site commissions. In an effort to compare interstate inmate calling services rate levels with intrastate rate levels, Commission staff analyzed the intrastate rate data submitted as part of the providers' April 1, 2020, annual reports. Commission staff's review revealed that intrastate rates for debit or prepaid calls exceed interstate rates in 45 states, with 33 states allowing rates that are at least double the Commission's interstate cap and 27 states allowing ''first-minute'' charges that can be more than 25 times that of the first minute of an interstate call. For example, one provider reported a first-minute intrastate rate of $5.34 and additional per-minute intrastate rates of $1.39 while reporting the per-minute interstate rate of $0.21 for the same correctional facility. Similarly, another provider reported a first-minute intrastate rate of $6.50 and an additional per-minute intrastate rate of $1.25 while reporting the per-minute interstate rate of $0.25 for the same correctional facility. Further, Commission staff identified instances in which a 15-minute intrastate debit or prepaid call costs as much as $24.80—almost seven times more than the maximum $3.15 that an interstate call of the same duration would cost.

24. In light of these data, in September 2020, former Chairman Pai and Brandon Presley, then president of the National Association of Regulatory Utility Commissioners (NARUC), jointly sent a letter to the co-chairs of the National Governors Association urging state governments to take action to reduce intrastate rates and related fees. At least one state has enacted a law to reduce intrastate inmate calling services rates and fees, at least one state commenced a regulatory proceeding aimed at reducing intrastate inmate calling services rates and fees, and several states are considering legislation.

III. Fifth Further Notice of Proposed Rulemaking

25. In this document the Commission seeks further evidence and comments from stakeholders to consider additional reforms to inmate calling services rates, services, and practices within its jurisdiction, including permanent rate caps. To that end, the Commission seeks comment on the provision of functionally equivalent communications services to incarcerated people with hearing and speech disabilities, the methodology for establishing permanent rate caps, further reforms to the treatment of site commission payments, including at jails with average daily populations less than 1,000, and revisions to its ancillary service charge rules, among other matters.

A. Disability Access

26. While there are barriers to telecommunications access for incarcerated people, the obstacles are much larger for those who are deaf, hard of hearing, or deafblind, or who have a speech disability. The Commission refers to this class of people generally as incarcerated people with communication disabilities. Because functionally equivalent means of communication with the outside world are often unavailable to incarcerated people with communication disabilities, they are effectively trapped in a ''prison within a prison.'' The ability to make telephone calls is not just important to maintain familial and intimate relationships necessary for successful rehabilitation, but also crucial to allow for communication with legal representatives and medical professionals.

1. Background

27. The Commission first sought comment in 2012 on access to inmate calling services for incarcerated people with communication disabilities. In 2015, the Commission affirmed the obligation of inmate calling services providers, as common carriers, to provide incarcerated people access to ''mandatory'' forms of TRS—TTY-based TRS and speech-to-speech relay service (STS). TTY-based TRS allows an individual with a communication disability to communicate by telephone with another party, such as a hearing individual, by using a text telephone (TTY) device to send text to a communications assistant (CA) over a circuit-switched telephone network. To connect a hearing individual as the other party to the call, the CA establishes a separate voice service link with the hearing party and converts the TTY user's text to speech. The CA listens to the hearing party's voice response and converts that speech to text for the TTY user. STS ''allows individuals with speech disabilities to communicate with voice telephone users through the use of specially trained CAs who understand the speech patterns of persons with speech disabilities and can repeat the words spoken by that person.'' The Commission also amended its rules to prohibit inmate calling services providers from levying or collecting any charge for TRS calls. For TTY-to-TTY calls, which require substantially longer time than voice calls, the Commission limited permissible charges to 25% of the applicable per-minute voice rate.

28. The Commission recognized in the *2015 ICS Order* that other, more advanced forms of TRS, many of which use the internet, had been developed and recognized as eligible for TRS Fund support. For example, video relay service (VRS) makes use of video communications technology to allow individuals whose primary language is American Sign Language (ASL) to communicate in ASL. VRS is a form of TRS that ''allows people with hearing and speech disabilities who use sign language to communicate with voice telephone users through video equipment. The video link allows the [communication assistant] to view and interpret the party's signed conversation and relay the conversation back and forth with a voice caller.'' internet

Protocol Captioned Telephone Service (IP CTS) and its non-internet counterpart, Captioned Telephone Service (CTS), allow a person who is hard of hearing to participate in direct voice communications while receiving captions of the other party's voice—thereby eliminating much of the delay inherent in more traditional forms of TRS. IP CTS is a form of TRS ''that permits an individual who can speak but who has difficulty hearing over the telephone to use a telephone and an internet Protocol-enabled device via the internet to simultaneously listen to the other party and read captions of what the other party is saying.'' And IP Relay enhances traditional text-based relay by making use of the faster transmission speeds offered by the internet. Today, among people with communication disabilities, there is far more demand for these forms of TRS than for TTY-based TRS and STS. In its annual TRS usage projections for TRS Fund Year 2020–21, the TRS Fund administrator projected that interstate usage of TTY-based TRS from July 2020 through April 2021 would total 1,361,038 minutes, and interstate usage of STS for the same period would be 141,313 minutes. Taking account of likely intrastate usage, total usage of TTY-based TRS in this period will not exceed 6 million minutes, and total usage of STS will not exceed 500,000 minutes. Although these statistics are for calendar year 2019, an earlier period, TTY-based TRS usage has been declining over time, and STS usage has not increased significantly in recent years. Therefore, the corresponding intrastate usage statistics for TRS Fund Year 2020–21 are likely to be lower (in the case of TTY-based TRS) or not substantially higher (in the case of STS) than these totals. By contrast, projected usage of VRS for the same period is 140,575,160 minutes (about 23 times the usage of TTY-based TRS) and projected usage of IP CTS is 542,340,606 minutes (about 90 times the usage of TTY-based TRS).

29. The Commission also ''agree[d] with commenters that limiting all inmates with communication disabilities to one form of TRS, particularly what many view as an outdated form of TRS that relies on TTY usage, may result in communication that is not functionally equivalent to the ability of a hearing individual to communicate by telephone.'' However, noting that the newer forms of TRS (other than STS) are not ''mandatory'' for common carriers to provide, the Commission declined to require calling service providers to make them available. Instead, it ''strongly encourage[d] correctional facilities to work with [inmate calling services] providers to offer these other forms of TRS,'' and to ''comply with obligations that may exist under other federal laws, including Title II of the ADA, which require the provision of services to inmates with disabilities that are as effective as those provided to other inmates.'' The Commission stated it would ''monitor the implementation and access to TRS in correctional institutions and may take additional action if inmates with communications disabilities continue to lack access to functionally equivalent service.''

30. In 2015, the Commission sought comment on the accessibility implications of the increasing availability to incarcerated people of video calling and video visitation services. Recognizing that video calling could enable incarcerated sign language users to access and use VRS, as well as communicate directly with other sign language users, the Commission sought comment on the bandwidths and broadband speeds currently used for video visitation, the interoperability of video visitation systems with VRS, the prevalence of VRS access in correctional institutions, and the steps that should be taken to ensure that charges for video calling services offered to deaf incarcerated people are just and reasonable. In 2020, the Commission sought comment more broadly on the needs of incarcerated people with communication disabilities, including whether they have adequate access to TRS, whether additional forms of TRS should be made available by inmate calling services providers, and what the Commission can do to facilitate such access. In response to the 2015 and 2020 ICS documents, the Commission has received information describing the lack of functionally equivalent access to telecommunications services for incarcerated people with communication disabilities. The Commission has also received several individual comments urging it to require more access to communications in correctional facilities and sharing personal experiences with disability access to telecommunications in correctional facilities. As a result of these limitations, the Accessibility Coalition asserts, many incarcerated people with communication disabilities have been unable to stay in contact with their loved ones.

2. Making Modern Forms of TRS Available

31. In light of the comments filed in response to the 2020 ICS document, as well as other evidence, the Commission proposes to amend the Commission's rules to require that inmate calling services providers provide access, wherever feasible, to all forms of TRS that are eligible for TRS Fund support—including (in addition to TTY-based TRS and STS) CTS (a non-internet-based telephone captioning service) and the three forms of internet-based TRS: VRS, IP CTS, and IP Relay. In proposing that inmate calling services providers offer access to all forms of TRS, the Commission does not contemplate that providers would necessarily provide TRS directly. They would only need to ensure that incarcerated people with hearing and speech disabilities can be connected to an existing, authorized provider of the appropriate form of TRS.

32. As the Commission has recognized, ''functional equivalence'' is an evolving standard for the level of communications access that TRS must provide. ''Functional equivalence is, by nature, a continuing goal that requires periodic reassessment. The ever-increasing availability of new services and the development of new technologies continually challenge us to determine what specific services and performance standards are necessary to ensure that TRS is functionally equivalent to voice telephone service.'' The current record confirms the Commission's initial assessment in the *2015 ICS Order* that TTY-based TRS and STS may be insufficient by themselves to ensure functionally equivalent communication for people with communication disabilities. As explained above, among the general population of people with communication disabilities, TTY-based TRS and STS are currently the *least* frequently used forms of relay service. TTY-based TRS is little used today because it is based on an obsolete technology, which is very slow and cumbersome compared with current internet technology. Further, given the availability of VRS, limiting sign-language users to TTY-based TRS unnecessarily precludes them from communicating in their primary language. Similarly, for individuals who are hard of hearing, captioned telephone services such as CTS and IP CTS frequently provide far more efficient and effective means of communication than TTY-based TRS. Further, current transitions to modern IP-based networks have adversely affected the quality and utility of TTY-based communication. In the *2016 RTT Order,* the Commission recognized the limitations of TTY technology in an IP environment, and adopted rules to facilitate a transition from TTY technology to real-time text

(RTT) as a reliable and interoperable universal text solution over wireless IP-enabled networks for people who are deaf, hard of hearing, deafblind, or have a speech disability.

33. Although the Commission has not mandated the provision of the more advanced forms of TRS by state TRS programs or common carriers, their ''non-mandatory'' status does not reflect a lower level of need for these forms of TRS. These forms of TRS are ''non-mandatory'' only in the limited sense that the Commission does not require that they be included in the offerings of Commission-certified state TRS programs (and, in the event that a state does not have a certified TRS program, does not require common carriers in that state to make their own arrangements to provide such relay services). Instead, internet-based TRS are made available by TRS providers operating on a nationwide basis and certified by the Commission. However, *support* for *all* forms of TRS is mandatory for all carriers and VoIP service providers, which must support the provision of these services through mandatory contributions to the TRS Fund. As noted above, among the general population of people with communication disabilities, there is far more demand for ''non-mandatory'' than ''mandatory'' relay services. Further, the comments submitted in response to the 2015 and 2020 ICS documents persuade us that access to commonly used, widely available relay services such as VRS and IP CTS is equally or more important for incarcerated people with communication disabilities than it is for the general population. Further, incarcerated people—unlike the general population—have no ability to connect to a suitable form of TRS on their own. Therefore, to fulfill the statutory TRS mandate with respect to this subset of people with communication disabilities, it appears to be incumbent on the Commission to take additional steps in this proceeding to ensure that they can access those relay services needed for functionally equivalent communication, regardless of the ''mandatory'' or ''non-mandatory'' status of such services as provided in other contexts. The Commission seeks comment on this analysis.

34. *Legal Authority.* As a threshold matter, the Commission seeks comment on the extent of its statutory authority to require inmate calling services providers to provide access to TRS. Section 225 of the Act directs the Commission to ''ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to [individuals with communications disabilities] in the United States,'' and incarcerated people are not excluded from this mandate. To this end, section 225 expressly provides the Commission with authority over common carriers providing intrastate as well as interstate communications services, including the authority to require carriers to provide access to TRS ''to the extent possible.'' Section 225 also expressly requires common carriers to ''provide in compliance with the regulations prescribed under this section, throughout the area in which it offers service, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers.'' Does section 225 authorize the Commission to require that inmate calling services providers provide access to appropriate forms of TRS, as well as to regulate the manner in which such access is provided?

35. As alternative sources of authority, section 255 of the Act requires providers of telecommunications services to ensure that their services are ''accessible to and usable by individuals with disabilities 'if readily achievable.''' Similarly, section 716 of the Act requires providers of advanced communications services (including VoIP services) to ensure that such services are accessible to and usable by individuals with disabilities ''unless [these requirements] are not achievable,'' prohibits such providers from installing ''network features, functions, or capabilities that impede accessibility or usability,'' and authorizes the Commission to adopt implementing regulations. The Commission seeks comment on the extent to which, independently of section 225, these provisions authorize the Commission to require inmate calling services providers to provide access to appropriate forms of TRS.

36. As noted earlier in the accompanying Report and Order, correctional authorities ''exercise near total control over how incarcerated people are able to communicate with the outside world.'' In general, the Communications Act does not provide us with authority to regulate the actions of correctional authorities (except to the extent that they also act as communications service providers or other entities subject to its authority). As a practical matter, therefore, its ability to compel an inmate calling services provider to make additional forms of TRS available in a particular facility may depend, for example, on whether the correctional institution agrees—or is required by other applicable law—to make suitable communications devices and network access available to incarcerated people with disabilities, or to permit a service provider to do so. The Commission seeks comment on the extent to which Title II of the ADA or other federal or state laws require such access. Access to telecommunications for incarcerated people with disabilities may also involve issues of constitutional rights. The Commission also stresses that, although the obligations of inmate calling service providers under any rules the Commission adopts may be limited to measures that are ''feasible'' in the circumstances of a particular correctional facility, the Commission does not propose to preempt other requirements under state or federal law, whether applicable to service providers or correctional authorities, which may expand the scope of access to TRS that would otherwise be deemed ''possible'' under section 225.

37. *Benefits and Costs.* To supplement the current record, the Commission seeks further comment on the benefits and costs of requiring that providers of inmate calling services provide access to all authorized forms of TRS. First, to establish a baseline, the Commission seeks additional, specific information on the extent to which VRS, IP Relay, IP CTS, and CTS are currently being made available in correctional facilities. According to comments on the 2020 ICS document, VRS and IP CTS already have been made available in some correctional facilities. ZP Better Together, LLC, a certified VRS provider, notes that a number of state facilities that allow video visitations also have added VRS and point-to-point video communications for those with accessibility needs. Where available, how are internet-based relay services and CTS provided? Do correctional facilities make arrangements directly with TRS Fund-supported TRS providers to provide these services, or are they accessed through an inmate calling services provider? What kinds of devices are used to access these forms of TRS, and how and by which entities are they provided? Similarly, how is broadband internet access provided to the facility—by arrangement with an inmate calling services provider or some other entity? Where access to additional forms of TRS has been made available, what operational or other challenges were encountered, and how were they addressed?

38. Second, the Commission seeks additional comment on the benefits of making VRS, IP CTS, IP Relay, and CTS available in correctional facilities where they are *not* currently available. As

noted above, the record to date strongly suggests that TTY-based TRS and STS, by themselves, are insufficient to ensure that incarcerated people with communications disabilities have access to functionally equivalent communications. The Commission seeks additional, specific information on how and to what extent each of the other TRS-Fund supported relay services would enhance communications for incarcerated people with communications disabilities. Where available, what specific benefits do these services offer that TTY-based TRS and STS cannot? What communications limitations of TTY-based TRS and STS would be remedied by providing modern relay services? For example, how would access to additional forms of TRS improve communications access for incarcerated people who are deafblind? Should each of these relay services—VRS, IP CTS, IP Relay, and CTS—be available, or would a combination of some of them collectively provide adequate access to telecommunications for incarcerated people with communication disabilities? Would the provision of modern relay services also benefit the people that incarcerated people with communication disabilities want to call?

39. As part of its assessment of the potential benefits of making other forms of TRS available, the Commission also seeks comment on the extent to which, as a practical matter, TTY-based TRS is actually available and usable in correctional facilities. To what extent is access to TTY-based TRS subject to more restrictions (*e.g.,* physical access, limited hours, dependence on correctional staff) than telephone access? For example, to what extent are TTY devices incorporated into the telephones used by the general incarcerated population, or are TTY devices available only upon request? The Commission also seeks comment on the extent to which the TTYs available at correctional facilities are actually functional and capable of making calls. Are TTYs adequately maintained? Further, in light of the incompatibilities between TTYs and IP networks, the Commission seeks comment on the extent to which correctional facilities have upgraded to IP-enabled voice service. For those that have upgraded, how do correctional facilities ensure that incarcerated people with communication disabilities are able to use TTYs successfully? Do incarcerated people with disabilities wishing to use TTY-based TRS encounter difficulties navigating inmate calling services (*e.g.,* accessing the system to complete steps required to make an outgoing call)? What kinds of difficulties are encountered by individuals eligible to use STS? To what extent could such difficulties in using TTY-based TRS and STS be overcome by providing access to other forms of TRS?

40. Third, what security or other issues do inmate calling services providers and correctional facilities face that could be affected by the provision of VRS, IP CTS, IP Relay, and CTS, and how could such issues be effectively addressed? The Commission has recognized that security is a significant concern for inmate calling services generally. However, service providers and correctional facilities have developed methods for effectively monitoring, recording, and administering inmate calls, and some commenters have stated that these solutions are applicable or adaptable to the TRS context. Is there evidence that security issues are more challenging for TRS than for inmate calling services in general, and if so, why? What specific security issues are raised by incarcerated people's access to TRS? Are there specific concerns with respect to VRS, given its use of video? How have security concerns been addressed with respect to TTY-based TRS and STS, and in facilities where VRS is currently available? What measures are available to address such security concerns with respect to other forms of TRS?

41. Fourth, what additional costs would be incurred—and by which entities—in providing access to VRS, IP CTS, IP Relay, and CTS, respectively, for incarcerated people? For example, would inmate calling services providers or other entities incur costs associated with upgrading or modifying existing technology configurations, operations, or associated network infrastructure? To what extent would additional broadband services be needed for transmission and completion of TRS calls, what costs would be involved, and which entity would incur such costs—the correctional institution or the inmate calling services provider? To what extent would additional costs be incurred by TRS providers to provide relay services in correctional facilities? Would it be necessary to provide training to correctional facilities personnel regarding modern TRS, and which entity would incur such costs? To what extent would additional costs be incurred, and by which entity, in ensuring that the provision of VRS, IP CTS, IP Relay, and CTS is secure? The Commission seeks detailed estimates of the costs described above and how they would be incurred—including discussion of the actual costs incurred in those instances where access to some of these forms of TRS is already being provided.

42. The Commission also seeks comment on how the various costs attributable to the provision of TRS access should be recovered. Which, if any, of the additional costs that may be incurred by TRS providers should be treated as eligible for TRS Fund support? To the extent that costs are incurred by inmate calling services providers, to what extent should they be recoverable in generally applicable inmate calling services charges that are subject to Commission regulation? As discussed below, the Communications Act restricts the extent to which parties to a TRS call may be charged for TRS access.

43. *Feasibility, TRS Equipment, and internet Access.* As noted above, its proposed expansion of inmate calling services providers' obligations to provide access to TRS is necessarily conditional on the extent to which associated communications capabilities, such as internet access and suitable user devices, can be made available in a particular correctional facility. The Commission cannot compel providers to provide access to all forms of TRS in those facilities where it is not feasible to do so. The Commission seeks comment on how to determine feasibility in this context and how potential limitations on the availability of internet service and user devices could be addressed and overcome. In order to access relay services, certain hardware is necessary. The Commission notes that people who are deafblind may need devices that have refreshable Braille output or text enlarging capabilities. To access TTY-based relay, a TTY is necessary. For CTS, a telephone with a display suitable for captioning, and compatible with the applicable state-program captioning service, is required. For internet-based forms of TRS, broadband internet access is required, as well as appropriate devices. Various devices may be used for IP CTS, such as a caption-displaying telephone compatible with an IP CTS provider's service, a personal computer, a laptop, a tablet, or a smartphone. IP Relay, similarly, may be accessed using a personal computer, a laptop, a tablet, or a smartphone. Finally, VRS requires a device with a screen and a video camera, such as a standalone videophone, a personal computer, a laptop, a tablet, or a smartphone. Internet-based services (IP Relay, IP CTS, and VRS) also require certain software that is available from TRS providers. With respect to VRS, the Commission requires that any user

devices and associated software distributed by a VRS provider must be interoperable and usable with all VRS providers' services.

44. As a threshold matter, the Commission seeks comment on the extent to which broadband internet access, as well as the various user devices described above, are currently made available in correctional facilities for use by incarcerated people. To what extent are broadband internet access services currently available for use by incarcerated people, and could such services be used to support access to internet-based TRS? For example, the record indicates that remote video visitation, where available, is often provided by an inmate calling service provider. Where an inmate calling service provider or affiliated company is providing video visitation using broadband internet access, is it feasible for the provider to also use such broadband service to provide access to VRS or other forms of internet-based TRS? To what extent are off-the-shelf user devices suitable for internet access, such as personal computers, laptops, tablets, smartphones, or specialized videophones, available to incarcerated people? For VRS, to what extent are video-capable versions of such devices available? To what extent do correctional facilities place restrictions on people with disabilities' access to the internet and internet-capable devices (*e.g.,* physical access, limited hours, dependence on correctional staff) that are not imposed on the use of telephones by hearing people? The Commission also seeks comment on any security issues specific to certain types of equipment that may be used to access TRS. Are such security issues more easily or effectively addressed with certain kinds of video-capable user devices than with others?

45. To what extent is the provision of broadband internet access or TRS-compatible user devices (other than TTYs) by a correctional facility required by the ADA or other laws? Federal prisons and other facilities receiving federal funds are subject to section 504 of the Rehabilitation Act of 1973 and implementing regulations. State and local correctional facilities are subject to Title II of the ADA, 42 U.S.C. 12131 *et seq.,* and implementing regulations adopted by the Department of Justice. For example, public entities must ''furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.'' Such ''auxiliary aids and services'' include ''qualified interpreters on-site or through video remote interpreting (VRI) services; . . . real-time computer-aided transcription services; . . . telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing.'' The Commission invites parties to comment on the extent to which this or other applicable ADA regulations mandate the availability to incarcerated people of appropriate equipment for accessing TRS. To the extent that such access services and devices are *not* otherwise available, should the Commission require inmate calling services providers to provide internet access service or user devices? The Commission also notes that TRS providers frequently distribute suitable user devices to TRS users, although its rules do not permit recovery of device-related costs from the TRS Fund. Should the Commission make TRS Fund support available for the provision of these items by a certified TRS provider to an incarcerated person, as an exception to the cost-recovery prohibition? The Commission seeks comment on the merits, costs, and benefits of these alternatives, and whether the Commission has statutory authority to adopt each of them.

46. To what extent do these feasibility issues implicate the agreements between calling service providers and correctional facilities, and how should the Commission treat such contractual issues in defining providers' obligations? For example, an inmate calling services provider may claim that access to a particular form of TRS is infeasible at a particular facility because the correctional authority has withheld permission for incarcerated people to use that form of TRS—or has withheld permission for the inmate calling services provider or TRS provider to provide internet access or suitable user devices. How should the Commission evaluate such possible defenses? For example, should the Commission require the inmate calling services provider to provide written evidence that the necessary permissions were withheld? Should the Commission require providers to make a good faith effort to secure necessary permissions, and how should a sufficient effort be defined? Should the Commission require the provider to show that it assured the correctional authority of its willingness to abide by reasonable use limitations and security restrictions? If there is sufficient evidence of infeasibility of access to some form of TRS due to the policy of the correctional authority, are there any steps that the Commission could take to encourage the facility to alter its practice? The Commission invites commenters to discuss the Commission's legal authority for any measures advocated in this regard.

3. Application of Existing TRS Rules

47. The Commission seeks comment on whether any modifications of its existing TRS rules may be appropriate in conjunction with expanded TRS access for incarcerated people. In general, the rules governing internet-based forms of TRS are more complex than those applicable to TTY-based TRS. For example, to prevent waste, fraud, and abuse and allow the collection of data on TRS usage, its rules require that people using VRS, IP Relay, or IP CTS be registered with a TRS provider and that such providers submit information on users registered for VRS and IP CTS to a central User Registration Database (User Database). The VRS provider must ''obtain a written certification from the individual responsible for the videophone, attesting that the individual understands the functions of the videophone[,] that the cost of VRS calls made on the videophone is financed by the federally regulated Interstate TRS Fund,'' and that the institution ''will make reasonable efforts to ensure that only persons with a hearing or speech disability are permitted to use the phone for VRS.'' In addition, the VRS provider must collect and submit to the User Database the following information: (1) The VRS provider's name; (2) the telephone number assigned to the videophone; (3) the name and physical address of the institution (and the Registered Location of the phone, if different from the physical address); (4) the type of location where the videophone is placed within the institution; (5) the date of initiation of service to the videophone; (6) the name of the individual responsible for the videophone, confirmation that the provider has obtained the certification described above, and the date the

certification was obtained; and (7) whether the device is assigned to a hearing individual who knows sign language. VRS providers, however, may register videophones maintained by businesses, organizations, government agencies, or other entities and designated for use in private or restricted areas as ''enterprise videophones.'' In lieu of individual registration, should the Commission also permit such enterprise device registration for equipment used by incarcerated people to access IP Relay and IP CTS? Should the information and documents collected by TRS providers for purposes of such enterprise or individual user registration be the same, or different from, the information and documents currently required by its rules? Are additional safeguards necessary for the provision of certain relay services in the inmate calling services context, to prevent waste, fraud, and abuse? What steps should be taken to ensure that compliance with user registration rules or other TRS rules does not create a significant delay for telecommunication access for incarcerated people with disabilities?

48. Should incarcerated people be able to select the TRS provider they wish to use, or should the TRS provider be selected by the inmate calling services provider serving a facility (or by the facility itself)? Should a TRS provider be required to identify inmate calling services calls in their claims for TRS Fund compensation, or to submit additional or different information to the TRS Fund administrator regarding TRS calls involving incarcerated people? To assist the Commission in evaluating the level of service incarcerated people are receiving, and the effectiveness and efficiency of such service, should the Commission require TRS providers to report annually on the provision of TRS to incarcerated people? What kinds of information should be included in such reports—*e.g.,* identification of the correctional facilities served, the number and type of devices provided at each facility, and the number of minutes handled per facility?

49. Are any changes in the Commission's TRS confidentiality rules necessary to address the security concerns of correctional facilities? For example, section 64.604(a) states:

> Except as authorized by section 705 of the Communications Act, 47 U.S.C. 605, CAs [(communications assistants)] are prohibited from disclosing the content of any relayed conversation regardless of content, and with a limited exception for STS CAs, from keeping records of the content of any conversation beyond the duration of a call, even if to do so would be inconsistent with state or local law.

This rule, which the Commission has recognized as fundamental to ensuring that TRS is ''functionally equivalent'' to voice communications and maintaining the trust of TRS users in the TRS program, applies to TRS providers and their CAs but does not expressly impose obligations on other parties, such as an inmate calling services provider that does not employ CAs and is only providing a communications link to an authorized TRS provider. The Commission tentatively concludes that the existing rule does not prohibit an inmate calling services provider or correctional facility from monitoring the transmissions sent and received between an incarcerated person and the TRS provider's CA, in the same way as they monitor other inmate calls, provided that the TRS provider and CA are not directly facilitating such monitoring. The Commission seeks comment on this tentative conclusion. The Commission also seeks comment on whether such monitoring that does not require affirmative steps by the TRS provider or CA is sufficient to ensure that a facility's security needs are protected as effectively as for other inmate calls. The Commission notes that, by monitoring transmissions to and from the incarcerated user's device, without involving the TRS provider, the inmate calling services provider or facility would have access to the entire content of the incarcerated person's conversation with the other party to the call. That is, the inmate calling services provider or facility could monitor the incarcerated person's communication directly, and could monitor the speech of the other party as conveyed in text or ASL video by the TRS CA. To the extent that monitoring permitted by the current rule is insufficient to protect institutional security, the Commission seeks comment on whether there are ways to narrowly address such security needs in order to avoid eroding the legitimate privacy interests of TRS users.

50. The Commission seeks comment on whether any other modifications to its TRS rules are necessary to address the special circumstances that characterize inmate calling services. For example, what, if any, changes are needed in the TRS rules governing the types of calls TRS providers must handle (47 CFR 64.604(a)(3)), the TRS Numbering Directory (47 CFR 64.613, 64.615(a)(1)–(2)), change of default TRS provider (47 CFR 64.630–64.636), and TRS customer proprietary network information (47 CFR 64.5101–64.5111)? In the inmate calling services context, should any of the rules under part 64, subpart F, that currently apply to TRS providers be applicable to inmate calling services providers as well—and if so, which rules?

4. Charges for TRS Calls

51. *Prohibition of Provider Charges for TTY-Based TRS Calls.* In 2015, the Commission amended its rules to state that ''No [inmate calling services] Provider shall levy or collect any charge or fee for TRS-to-voice or voice-to-TTY calls.'' Notwithstanding this rule, some commenters allege that some calling service providers are imposing fees on the receiving end of TTY-based TRS calls placed by incarcerated people. In addition, at least one commenter suggests that incarcerated people with disabilities may be subject to charges for using or accessing the TTY or telephone devices needed to make TRS calls. To prevent circumvention of the rule, advocates and VRS providers have requested that the Commission clarify that it does not allow either party to be charged for a TRS call, or for access to equipment when used to place or receive a TRS call. The Commission seeks additional comment and information on whether, and to what extent, such practices have continued after section 64.6040(b) of the rules became effective, and by which entities—inmate calling services providers or correctional institutions—such charges are being imposed.

52. The Commission notes that, by its terms, section 64.6040(b) prohibits *any* charge for TRS calling, regardless of the person on whom such a charge might be assessed, or whether such a charge is formally applied to the service itself or to a device used to access the service. Prior to the adoption of section 64.6040, other provisions of the rules might have been read to suggest that inmate calling services providers were free to charge the called party for TRS calls. Specifically, in the payphone provisions of the rules, adopted more than 20 years ago, section 64.1330(b) states that ''[e]ach state must ensure that access to dialtone, emergency calls, and telecommunications relay service calls for the hearing disabled is available from all payphones at no charge to the *caller.*'' However, the Commission sees no basis for inferring that the Commission, in adopting section 64.6040, intended an unstated qualification that similarly limits its application to the assessment of charges on the initiator of a call. In any event, the proposed amendment would put to rest any conceivable doubt that inmate calling services providers are prohibited

from charging other parties to a TRS call. Nonetheless, to more effectively deter the charging practices described above, the Commission proposes to amend the rule to expressly prohibit inmate calling services providers from levying or collecting any charge on *any* party to a TRS call subject to this rule, regardless of whether the party is the caller or the recipient and whether the party is an incarcerated person or is communicating with such individual, and regardless of whether the charge is formally assessed on the service itself or on the use of a device needed to make the call. The Commission seeks comment on this proposal, including its costs and benefits. The Commission also seeks comment on its legal authority in this regard, including section 225 of the Act, which the Commission relied upon in the *2013 ICS Order,* as well as the interplay with section 276 of the Act.

53. *Provider Charges for Other Forms of TRS.* In light of its proposal above to expand the kinds of relay services that incarcerated people are able to access, the Commission also proposes to amend section 64.6040 to prohibit inmate calling service providers from charging for other forms of TRS to which an inmate calling services provider provides access. The Commission seeks comment on the costs, benefits, and statutory authority for this proposal.

54. To the extent that incarcerated people currently have access to forms of TRS not currently covered by the ban on TRS charges, the Commission seeks comment on the extent to which callers or called parties are currently being charged for such TRS calls, and whether such charges are assessed by the inmate calling services provider, the correctional facility, the TRS provider, or another entity. Are the same charges assessed for all types of TRS calls allowed at a given correctional facility, or only some? If certain charges are only being assessed for some types of TRS, which types are being assessed? If charges are imposed on either party for relay calls, what justification, if any, is proffered for imposing such charges? Are incarcerated people with communication disabilities being charged to access equipment needed to make relay calls? If so, how are they being charged (*e.g.,* per use, or per minute), and how much are they being charged? Are there any comparable charges for the use of telephones in correctional facilities? Which entities impose charges for the use of relay equipment in correctional facilities, and what justification, if any, is proffered for such charges? Where charges are *not* imposed for calls involving such additional forms of TRS, how are costs attributable to such calls currently being recovered, and how should they be recovered?

55. To the extent that the Commission has discretion to permit calling service providers to assess charges for non-TTY TRS, to what extent should such charges be allowed? Should the Commission allow charges for some forms of TRS and not others? For example, while VRS cannot be used for video communication unless the user knows sign language, CTS and IP CTS have no similar inherent barriers to use—and consequently are more susceptible to abuse by ineligible users. Could requiring the free provision of CTS and IP CTS create an undesirable incentive for ineligible incarcerated people to place calls using such relay services, simply to avoid the applicable charges for using non-TRS inmate calling services? Are correctional facilities able to effectively mitigate such risks? Should any allowed charges be calibrated, like TTY-to-TTY calls, to take into account that VRS, IP Relay, IP CTS, or CTS calls, like TTY-to-TTY calls, are of longer duration than ''functionally equivalent'' calls using ''voice communications services''? On this point, the Commission invites commenters to submit evidence regarding the relative duration of various kinds of TRS calls and voice calls.

56. *Correctional Institution Charges.* Regarding charges for the use of relay services (whether TTY-based or modern) or related user devices or access services that are imposed directly by a correctional facility, rather than by an inmate calling services provider, the Commission seeks comment on whether the Commission has authority to regulate or prohibit such charges, either directly or indirectly, the source of any such authority, and how any such rules should be structured. The Commission also seeks comment on the legality of such charges under other laws, including other titles of the ADA.

5. Direct Video Communication by Incarcerated People With Communication Disabilities

57. *Availability of Direct Communication.* Many incarcerated people with communication disabilities have family and loved ones who also have communication disabilities. Communication with these people requires direct communication without TRS. This is a particular concern for incarcerated persons who are deaf and whose primary language is ASL. For these individuals, direct communication in their primary language requires direct video communication. To facilitate direct communication among ASL users, the Commission has long required VRS providers to handle point-to-point calls between a registered VRS user and another ASL user with an assigned VRS telephone number. Further, the record indicates that the number of correctional facilities that allow some form of direct video communication by incarcerated people has grown in recent years.

58. Because of the key role of video communications for ASL users, because VRS providers are already set up to provide direct video service in conjunction with VRS, and because the equipment and internet connection needed for VRS is also sufficient for direct video, the Commission proposes to require that, wherever inmate calling services providers provide access to VRS, they also provide access to direct video service, through a VRS provider or by another effective method. The Commission seeks comment on this proposal, including its costs and benefits and relevant sources of statutory authority. The Commission invites commenters to provide additional information on specific benefits that direct video communication provides, beyond those offered by VRS. In terms of benefits, costs, and feasibility, what are the differences between video visitations, which some facilities currently allow, and direct video communications using VRS provider networks? Is one form of direct video communication generally more available than the other? What are the security concerns, and related costs, with providing direct video communication in ASL using broadband internet in correctional facilities? How can such concerns be effectively addressed to increase the availability of direct video communication to incarcerated people with disabilities?

59. With respect to direct *text-based* communication for incarcerated people with disabilities, the record is insufficient for us to formulate a proposed rule. What kinds of direct text-based communication services—such as SMS messaging and real-time text—are currently available to incarcerated people with disabilities, and to what extent? Do direct text communications raise security concerns, and if so, how can they be addressed to enable increased availability of text communication to incarcerated people with communication disabilities?

60. *Charges for Direct Communication.* The Commission's current rules limit the rates charged by inmate calling services providers for TTY-to-TTY calls to no more than 25% of the rates they charge for traditional

inmate calling services. The Commission invites comment on whether and how to expand the scope of this rule to include charges for other types of direct communications.

61. First, the Commission seeks additional information on current charging practices for other types of direct communications by incarcerated people with communication disabilities. With respect to direct video communication that is currently available in correctional facilities, are incarcerated people being charged for such calls, and if so, how much? Are different charges currently applied to point-to-point videophone calls by sign-language-using individuals with communication disabilities than for video visitation by other incarcerated people? How do charges for direct video communication and video visitation compare with charges for voice telephone calls? Regarding direct text services for incarcerated people with communication disabilities, are there charges for such services? If so, what are the rates? Are there differences in how much incarcerated people with communication disabilities are charged to engage in direct text communication and how much other incarcerated people are charged for similar services?

62. The Commission invites comment on whether the Commission should impose limits on the charges that may be assessed for direct video communications by ASL users, as well as the costs and benefits and its statutory authority for regulating such charges. Are such limits justified by fairness and nondiscrimination considerations, such as those underlying the TTY-pricing rule? For example, should the Commission require that an inmate calling services provider's charges for direct video communication by an incarcerated ASL user should be no greater than the provider's charges for a voice call of equivalent duration? Are similar limits needed and appropriate for direct text communication by people with communication disabilities?

6. Accessibility-Related Reporting

63. As a part of the Commission's Annual Reporting and Certification Requirement, inmate calling services providers are required to submit certain information related to accessibility: (1) ''[t]he number of TTY-based Inmate Calling Services calls provided per facility during the reporting period''; (2) ''[t]he number of dropped calls the . . . provider experienced with TTY-based calls''; and (3) ''[t]he number of complaints that the . . . provider received related to[,] *e.g.,* dropped calls, [or] poor call quality[,] and the number of incidents of each by TTY and TRS users.'' Inmate calling services providers must submit annual reporting and certifications forms to the Commission by April 1 of each year. Required information to submit include international, interstate, and intrastate inmate calling services rates and ancillary service charges. In the *2015 ICS Order,* the Commission concluded that tracking TTY-based calls would not be overly burdensome because: (1) TTY-based TRS calls make up only a small portion of inmate calling services calls; and (2) the need for specialized equipment or calling a designated TRS number (such as 711), or both, makes tracking easier. The Commission also found the burdens of reporting TTY-based calls to be far outweighed by the benefits of greater transparency and heightened accountability on the part of inmate calling services providers. In the same order, the Commission established a safe harbor, allowing inmate calling services providers to avoid TRS-related reporting obligations if: (1) The provider operates in a facility that allows additional forms of TRS beyond those already mandated by the Commission, or (2) the provider has not received any complaints related to TRS calls. Although the TRS-related reporting may not be required under this safe harbor, the provider would need to provide a certification from an officer of the company stating which prong(s) of the safe harbor the provider has met. This safe harbor was adopted to help encourage correctional facilities to adopt more modern forms of TRS. Accessibility Coalition requests that the Commission expand the reporting requirement to foster accountability on the part of inmate calling services providers, and to eliminate the safe harbor. Specifically, they ask to include the functionality and status of accessible equipment in correctional facilities in the reporting requirements. At this time, the Commission does not propose a rule on reporting of accessible equipment by inmate calling services providers, pending further information and analysis regarding the current availability of such equipment and the role of inmate calling services providers in providing such equipment. Generally, GTL is opposed to additional data collection on the basis it would create an administrative burden.

64. Given its proposal to expand the types of TRS that inmate calling services providers are required to provide, the Commission seeks comment on whether to expand the inmate calling services providers' reporting requirements to include all other accessibility-related calls. What are the benefits or burdens, including on small entities, of imposing these additional requirements? Has its safe harbor, in fact, driven more correctional facilities to adopt forms of TRS other than TTY-based TRS and STS? If the reporting requirements are expanded to include other types of TRS, should the safe harbor be modified so that inmate calling services providers can avoid TRS-related reporting obligations only if they have not received complaints related to TRS calls? Alternatively, should the Commission eliminate the safe harbor and require all inmate calling services providers to report the required information?

B. Permanently Capping Provider- and Facility-Related Rate Components

1. Overall Methodology

65. The Commission seeks comment on what methodology the Commission should use to permanently cap provider-related rate components for interstate and international inmate calling services. In the Report and Order the Commission adopts today, the Commission uses data from the Second Mandatory Data Collection to establish zones of reasonableness from which the Commission selects separate interim provider-related rate caps for prisons and larger jails. Although those data are more than sufficient to support the interim rate caps, the Commission recognizes that more disaggregated, consistent and uniformly reported data will be needed for us to set permanent rate caps for interstate and international inmate calling services that more accurately reflect the cost of providing inmate calling services, including to jails with average daily populations less than 1,000. Accordingly, the Commission establishes another Mandatory Data Collection to enable us to obtain those data.

66. The Commission seeks comment on how the Commission should use the data from the Mandatory Data Collection in establishing permanent provider-related rate caps for interstate and international inmate calling services. Should the Commission use those data to calculate industry-wide mean contract costs per paid minute of use, and the associated standard deviation, in the provision of calling services to incarcerated persons? Should the Commission, instead, analyze costs at the facility level, which seems necessary to capture potential differences in costs associated with smaller facilities? If so, how would the Commission do that if providers keep

their costs only on a contract basis? Does that fact suggest that, for any particular contract, so long as the permanent rate caps enable the provider to recover the contract costs for interstate and international services without regard to the different facilities comprising the contract, the caps would be consistent with the fair compensation provision of section 276 of the Act? Or should the Commission use an alternative methodology and, if so, what methodology should the Commission use?

67. The Commission also seeks comment on whether the Commission should employ a zone of reasonableness approach in establishing permanent rate caps. If so, should the Commission establish separate zones of reasonableness for prisons, larger jails, and jails with average daily populations less than 1,000? Or should the Commission use different groupings of facilities? Precisely how should the Commission establish the upper and lower bounds of the zones of reasonableness for each group of facilities? Should the Commission follow the approach set forth in the Appendices to the Report and Order in developing the database that the Commission use to set any upper and lower bounds? If not, what alternative approach should the Commission take? What other steps, if any, should the Commission take to make sure that any upper and lower bounds reflect the costs of providing interstate and international inmate calling services? And what criteria should the Commission use in picking interstate rate caps from within those zones? How should the Commission determine permanent rate caps if the Commission does not use a zone of reasonableness approach? Should the Commission set the caps at its best estimates of industry-wide mean costs per paid minute of use plus one standard deviation or should the Commission use another methodology? And, if so, what methodology should the Commission use?

68. The Commission's rules preclude providers from imposing on consumers of interstate inmate calling services any charges other than per-minute usage charges and the permissible ancillary services fees. The Commission invites comment on whether the Commission should consider alternative rate structures, such as one under which an incarcerated person would have a specified—or unlimited—number of monthly minutes of use for a predetermined monthly charge. Should providers be permitted to offer different options of rate structures as long as one of their options would ensure that all consumers of inmate calling services have the ability to choose a plan subject to the Commission's prescribed rate caps? Would such an optional rate structure benefit incarcerated persons and their families? For example, incarcerated people and their families enjoy free telephone calling in New York City and San Francisco for calls made from jails. Or would a different alternative rate structure be preferable? Securus requests that the Commission adopt a waiver from per minute requirements to allow ICS providers to establish alternative rate-based pilot programs to allow families the option of utilizing a flat rate plan. Securus also requests that the Commission adopt a presumption in favor of granting such waiver requests upon a showing that the alternative rate plan would result in a lower effective rate than the interim provider-related per minute rate caps. The Commission seeks comment on whether the Commission should adopt such a waiver process, including the presumption Securus seeks. What incremental costs, if any, would providers incur to develop an alternative rate structure and implement it on an ongoing basis? The Commission asks interested parties to address the relative merits of different rate structures and their impact on calling services consumers and providers.

2. Provision of Service to Jails With Average Daily Populations Below 1,000

69. In 2020, the Commission sought comment on its proposal to adopt a single interstate rate cap for prisons and a single interstate rate cap for jails. The Commission asked, however, whether there are differences in providers' costs to serve different types of facilities, and, if so, how it should take those differences into account in setting interstate rate caps for different types of facilities. The Commission now seeks to expand the record on these matters.

70. The available data do not make clear how, if at all, jail size affects the costs providers incur in providing inmate calling services. Securus asserts that jail size is a ''critical cost factor'' in providing calling services to incarcerated people, identifying jails with average daily populations less than 1,000 as being the most costly to serve. The National Sheriffs' Association, for example, contends that there are a number of factors that result in jails with fewer incarcerated people having higher costs per minute, noting that jails are typically operated by local jurisdictions that are under the authority of the county government or an elected sheriff, and that jails lack the economies of scope and scale of federal or state prisons. The National Sheriffs' Association's 2015 survey shows, in general, that jails with larger average daily populations have lower per-minute costs than jails with average daily populations less than 1,000, but even if this is the case, would the fact that the jails themselves may have higher costs make providers' costs to provide service at jails with fewer incarcerated people any higher? Pay Tel's outside consultant argues that ''some locations, particularly small jails, have characteristics that make them more costly for an [inmate calling services] provider to serve, and that the higher level of costs precludes any ability to pay site commissions.'' Is this the case for other providers as well? High turnover rates may play a role, as Pay Tel explains, because ''the cost of establishing service or 'selling' to a new customer is greater than the cost of continuing to service or maintain an existing customer.'' But to the extent providers are able to recover the cost of account setup and funding through ancillary service fees, how does setting up new accounts for newly incarcerated people differ in any material way from funding existing accounts?

71. The Commission seeks comment on the particular factors that result in higher costs of serving jails having average daily populations below 1,000 and ask commenters to address how the Commission should take those factors into account in setting permanent interstate rate caps using data from the upcoming Mandatory Data Collection. Are there characteristics that are consistent across all jails with average daily populations less than 1,000 and that contribute to making those facilities more costly to serve on a per-minute basis? What factors affect providers' costs of serving these jails? Are the characteristics that make it more costly to serve these jails related to size, geography, state or local law, or other factors? Does the length of the average incarcerated person's stay influence providers' costs of serving jails having average daily populations below 1,000 and, if so, how? What one-time costs, if any, do providers incur when first offering service to a newly incarcerated person that differ from the costs of the services permitted under its ancillary services rules? What is the effect of turnover of incarcerated people in jails with average daily populations less than 1,000 on a provider's cost to serve that jail? Finally, are there other cost categories, such as account setup, customer service, or refund processing, that the Commission should consider in

determining appropriate rate caps for jails having average daily populations below 1,000? Commenters are asked to share any additional information that may be relevant for the Commission to consider in establishing new permanent rate caps for jails with average daily populations less than 1,000 vis-à-vis larger jails.

72. The Commission also seeks comment on how its methodology for setting permanent interstate rate caps can quantify the factors that make jails with average daily populations less than 1,000 more costly to serve than prisons and larger jails. What steps should the Commission take to distinguish the direct costs of serving these jails from the direct costs of serving prisons and larger jails? How can the Commission ensure that jails with average daily populations less than 1,000 are allocated an appropriate proportion of providers' common costs? Should the Commission use a combination of allocation methods to apportion those costs among facilities and, if so, what allocation methods should the Commission use?

73. Finally, the Commission seeks comment whether the current definition of the average daily population sufficiently addresses fluctuations in jail populations and variations in how correctional facilities determine average daily populations. Currently, its rules define the average daily population as ''the sum of all inmates in a facility for each day of the preceding calendar year, divided by the number of days in the year.'' However, the record suggests that average daily populations may fluctuate, and ''[v]arious states and localities track these numbers differently.'' Should the Commission modify the definition and if so, how? What other steps, if any, should the Commission take to ensure that average daily populations are determined on a consistent basis for all correctional facilities?

3. Correctional Facility Costs

74. In the Report and Order the Commission adopts today, the Commission reforms, on an interim basis, the current treatment of site commission payments related to inmate calling services for prisons and larger jails based on the record before us. The Commission uses the term ''larger jails'' to refer to facilities with average daily populations greater than or equal to 1,000. The Commission permits recovery of payments or portions of site commission payments mandated by federal, state or local law or regulation (legally mandated) and those resulting from contractual obligations imposed by correctional facilities or agencies (contractually prescribed). For legally mandated site commission payments, the Commission permits providers to pass through these payments to consumers, without any markup, up to a maximum total interstate rate of $0.21 per minute. For contractually prescribed payments, the Commission adopts a new interim rate component of up to $0.02 per minute for both prisons and larger jails. The Commission refrains from including jails with average daily populations less than 1,000 from today's interim rate cap reforms because the Commission finds the record information insufficient to reasonably consider such reforms, including for discretionary site commission payments, at this time. The Commission seeks comment to supplement the record to account for this fact, specifically with respect to facility costs reflected in site commission payments. The Commission seeks broad comment on potential site commission reforms with respect to all correctional facilities. ICSolutions requests that the Commission require in-kind site commission payments to be explicitly stated on consumer bills. The Commission seeks comment on this request. Would such a requirement be administratively difficult and confusing to consumers? The Commission also seeks more targeted data and detailed information that would better enable us to undertake further reforms in how providers recover site commission payments going forward, especially for jails with average daily populations less than 1,000, if permitted at all, that are legitimately related to, and necessary for, the provision of inmate calling services. Although in some places the Commission uses the term ''smaller jails'' to refer to facilities with average daily populations less than 1,000, that usage is not meant to imply that such jails are small in any absolute sense.

75. In *GTL* v. *FCC,* the court left it to the Commission to determine ''*which portions* of site commissions *might be directly related to the provision of ICS and therefore legitimate,* and which are not.'' As the Commission explained in 2020, site commissions have two components: Compensating facilities for the costs they incur in providing inmate calling services and compensating the facilities for the transfer of market power over inmate calling services from the facilities to the providers. Prior to the *2016 ICS Reconsideration Order,* the Commission viewed these payments solely as an apportionment of profits between providers and correctional facility owners even though it recognized some portion of site commission payments may be attributable to legitimate facility costs. In the *2016 ICS Reconsideration Order,* the Commission recognized that ''some facilities likely incur costs that are directly related to the provision of [inmate calling services],'' and determined that ''it is reasonable for those facilities to expect [inmate calling services] providers to compensate them for those costs . . . [a]s a legitimate cost of [inmate calling services].'' But, as the Public Interest Parties' expert explains, it is ''difficult to disentangle which part of the site commission payment goes towards reasonable costs and which portion is due to the transfer of market power.'' Even the National Sheriffs' Association acknowledges that some portion of site commission payments are ''locational rents,'' while other parts may be attributable to other factors. How and where should the Commission draw the line between legitimate and illegitimate portions of site commissions? The Commission seeks comment on the specific costs that the Commission should consider to be legitimate for recovery through site commission allowances as the Commission moves from the interim steps the Commission takes today to a more permanent policy. Specifically, what costs are directly related to, and necessary for, the provision of inmate calling services? What costs are too attenuated or indirect to be directly related to the provision of inmate calling services? Commenters should be as specific as possible in describing specific costs or cost categories. If commenters identify categories of costs that they believe are directly related to the provision of inmate calling services, those commenters should identify with specificity what those costs cover and why they would not be incurred but for the fact that inmate calling services are provided at that facility.

76. *Methodology to Estimate Costs.* The Commission also seeks comment on other methodologies to estimate correctional facility costs directly related to the provision of inmate calling services and whether and how the Commission should consider accounting for legitimate facility costs related to inmate calling in the future. Should the Commission continue to permit recovery through an additive per-minute rate component like the interim $0.02 rate component the Commission adopts today for larger jails and prisons? Should the Commission consider some other method of recovery such as a flat fee per billing period or on a per-call basis? The Commission seeks comment, generally, on any other

factors that the Commission should consider in determining legitimate facility-related costs to enable inmate calling services and whether those costs are reflected in site commission payments or recovered by facilities in some other way, and whether it is appropriate to even permit providers to recover those costs from end users of inmate calling services. If they are recovered through other means, how best can the Commission account for that fact so as to ensure there is no double recovery at the expense of incarcerated people and their families?

77. Given the difficulties and complexities evidenced in accounting for and isolating what portion of site commission payments may be related to legitimate facility costs for enabling inmate calling, should the Commission simply consider prohibiting providers from entering into any contract requiring the payment of contractually prescribed site commissions for interstate and international calling services? Would such a prohibition be the best way to ensure incarcerated people and their families do not bear a financial burden that is unrelated to costs necessary to provide their calling services? The Commission believes section 201(b) of the Act provides sufficient authority for us to prohibit such payments. Do commenters agree? What other legal authority does the Commission have to make this determination? Would restricting such payments ensure that providers recover fair compensation pursuant to section 276 of the Act? Would prohibiting such payments eliminate the incentive for facilities to select providers that pay the highest site commissions, even if those providers do not offer the best service or lowest rates? Would prohibiting such payments encourage facilities to allow multiple providers of inmate calling services to serve a given facility, instead of awarding monopoly franchises? Does permitting providers to recover any portion of site commission payments through interstate and international rates decrease incentives of providers to negotiate with facilities to lower or eliminate such payments altogether? The Commission seeks comment on whether contractually prescribed site commissions are commonly paid on intrastate calls. If so, will the ability to charge site commissions on intrastate calls render ineffective any Commission efforts to encourage correctional facilities to prioritize the selection of providers with the best service or lowest rates, rather than those which pay the highest site commission?

78. The Commission seeks comment on legally mandated site commission payments. As Judge Pillard explained in her dissent in *GTL* v. *FCC* and as the United Church of Christ and Public Knowledge emphasize, ''the fact that a state may demand them does not make site commissions a legitimate cost of providing calling services.'' Do commenters agree? Why or why not? If there is a legal requirement to pay site commissions in a state, on what basis could the Commission say that this legal requirement is not recoverable through interstate inmate calling services rates? Should the Commission preempt state or local laws that impose these payments on interstate and international calling services because they interfere with federal policy and its statutory duty to consumers of inmate calling service that their interstate rates be just and reasonable? What effect would such a prohibition have on inmate calling services? How do these various possible approaches comport with sections 201(b) and 276 of the Act, and cases interpreting those provisions, including *GTL* v. *FCC*? Would preventing providers from paying site commissions (or certain types of site commissions) comport with principles of federalism? Should the Commission consider continuing to allow the payment of site commissions but prohibit the recovery of any portion of site commissions in interstate and international rates?

79. *Facility Costs for Jails with Average Daily Populations Less Than 1,000.* Several commenters responding to the 2020 ICS document argue that a $0.02 rate component is inadequate for smaller jails to recover their costs related to inmate calling services. They point to the National Sheriffs' Association 2015 cost survey to support the claim that ''the per minute cost incurred by the vast majority of Sheriffs and jails for security and administrative duties associated with [inmate calling services] greatly exceeds $0.02 per minute.'' Pay Tel contends that a uniform $0.02 allowance for all size facilities is at odds with the Commission's tiered treatment of site commissions in the *2016 ICS Reconsideration Order,* which adopted higher allowances for smaller facilities, based on a finding that those facilities incur higher per-minute costs than larger facilities. Here, commenters suggest that legitimate facility costs related to inmate calling services may indeed be higher for smaller facilities. Unfortunately, they did not provide sufficient evidence to enable us to quantify any such costs.

80. The Commission seeks that comment now. While the National Sheriffs' Association points us to its 2015 survey for evidence that correctional facility costs for smaller facilities are higher, the survey data for jails with fewer incarcerated people varied far too widely to comfortably estimate any values that would withstand scrutiny today. This is particularly the case when even the National Sheriffs' Association itself explains that ''each individual jail facility has its own per minute cost because of differences in officer, supervisor and other employee hours spent on various duties; the compensation rates for officer, supervisors and other employees; and differences in minutes of use,'' and states that in some cases, jails with similar average daily populations have ''significantly different cost per minute.'' The Commission understands there are many potential variables that impact facilities' cost of enabling inmate calling services in addition to size. The Commission seeks detailed comment on those variables, including jail funding sources that may come from state or local government budgets to offset these costs.

81. The Commission seeks comment on what costs, if any, jails with average daily populations less than 1,000 incur related to the provision of inmate calling services that prisons and larger jails may not incur. If costs are indeed higher, either in an absolute sense or on a per-unit basis, at jails with average daily populations less than 1,000, what are the characteristics that make those facilities more costly to serve? Are these characteristics related to geography, state or local law, or other factors, and if so, how should the Commission account for that in its facility-rate component analysis? Are there particular factors or characteristics that are consistent across all jails with average daily populations less than 1,000? The Commission encourages commenters, especially correctional facilities and agencies, to provide detailed descriptions and analyses of the cost drivers for jails with average daily populations less than 1,000.

82. The Commission also seeks comment on the effect of turnover of incarcerated people in jails with average daily populations less than 1,000. The National Sheriffs' Association explains that jails ''contain people who have been arrested and not convicted and, as a result they experience a much greater number of admissions and higher turnover.'' Pay Tel's outside consultant points to data previously submitted by Pay Tel estimating that the average weekly turnover is 62.2% for jails compared with 1.01% for prisons. According to Pay Tel, this turnover impacts both provider and facility costs.

While these turnover costs might lead to increased costs for the provider due to, for example, larger numbers of account setups and larger quantities of called numbers to be vetted, do they similarly increase costs for the facility? If so, how and by how much, and how is that related specifically to inmate calling services? The National Sheriffs' Association explains that the relatively shorter stays in jails with fewer incarcerated people leave correctional facilities with less time to recover their costs from incarcerated people which, in turn, leads to higher ''per inmate cost'' in these jails.'' The Commission seeks detailed comment and analysis on the relationship between turnover and correctional facilities' costs, but more specifically, between turnover and inmate calling service costs. For example, if an intake process requires certain tasks associated with newly incarcerated people, including explaining the availability of inmate calling services, the Commission sees no reason why any portion of the costs of that intake process should be included as a legitimate facility cost related to inmate calling. This is because intake procedures are not specific to the provision of inmate calling services. Facilities incur costs related to these procedures regardless of whether the correctional facility staff explain the availability of inmate calling services. The Commission also seeks data regarding turnover rates and legitimate facility costs unique to jails with average daily populations less than 1,000, if any. The Commission also seeks specific information and comment on how the Commission avoids duplication in cost recovery for inmate calling services-related costs that both facilities and providers say they incur for the same functions. Commenters should be specific in identifying cost categories and providing supporting data for each category.

83. Pay Tel, which ''serves many small facilities,'' indicates that it has experienced increases in site commissions over the last four years, but there is no indication that these increases are attributable to legitimate facility costs related to inmate calling services. What accounts for these increases and why should incarcerated people and their families bear the burdens of these costs when other services are provided to incarcerated people for which they need not pay any fee or rate? Is there any evidence such increases have any relationship to inmate calling services at all except that they are being extracted from an inmate calling services provider? Do these increases reflect other market dynamics, such as providers offering increasingly larger site commissions? Have other providers that serve smaller facilities observed a similar trend? Is this increase attributable to smaller facilities undertaking a greater share of administrative and security tasks that calling providers would ordinarily perform for larger facilities? Are these increases observed at all jails with average daily populations less than 1,000 or only at the jails with the fewest people? Conversely, have other providers experienced a decrease in site commissions at smaller facilities in recent years? If so, what has caused this decrease? The Commission encourages commenters to submit current data and detailed analyses of these increases or decreases and to what they are attributable to enable the Commission to better understand cost causation at these smaller facilities. The Commission also seeks comment on whether providers have sought to pay lower site commissions in connection with inmate calling services and whether such attempts have been rebuffed or successful.

84. Some commenters advocate for a tiered jail structure based on average daily population, with the jails with the fewest incarcerated people receiving the largest per-minute facility-related cost recovery. The Commission seeks comment on whether the Commission should adopt separate tiers that distinguish between jails with average daily populations of less than 350 and somewhat larger jails (*e.g.,* those with average daily populations of 350 to 999). If so, what tiers should the Commission adopts? The Commission previously adopted site commission allowances for tiers that reflected three categories of incarcerated people (*i.e.,* jails with average daily populations below 350; medium-sized jails with average daily populations of 350 to 999; and larger jails). Should the Commission adopt these same tiers or different sizes or number of tiers? If so why? Or would a single tier covering all jails with average daily populations below 1,000 be more appropriate? Alternatively, should the Commission conclude, as certain commenters suggest, that a uniform facility-related allowance is the most appropriate if any such allowance is permitted? Commenters arguing that the Commission should adopt different site commission rate components based on jail size should provide data and supporting analysis for any proposals submitted. Pay Tel and the National Sheriffs' Association ask the Commission to consider the data that are already in the record. But Pay Tel's representation that it has seen upticks in site commission costs at some of the smaller facilities it serves suggests that the landscape has changed since those data became part of the record in this proceeding. The Commission therefore requests renewed data and analysis regarding reasonable inmate calling services costs at facilities with average daily populations between 0 and 999.

85. *Facility Costs for Prisons and Larger Jails.* The Commission also seeks comment on whether the Commission should further reduce or eliminate the $0.02 rate component allowance for contractually prescribed site commissions for prisons, larger jails, or both. The Commission seeks comment on the same questions the Commission poses for jails with average daily populations less than 1,000 regarding what factors impact a facility's legitimate costs to enable inmate calling services. Should the Commission consider different tier sizes for larger jails? For example, the National Sheriffs' Association proposes categorizing the largest jails as those with average daily populations exceeding 2,500. What would be the basis for different-sized tiers for prisons and larger jails? Are there material differences in unit costs that facilities reasonably incur as sizes increase? As explained above in connection with jails with average daily populations less than 1,000, there is record evidence suggesting that small facilities incur higher costs due to turnover of the incarcerated population. Are larger jails and prisons similarly affected by turnover rates? If not, what effect, if any, does turnover have at larger facilities? As the Commission does for jails with average daily populations less than 1,000, the Commission asks commenters to provide data on turnover rates for prisons and larger jails.

86. *Security and Surveillance.* Several commenters argue that facilities' security and surveillance costs should not be recovered through inmate calling services rates as these tasks are ''not related to the provision of communication service and provide no benefit to consumers.'' Others argue that these costs should be recovered through providers' calling rates because correctional facilities incur them to provide incarcerated people with access to inmate calling services. In the survey data the National Sheriffs' Association provided, facilities reported often hundreds of hours a week on security and related administrative functions associated with inmate calling. How can the Commission ensure that these functions are not normal security

functions a facility already incurs? How can the Commission determine to what extent some of these security-related costs are for services that should more appropriately be deemed to be general security services that are added on to inmate calling services but not actually necessary to the provision of the calling service itself? In other words, the Commission seeks to determine if inmate calling service providers are providing two different services to facilities when it comes to these so-called security and surveillance costs: (1) A communication service that enables incarcerated people to make telephone calls; and (2) a separate security service that aids the facility's general security efforts but would more appropriately be paid for directly by the facility rather than by the users of the communications service who receive no benefit from these security features that are unnecessary to enable them to use the calling service. The Commission also notes that the functions described by the National Sheriffs' Association appear to duplicate many of the same security functions for which providers reported costs. What types of security and surveillance functions, if any, are appropriately and directly related to inmate calling? For example, ICSolutions suggests that a basic phone system requires security related to identifying the incarcerated individual placing a call, restricting who that individual can and cannot call, providing the called party with the ability to accept, reject, or block the caller, and providing the facility with the ability to monitor and record calls. This is consistent with the position of Worth Rises, which argues that providers ''have routinely introduced new security and surveillance services that are not required by procuring agencies.'' The United Church of Christ, however, disagrees with ICSolutions's assertions about ''what is considered a minimum necessary service for the consumer, as opposed to the carceral facility.'' ICSolutions suggests that anything more than this is not required for secure calling and that additional products are ''gold-plated offerings.'' What functions should be disallowed as too attenuated to claim as legitimate costs? What methodology would permit the Commission to verify or otherwise isolate telephone calling-related security and surveillance costs from general security and surveillance costs in correctional facilities? Worth Rises cautions that isolating and thus being able to quantify calling-related security and surveillance costs is an important step in determining how, if at all, such costs should be recovered through rates. The Commission seeks comment on how to isolate and quantify these from general security and surveillance costs.

87. *Obtaining Correctional Facility Cost Data.* Several commenters discuss the difficulty in determining facilities' actual costs related to the provision of inmate calling services from examining providers' reported costs. For example, GTL asserts that correctional facilities ''are in the best position to provide information regarding their costs related to [inmate calling services],'' which fall into several generic categories, namely ''administrative security, monitoring investigative, maintenance, and staffing.'' The National Sheriffs' Association again points to its 2015 survey as the most recent data available about correctional facility costs as reported by correctional officials. Are the data from the National Sheriffs' Association survey accurate today regarding the functions and related costs that jails legitimately incur in connection with inmate calling services? The Commission invites the National Sheriffs' Association and others to provide updated data and analysis in this regard. The Commission also seeks comment more broadly on how the Commission can obtain reliable data on correctional facility costs. Are there specific questions the Commission could ask of providers or other stakeholders that would elicit data appropriate to establish a permanent allowance for recovering legitimate facility-related costs that are included in site commission payments? Should the Commission condition any rate element for correctional facility costs on the provision of reliable correctional facility cost data provided to us by the facilities themselves? Or should the Commission specify a default rate cap, similar to the $0.02 per minute that the Commission adopts on an interim basis in the accompanying Report and Order, and disallow recovery of any amount above that default rate cap absent the provision of reliable facility cost data that supports a higher rate cap?

C. Revising Ancillary Service Charges Rules

88. The Commission seeks comment on its current rules for permitted ancillary service charges, and whether the Commission should revisit the rules and the level of charges. Ancillary service charges are fees that providers of calling services for incarcerated people assess on calling services consumers that are not included in the per-minute rates assessed for individual calls. Currently, the Commission allows five types of ancillary service charges in connection with interstate or international inmate calling services:

(1) Fees for Single-Call and Related Services;

(2) Automated Payment Fees;

(3) Third-Party Financial Transaction Fees;

(4) Live Agent Fees; and

(5) Paper Bill/Statement Fees.

89. The Commission has explained that these charges are unchecked by market forces because incarcerated people and their families must either incur them when making a call or forego contact with their loved ones. Ancillary charges have in the past drawn Commission scrutiny and reform because they were excessive and not cost-justified. The record reflects concerns that consumers may still be overpaying ancillary service charges in various ways. The Commission seeks comment on these concerns. Certain providers argue that the Commission need not consider making any changes its ancillary service charge cap rules. Do commenters agree? Why or why not?

90. The record suggests that some providers of inmate calling services may impose ''duplicate transaction costs'' on the same payments, such as charging both an automated payment fee and a third-party financial transaction fee also covering credit/debit card processing fees, for example, when a consumer makes an automated payment to fund its account with the services provider. There appears to be some confusion among industry stakeholders regarding the relationship between the automated payment fee and third-party transaction fees as they relate to credit card processing fees. In connection with automated payment fees, the Commission has suggested that credit card processing fees that providers incur are already included in the automated payment fee, which is capped at $3.00. At the same time, the Commission referred to ''credit card processing fees'' in its discussion of third-party financial transaction fees in the *2015 ICS Order.* The Commission seeks comment on whether the credit card processing fees encompassed in the automated payment fee are the same credit card processing fees referred to in the third-party financial transaction fee. If they are the same, then permitting providers to charge both an automated payment fee and a credit card processing fee when consumers use a credit or debit card to make an automated payment would, indeed, seem to allow for double recovery. And if credit or debit card companies or other third parties are also charging the consumer a fee for using a credit or debit card to fund their account, permitting the services

provider to double recover would mean the consumer might potentially be paying for the same processing fees *three* times. Do commenters agree? Alternatively, is the credit card processing embedded in the automated payment fee related to providers' costs of allowing credit card and debit card payments in the facilities they serve separate and apart from any other fees providers might incur from the third-party financial institution for enabling such payments when third parties are involved in the transaction? Are the ''credit card processing fees'' charged by third parties, such as Western Union, Money Gram, or credit card companies, fees associated solely with transferring *cash* from a consumer's credit card to an incarcerated person's calling account? If so, are those fees passed on to the services provider, or the consumer requesting the cash transfer, or both? If a third-party transaction fee can only be passed on by the provider to the consumer when a third party is directly involved in the transaction with the provider (as opposed to indirectly when the consumer uses its credit or debit card to fund an account or pay a bill using an automated method), when would it be the case that a third-party financial transaction fee is incurred by the provider that could appropriately be passed on to the consumer? The Commission seeks comment on how the Commission should amend its rules to clarify when providers may pass through separate third-party financial transaction fees and when they may not.

91. Alternatively, the Commission seeks comment on whether its rules clearly prohibit services providers from charging an automated payment fee and a third-party financial transaction fee for the same transaction in spite of some providers' apparent confusion. The Prison Policy Initiative argues that ''the Commission's record overwhelmingly indicates that carriers should not be allowed to double-dip by charging an automated payment fee and passing through third-party fees on the same transaction.'' Do commenters agree? As discussed above, if the credit card processing costs associated with the automated payment fee are different than the credit card processing costs inherent in the fee associated with the third-party financial transaction fee, how are providers double-dipping? CPC argues that there is no double-dipping associated with charging an automated payment fee and a third-party financial transaction fee for the same transaction. And GTL asserts that ''[t]he rationale for and purpose of Automated Payment Fees and Third-Party Financial Transaction Fees are therefore distinct; the former cannot substitute for or subsume the latter.'' Do commenters agree with this assertion? Why or why not? Can commenters point us to specific evidence of other forms of double-dipping in the record? Are there other costs embedded in the automated payment and third-party transaction fees that could lead to double recovery? If there is no overlap between the costs recovered in the automated payment fee and the third-party financial transaction fee, on what basis would the Commission say that providers cannot charge both for the same transaction provided that the charges are at or below the applicable caps?

92. Similar to its inquiry above, should the Commission specifically prohibit providers from charging a live agent fee and a third-party financial transaction fee in the same transaction, if no third party is directly involved when the consumer provides the agent with credit or debit card information? The Prison Policy Initiative alleges that at least one provider may be charging ''an automated-payment or live-agent fee *and* passing through its credit- or debit-card processing costs.'' They point to tariff language that appears to couple live agent fees with third-party transaction fees. In the *2015 ICS Order,* the Commission explained that ''interaction with a live operator to complete [inmate calling services] transactions may add to the costs of providing ICS'' recognizing that providers incur costs associated with use of a live operator. But it is unclear from the current record whether third-party costs are involved with all or even some such live agent transactions, or whether such costs are already included in the live agent fee. For example, if the provider uses its own live agents, do such agents ever engage in three-way calls with third parties, such as Western Union or MoneyGram to transfer money to effectuate the transaction? If so, would it be the provider or the consumer that would incur the third-party transaction fee imposed by Western Union or MoneyGram for transferring the money? Even if there were third parties involved, the Commission has been clear that the fee for use of a live agent applies ''regardless of the number of tasks completed in the call.'' Does this suggest that there should be no other fees passed through to the consumer in connection with the use of a live operator? Why or why not? ICSolutions characterizes third-party fees, automated payment fees, and live agent fees as fees related to funding accounts and suggests that the Commission should amend its rules to prevent providers from charging more than one of these types of fees per funding event. Do commenters support this proposal? Why or why not?

93. Finally, the Commission seeks comment on how the Commission can ensure that third parties are involved when third-party financial transaction fees are charged. The Commission has explained that the third-party financial transaction fees necessarily must involve third parties. The Prison Policy Initiative suggests that certain fees characterized as third-party financial transaction fees may not actually involve third parties. In the case of GTL, for example, the Prison Policy Initiative explains that ''the customer makes a payment via GTL's website, thus making only two parties to the transaction.'' The Prison Policy Initiative acknowledges that ''other entities may participate behind the scenes (such as the customer's card issuer and GTL's acquiring bank), but these entities are not directly third parties to the transaction; they are merely agents of the payor and payee.'' Should the Commission amend its rules to require calling service providers to specify the third party involved in the transaction whose fees are being passed through to the consumer? Why or why not? Should the Commission define a third party in its rules as a company that is not related to the calling services provider as ICSolutions suggests? How should the Commission define ''not related'' for purposes of such a rule?

94. The record also reveals that ''15 states now explicitly exclude any automated payment (or deposit) fees from being charged to end users because the costs of automated payments are already factored into the [inmate calling services] provider's direct or indirect costs of providing service.'' What is the basis for these states' decisions to exclude these types of fees? Do providers already include these costs in the cost of providing inmate calling services? To the extent providers claim that it costs more to serve smaller facilities because higher turnover rates result in opening proportionately more new accounts, does this confirm that providers consider the processing of automated payments (necessary to establish a new account) as a cost included in their general inmate calling services accounts? The Commission seeks comment on whether the Commission should similarly prohibit providers from charging automated payment fees. Should the Commission instead reduce such fees to account for the third-party charges embedded in

those fees? If so, what would be the appropriate cap?

95. In the Report and Order, the Commission adopts an interim cap of $6.95 for fees related to single-call services and third-party financial transaction fees based on data provided by the Prison Policy Initiative and acknowledged by other public interest advocates that providers were circumventing the ''pass through without markup'' rule previously in place. NCIC has proposed that the Commission cap the third-party financial transaction fee associated with single-call services at the $3.00 cap for automated payment fees or the $5.95 cap for live agent fees, as applicable. And ICSolutions similarly suggests that the Commission cap third-party fees at the $5.95 live agent fee cap or the $3.00 automated fee cap. As the Commission explains in the Report and Order, however, the record does not contain sufficient evidence to adopt these proposals at this time. The Commission seeks comment on these proposals here. Why would it be reasonable to tie fees for single-call services and/or third-party transaction fees to the caps for automated payment or live agent fees? What is the relationship between these fees? Should the Commission consider adopting two separate caps on third-party financial transaction fees, one for money transfer companies like Western Union and a separate one for credit card companies? Given the evidence provided by the Prison Policy Initiative suggesting that one of the more prevalent money transmitter services charges more than NCIC's proposed caps, on what basis would the Commission adopts NCIC's lower caps? In the absence of a revenue-sharing agreement, do these third parties legitimately charge more than NCIC's proposed caps, and if so, do providers—due to the volume of business conducted with these money transfer companies—have an ability to negotiate lower fees?

96. Relatedly, the Commission remains concerned about the adverse effect of revenue-sharing arrangements between calling service providers and third-party financial institutions. In the *2020 ICS Order on Remand,* the Commission cited evidence that inmate calling services providers have ''entered into revenue-sharing arrangements with third-party processing companies such as Western Union and MoneyGram where a third-party processing company shares its revenues generated from processing transactions for an inmate calling services provider[s]' customers.'' While the Commission sought additional evidence that providers were using revenue-sharing or other arrangements to indirectly mark up ancillary service charge fees, the Commission received relatively little responsive comment. The Commission therefore seeks renewed comment on how revenue sharing arrangements work in the context of ancillary service charges, including concrete evidence of these arrangements. There is evidence in the record that revenue sharing can run from the third party to the calling services provider whereby the third-party provider charges the consumer a fee, which the third party then shares with the providers. The record also suggests that providers may charge the incarcerated person inflated fees and then split the resulting revenue with third parties. Is one scenario more prevalent than the other? How do commenters suggest that the Commission detect these types of practices? Will its adoption of a specific monetary cap—instead of permitting the pass-through of any third-party financial transaction fee—mitigate this issue, or could it still occur even under the adopted caps? Should the Commission adopt a rule disallowing the revenue-sharing arrangements with respect to interstate or international inmate calls or accounts altogether? If so, how should the Commission ensure compliance with such a rule?

97. Certain parties point out that the Commission's present ancillary services charge caps are based on cost data that are over six years old and assert that all ancillary service charge caps should be immediately reduced by 10%. These commenters argue that the caps should also be adjusted in the future based on more current cost data. The Commission seeks comment on these proposals. The Commission notes that the Mandatory Data Collection that the Commission authorizes in the accompanying Report and Order will collect cost data on the permissible ancillary service charges. Should the Commission adjust the ancillary service charge caps based on the new data collection the Commission will receive from the upcoming Mandatory Data Collection? What factors should the Commission consider in evaluating that cost data for ancillary service charges in connection with interstate and international inmate calling services?

98. The Commission asks commenters to address specific factors that the Commission should consider in evaluating the cost data to ensure the Commission addresses and accounts for anomalies that may distort its analysis. The Commission encourages participation, and seek input, from any state public utility commission or similar state regulatory agency colleagues having jurisdiction over inmate calling services based on their expertise setting appropriate ancillary service charge caps.

99. Should the Commission consider revising the ancillary service charge caps on a standard periodic basis? If so, how frequently should the Commission revise those caps and what process should the Commission follow? Commenters should provide the reasoning and justification for their responses. For example, how should the Commission balance related benefits and burdens to all relevant stakeholders and serve the public interest in determining how frequently to update ancillary service charge caps to enable the Commission to continually maintain interstate and international rates and charges that are just and reasonable and provide fair compensation to providers? How frequently should the Commission require providers to file updated ancillary charges cost data to make this possible?

100. The Commission also seeks comment generally on any other matters related to ancillary services that the Commission should consider in reforming its ancillary service charges rules. For example, record evidence suggests that certain providers fail to close accounts and issue refunds to families of incarcerated people when they are released. It appears that some state authorities, such as the Alabama Public Service Commission, have addressed this problem. The Commission are concerned that any unused funds are not refunded to the account holder and invite comment on this issue. Should the Commission adopt a rule requiring automatic refunds after a certain period of inactivity? If so, what timeframe would be appropriate? Should the timeframe vary based on the size and type of facility? If the Commission requires these refunds, how should such refunds be made? Is this issue sufficiently related to setting up an account and making automatic payments that the Commission can address it in its existing ancillary services charges rules, or should the Commission adopt a separate rule to address this issue? The Commission also seeks comment on whether the Commission should add a rule relating to account setup fees to prohibit charging separate fees for establishing an account. Do providers assess separate fees for account setup? The Commission also seeks comment on the issue of dropped calls as it relates to ancillary service charges. Should the Commission amend its rules to prevent providers from assessing the same ancillary

service charge in cases where calls are dropped after a call is successfully connected? For example, should providers be permitted to charge a fee for single-call services if a consumer makes a call that is dropped and then must make another call to finish the conversation? Why or why not? If not, how should the Commission amend its ancillary service charge rules to prevent this? Are there other issues regarding dropped calls in the ancillary services context that the Commission should be aware of? More broadly, are there other practices in which providers engage that the Commission should also consider addressing in the context of its ancillary services rules? If so, the Commission asks commenters to describe such practices in detail and discuss how best the Commission should address them. Finally, the Commission seeks comment on whether fees for single-call services are ''already covered under the other fees applicable to all calls'' as ICSolutions alleges. Do commenters agree with this assertion? If so, how are these fees embedded in the other permitted ancillary service charges? Should the Commission consider eliminating fees for single-call services as a permissible ancillary service charge? Why or why not and on what basis would the Commission do so? NCIC and ICSolutions also mistakenly assume that fees for single-call services are capped at either the $5.95 live agent fee or the $3.00 automated payment fees, but the Commission's rules do not establish these caps in connection with fees for single-call services. Relatedly, should the Commission reduce the cap on fees for single calls as the Prison Policy Initiative asks? If so, what would be an appropriate cap?

D. Refining International Rate Methodology To Prevent Double Counting

101. In the Report and Order, the Commission adopts interim rate caps for international inmate calling services based on a formula that permits a provider to charge a rate up to the sum of the provider's per-minute interstate rate cap for a particular correctional facility plus the amount that the provider must pay its underlying international service provider for that call on a per-minute basis. The interim rate caps for international calls will benefit incarcerated people by lowering the rates for most of their international calls, while allowing providers to recover their costs for those calls. Nonetheless, the Commission is concerned that the new interim rate caps for international calls may be based on an overestimation of the costs providers actually incur in providing international inmate calling services.

102. In particular, the Commission is concerned by the Public Interest Parties' assertion that the interim rate caps for international calls that the Commission sets today may be double counting providers' costs for international calls because such costs are already included in their overall inmate calling services costs that the Commission uses to set interim interstate rate caps. As the Public Interest Parties explain, ''some [inmate calling services] providers reported zero international costs but positive international minutes and revenues [which] suggests that international costs are already included in their total costs, and thus accounted for in the interstate rates.''

103. The Commission seeks comment on this assertion. Do the data reflect such double counting? Is some degree of double counting a natural consequence of the way providers reported their costs associated with international calls as part of their total costs associated with inmate calling services? Despite Public Interest Parties' concerns, the record indicates that some providers separately reported international calling costs in their responses. The Commission anticipates that in the upcoming Mandatory Data Collection, WCB and OEA will require calling service providers to report separately the amounts they pay international service providers for international calls. Will this eliminate the double counting of international inmate calling services costs, to the extent it exists? If not, how should the Commission address this issue if providers do not ordinarily track international call costs separately? What allocation method should providers use to reliably separate their international costs from their interstate costs? The Commission further asks what types of costs should legitimately be considered as additional costs associated with international calls. Do those additional costs include only the charges imposed by international carriers?

104. The Commission also asks commenters to consider other ways in which the Commission could reform international rates on a permanent basis to ensure they are just and reasonable. For example, there is evidence in the record that in addition to varying by country/rate zone, international rates also vary depending on whether the call terminates on a mobile or fixed-line network. Should the Commission address this type of rate variation in setting permanent rate caps for international calls, and if so, how? Are there other types of international voice communications that could be provided to incarcerated people that would result in significantly reduced financial burdens for international calling to their family and loved ones abroad? Should the Commission require providers to work with facilities to enable alternatives to traditional types of voice communications that would be less expensive? Are there any other issues the Commission should take into account in setting permanent rate caps for international inmate calling services?

E. Recurring Mandatory Data Collection

105. The Commission seeks comment on whether the Commission should conduct cost data collections on a more routine, periodic basis than the Commission has since the First and Second Mandatory Data Collections in 2012 and 2019. In 2020, the Commission sought comment on whether, in the event that it adopted a new data collection, it should require providers to update their responses to that collection periodically. The Commission invited comment on the relative benefits and burdens of a periodic data collection versus another one-time data collection. The Commission also asked how frequently it should collect the relevant data, inquiring whether a biennial or triennial collection covering multiple years would balance the benefits and burdens better than an annual collection.

106. In the Report and Order, the Commission institutes a Third Mandatory Data Collection. GTL asserts that data filed in the Annual Reports are sufficient to evaluate calling service providers' rates, but the Commission disagrees. Instead, the Commission agrees with the Public Interest Parties who explain that the Annual Reports only include information on rates and charges and not the type of cost data required to establish and ensure continued cost-based rates. The Commission seeks comment on whether the Third Mandatory Data Collection should be required to be updated within a specific future timeframe to enable us to evaluate the reasonableness of providers' interstate and international rates on a regular basis. The Public Interest Parties assert that, to further refine rate caps in the future, the Commission should institute a ''routine, periodic data collection with clear, structured questions, commit to reviewing that data through scheduled ratemaking proceedings, and adjust [inmate calling services] rates accordingly.'' The Public Interest Parties contend that the Commission should first establish an annual data collection to ensure it has sufficient and updated

information to reevaluate rate caps, and then establish a triennial rate review process to evaluate the prior two years' cost data to determine whether interstate rates for inmate calling services and ancillary service charge caps should be lowered. According to the Public Interest Parties, a three-year review cycle would strike the appropriate balance between the need for the Commission to fulfill its statutory mandate and the administrative burdens to providers. Free Press supports conducting routine future data collections and implementing a biennial or triennial review process to evaluate rates based on those data collections. Free Press asserts that a periodic collection will provide the Commission with the opportunity to conduct trend analysis on costs, revenues, and prices charged over time, and that it may give providers an incentive to collect more uniform and consistent data over time. The Commission seeks comment on these proposals or alternative proposals that similarly enable us to monitor costs and revenue for the purpose of continuing to lower the rate caps.

107. The Commission recognizes that the periodic collection and assessment of cost data could yield valuable information but are conscious of potential burdens on providers. If the Commission were to adopt a periodic collection, how could the Commission best structure the collection in order to maximize its benefits, while at the same time reducing administrative burdens on providers? Would a triennial review, as described by the Public Interest Parties, be the ideal structure? What are the relative benefits and burdens of conducting a triennial review versus a biennial review, or some other type of review?

108. The Commission invites comment on how providers should maintain their records in the event the Commission requires a periodic collection, such as a triennial review? Should the Commission impose specific recordkeeping requirements on providers of inmate calling services? What would be the type of recordkeeping requirements necessary for a biennial or triennial review, as opposed to a one-time collection? Is there a relatively small but precisely defined set of investment and expense accounts that the Commission could establish relative to providers' inmate calling service assets and labor activities or categories of assets and labor activities to facilitate consistent data reporting among all providers? If so, what specific accounts should be included in the prescribed set of accounts? Securus considers its cost study ''to be a comprehensive view'' of its cost structures and encourages ''the Commission to consider similar data collection from other providers.'' Should the Commission use this cost study as a model for future mandatory data collections, especially in regard to the cost categories and methodologies set forth therein? Why or why not? Should a portion of revenues from ancillary services be netted out of the inmate calling service costs to the extent that costs are incurred for assets or labor shared among inmate calling services and ancillary services if the full amount of these shared costs is reported as inmate calling service costs? If so, how should it be calculated? The Commission believes its authority under sections 201 and 220 of the Act permits us to impose certain recordkeeping obligations on providers for the purpose of ensuring just and reasonable rates. Do commenters agree? What other authority does the Commission have to adopt such requirements should they be necessary? How can the Commission ensure that providers comply with any recordkeeping requirements? Are there other requirements associated with a periodic collection, as opposed to a one-time data collection, that the Commission should consider?

109. Alternatively, should the Commission require providers to comply with an annual or biennial certification obligation attesting to the fact that no substantial change in costs has occurred that would warrant a change in rates? Would such a certification in conjunction with providers' annual reporting obligation on rates provide us sufficient basis to avoid periodic data collection on a more routine basis? The Commission seeks comment on this alternative and any others that stakeholders may propose.

F. Revisions to the Commission's Definition of ''Jail''

110. The Commission proposes to amend section 64.6000(m) of its rules to clarify the definition of ''Jail'' in several ways. These amendments would apply equally to the definition of ''Prison'' because its rules explain that ''Prisons'' include ''*facilities that would otherwise fall under the definition of a Jail* but in which the majority of inmates are post-conviction or are committed to confinement for sentences of longer than one year.'' First, the Commission proposes to modify the definition of ''Jail'' in section 64.6000(m) of its rules to include facilities operated by the Federal Bureau of Prisons (BOP) and Immigration and Customs Enforcement (ICE), whether directly or by contract with third parties. Second, the Commission proposes to add ''juvenile detention facilities'' and ''secure mental health facilities'' to that definition. The Commission seeks comment on these proposals, which are consistent with the *2015 ICS Order* and are meant to prevent potential confusion as to the application of its rules.

111. In the *2015 ICS Order,* the Commission explained that the rate caps adopted in that order were meant to apply to ''jails, prisons and immigration detention facilities, secure mental health facilities and juvenile detention facilities.'' The Commission further explained that the general term ''Jail'' was meant to include facilities operated by local, state, or federal law enforcement agencies and ''city, county or regional facilities that have contracted with a private company to manage day-to-day operations; privately-owned and operated facilities primarily engaged in housing city, county or regional inmates; and facilities used to detain individuals pursuant to a contract with ICE and facilities operated by ICE.'' But the codified rule only includes ''facilities used to detain individuals *pursuant to a contract*'' with ICE, and does not explicitly include facilities operated directly by ICE. Similarly, while the BOP is a ''federal law enforcement agency'' such that BOP facilities fall within the purview of its rules, the codified rule does not explicitly distinguish between facilities operated by the BOP and those operated under a contract with the BOP. The Commission therefore proposes to explicitly list ICE and BOP facilities, whether operated directly by the relevant law enforcement agency or by contract, in the definition of ''Jail.'' The Commission finds these proposed changes to 64.6000(m) of its rules to be clarifying in nature given the Commission's stated intent in 2015 to include all facilities directly operated by law enforcement agencies and those operated pursuant to a contract with a third party. The Commission seeks comment on this analysis. The Commission also seeks comment on whether there are other types of correctional facilities that should be explicitly added to its codified definitions of ''Jail'' or ''Prison.''

112. The Commission also proposes to list ''juvenile detention facilities'' and ''secure mental health facilities'' within the definition of ''Jail'' in section 64.6000(m). In the *2015 ICS Order,* the Commission concluded that providing inmate calling services in these facilities was ''more akin to providing service to jail facilities'' and instructed that ''[t]o the extent that juvenile detention

facilities and secure mental health facilities operate outside of jail or prison institutions'' they would be subject to the rate caps applicable to jails. However, the codified definition of ''Jail'' does not include the phrases ''juvenile detention facilities'' or ''secure mental health facilities.'' As relevant to juvenile facilities, the National Center for Youth Law explains that it is ''unclear which rate cap will apply to juvenile facilities, many of which are not described by the proposed definitions of 'jail' or 'prison.''' The Commission therefore proposes to add these terms to the definition of ''Jail'' in section 64.6000(m) and seek comment on this proposal.

G. Characteristics of the Bidding Market

113. The Commission has already determined that inmate calling services providers have market power at the facility level once they win a contract. However, some providers claim that they win contracts through a competitive bidding process, and thus, that the market or markets to supply inmate calling services are competitive. To assess this claim, and its relevance to permanent rate caps, the Commission seeks comment on the characteristics of the bidding market. The Commission proposes to define every contract or request for proposal as a market in which calling service providers participate based on its understanding that providers generally make contract-by-contract decisions about whether or not to bid on a particular request for proposal, and they do not bid on all open requests for proposals. The Commission seeks comment on these proposed bidding market boundaries or whether there are other boundaries the Commission should consider.

114. The Commission also seeks comment on the extent of competition in these bidding markets. What share of providers' contracts are won through a competitive bidding process? Does this vary across providers? Does the number of bidders vary from request for proposal to request for proposal, and if so, what determines bidders' decisions to compete? Does the number of bidders vary depending on the type and size of facility? Do large providers have a competitive advantage in bidding for certain contracts, such as contracts for state prisons, or large or multiple facility contracts? Are there providers who cannot compete for such contracts at all? Are some providers unable to bid beyond certain geographies because of logistical difficulties or difficulties associated with meeting different governmental requirements? Are some providers uninterested in certain requests for proposals (*e.g.,* those for the jails with the fewest people)? What are the implications of these answers for competition for different requests for proposals? Should the Commission consider prisons, larger jails, and contracts for multiple facilities to be in separate market segments? Are there other potential market segments the Commission should consider? It is common, in measuring market power in bidding markets, to analyze bids across many requests for proposals to determine the impact of the number and identity of bidders on contract prices. In the context of a merger, the U.S. Department of Justice and Federal Trade Commission recommend examining ''the frequency or probability with which, prior to the merger, one of the merging sellers had been the runner-up when the other won the business.'' Should the Commission collect data to enable such analysis?

115. The Commission seeks to understand how correctional authorities select a winning bid. To what extent do correctional authorities evaluate inmate calling service bids based on costs (both to incarcerated people and to the facility), quality of service, or other factors? What is the relevance of site commissions? Do calling service providers compete on the basis of site commissions? If so, how? Are providers aware of site commissions offered by other providers in the bidding process? If not, how do they determine the level of the site commission to offer to ensure that they remain competitive? Assuming no site commission is legally mandated, can a provider win a bid if it offers no site commission to the facility? The Commission has observed differences in criteria for awarding contracts among various requests for proposals that the Commission has reviewed. Is this seeming heterogeneity in the criteria used by authorities when selecting a winning bid typical? If so, is this heterogeneity more pronounced in some jurisdictions or jail types than in others?

116. The Commission understands that once a local correctional authority awards the contract to a particular provider, it is locked into a multi-year contract, typically with options to renew that avoid the need for further competitive bidding to serve the facility after the expiration of the initial term. Is there a typical contract length, and if so, does this vary across prisons and jails or by contract size? Are there typical timeframes for options to renew? Does exercising options to renew lead to contract amendments that also avoid competitive bidding to effectuate contractual changes? Is contract length ever a dimension along which provider's bids are compared, in addition to criteria pre-specified in the request for proposal? Do correctional authorities give more weight to some criteria than others, and if so, which ones? How easy or difficult is it to modify the terms of the contract or terminate it during the contract term if the correctional authority is dissatisfied with the provider's rates, site commissions, terms, or quality of service? How common is it for a contract to be extended by correctional authorities, and does this occurrence vary as between prisons or jails, or by contract size?

117. The Commission has found that the inmate calling services industry is highly concentrated, and that GTL possesses the largest market share, controlling [REDACTED] of the market as measured by paid minutes. Another provider, Securus, controls [REDACTED] of the market, which means these two firms collectively control [REDACTED] of the market. The record also shows high industry concentration as measured by the Herfindahl-Hirschman Index (HHI). The Commission seeks comment on these findings. Are these shares still accurate? Does a large industry share, together with entry barriers and other market characteristics, give the two largest inmate calling services providers a degree of market power in bidding for certain or all requests for proposals?

118. The Commission seeks comment on barriers to entering the inmate calling services markets, both generally and in terms of bidding on a particular request for proposal. What impediments do potential providers face when considering entering the inmate calling services market? The Commission also seeks comment on actual entry into the market in the past. How many firms have entered or exited the inmate calling services market in the past twenty years? What barriers does a provider face once it enters the market? What services, other than inmate calling services, must be offered, at a minimum, by a provider in order to successfully participate in the bidding market given record evidence of service bundling required by many facilities when issuing requests for proposals?

119. The Commission also understands that providers frequently provide multiple nonregulated services at the facilities where they provide inmate calling services, including commissary services, access to email and the internet, video services, video visitation and calling, and access to tablets. Do correctional authorities sometimes or typically require that the

same company bundle some or all of these services? If so, are there any exceptions to this (*i.e.,* do correctional authorities enter into separate contracts for certain services with different providers), and how common is this? What other services outside of telephone communications do providers competitively bid on at the same facility? Are providers more likely to win bids if they offer other services at the same facility? Have calling service providers used their market power, to the extent they have such power, in the communications services market to affect bidding for other services? The Commission asks whether the Commission should consider any additional aspects of the bidding market and invite parties to submit alternative evidence in the record.

120. If the Commission does find that some providers possess market power in the bidding market, should the Commission act to make it easier for small providers to compete? Would doing so better ensure just and reasonable rates? For example, should the Commission prohibit dominant providers from including certain terms and conditions in their contracts with correctional authorities? In many instances, won contracts are not publicly available. Would requiring the contracts to be made publicly available make bidding more competitive? The Commission seeks comment on potential ways to even the playing field among large and small providers in the bidding market, and on whether doing so would lower interstate rates paid by incarcerated people and their families. The Commission also seeks comment on whether such regulations would result in supporting providers that are currently not as successful in winning contracts with correctional facilities in spite of continuing to bid for contracts.

121. The Commission also seeks comment on the optimal regulatory regime for inmate calling services. If the Commission finds that certain providers possess market power in the bidding market, should the Commission classify those providers as dominant carriers? In the past, the Commission imposed rate-of-return regulation on providers with market power. Would this type of regulation be appropriate in the event that market power in the bidding market is found to exist? If not, what type of regulatory regime would promote regulatory certainty and permit us to ensure that inmate calling services rates and charges are just and reasonable? What other type of regulatory framework would be appropriate to achieve its objectives if the Commission determines that some or all inmate calling service providers should be considered dominant carriers? What are the relative costs and benefits of the alternative approaches? Finally, the Commission welcomes comments by all stakeholders on appropriate alternative frameworks and ideas that will promote increased transparency and just and reasonable inmate calling services rates and charges for incarcerated people.

IV. Procedural Matters

122. *Filing of Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System. *See* FCC, Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998). The Protective Order issued in this proceeding permits parties to designate certain material as confidential. Filings which contain confidential information should be appropriately redacted, and filed pursuant to the procedure described therein.

123. Electronic Filers: Comments may be filed electronically using the internet by accessing the ECFS: *https://www.fcc.gov/ecfs/.*

124. 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.

125. 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.

126. 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.

127. Effective March 19, 2020, and until further notification, 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.

128. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules. The Commission directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to use a table of contents, regardless of the length of their submission. The Commission also strongly encourages parties to track the organization set forth in the Fifth Further Notice of Proposed Rulemaking in order to facilitate its internal review process.

129. *People with Disabilities.* The Commission asks that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

130. *Ex Parte Presentations.* 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).

131. 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 the prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

132. *Initial Regulatory Flexibility Act Analysis.* As required by the RFA, the Commission has prepared an Initial

Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Fifth Further Notice of Proposed Rulemaking. The Commission requests written public comments on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in the Fifth Further Notice of Proposed Rulemaking. The Commission will send a copy of the Fifth Further Notice of Proposed Rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Fifth Further Notice of Proposed Rulemaking and the IRFA (or summaries thereof) will be published in the **Federal Register**.

133. *Initial Paperwork Reduction Act Analysis.* The Fifth Further Notice of Proposed Rulemaking contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites OMB, the general public, and other Federal agencies to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

V. Initial Regulatory Flexibility Analysis

134. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Fifth Further Notice of Proposed Rulemaking (FNPRM). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of this document. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and the IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

135. In this document, the Commission seeks more detailed evidence and comments from industry stakeholders to consider further reforms to inmate calling services rates within its jurisdiction, including permanent interstate and international rate caps. The Commission seeks to ensure that functionally equivalent access is provided to people who are deaf, hard of hearing or deafblind, or have speech disabilities. The TTY-based telecommunications relay service (TRS) and speech-to-speech relay service (STS)—the only relay services for which inmate calling services providers currently are required to provide access under the Commission's rules—are insufficient to meet the range of needs of incarcerated people with communication disabilities using today's networks. The Commission seeks comment on requiring inmate calling services providers to make available newer forms of TRS, such as Captioned Telephone Service (CTS) (a non-internet-based telephone captioning service), and the three forms of internet-based TRS: Video relay service (VRS), IP Captioned Telephone Service (IP CTS), and IP Relay (a text-based relay service using IP). The Commission seeks comment on whether to modify the existing TRS rules for application to the provision of such services at correctional facilities. The Commission seeks comment on whether to expand the scope of the rule prohibiting charges for TRS provided at correctional facilities. Further, the Commission seeks comment on whether to require inmate calling services providers to provide access to direct video communication for incarcerated people with communication disabilities. Finally, the Commission seeks comment on whether new TRS services provided to incarcerated people with communication disabilities should be included in the existing accessibility-related reports.

136. The Commission seeks comment on what methodology it should use to permanently cap provider-related rate components for interstate and international inmate calling services. It seeks comment on the provision of communications services to jails with average daily populations below 1,000 and on further reforms to the treatment of site commission payments in connection with interstate and international inmate calling services, including at jails with average daily populations below 1,000. Next, the Commission seeks comments on revisions to its ancillary service charge rules and refining its international rate methodology to prevent double counting of international call costs that are already included in the providers' overall inmate calling services cost. The Commission also seeks comment on the need to adopt an on-going periodic cost data collection to ensure interstate and international calling services rates are just and reasonable and on revisions to the Commission's definition of ''jail'' to clarify the term to include certain types of facilities. Finally, the Commission seeks comment on the characteristics of the bidding market in order for the Commission to assess some providers' claims that they win contracts through a competitive bidding process and thus the inmate calling services market is competitive.

2. Legal Basis

137. The legal basis for any action that may be taken pursuant to the FNPRM is contained in sections 1, 2, 4(i)–(j), 201(b), 218, 220, 276, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201(b), 218, 220, 276, and 403.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

138. 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 rule revisions, 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. The statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 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.

139. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes 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 SBA's 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.

140. 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. The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C. 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. The Commission notes that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field. 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.

141. 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. While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimates that at least 48,971 entities fall into the category of ''small governmental jurisdictions.'' This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments—independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments—Organizations Tables 5, 6, and 10.

142. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

143. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated for the entire year. Of that total, 3,083 operated with fewer than 1,000 employees. Thus under this category and the associated size standard, the Commission estimates that the majority of local exchange carriers are small entities.

144. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by its actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees. Thus, using the SBA's size standard the majority of incumbent LECs can be considered small entities.

145. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field'' of operation. The SBA's Office of Advocacy contents that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope.

146. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers and under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on these data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or

competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

147. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

148. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities.

149. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provisions of toll resale services. Of this total, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by its action.

150. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS code is for Wired Telecommunications Carriers. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of this total, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by its action.

151. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers, a group that includes inmate calling services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 535 carriers have reported that they are engaged in the provision of payphone services. Of this total, an estimated 531 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by its action.

152. *TRS Providers.* TRS can be included within the broad economic category of All Other Telecommunications. Ten providers currently receive compensation from the TRS Fund for providing at least one form of TRS: ASL Services Holdings, LLC (GlobalVRS); Clarity Products, LLC (Clarity); ClearCaptions, LLC (ClearCaptions); Convo Communications, LLC (Convo); Hamilton Relay, Inc. (Hamilton); MachineGenius, Inc. (MachineGenius); MEZMO Corp. (InnoCaption); Sorenson Communications, Inc. (Sorenson); Sprint Corporation (Sprint); and ZP Better Together, LLC (ZP Better Together).

153. *All Other Telecommunications.* The ''All Other Telecommunications'' category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with annual receipts of $35 million or less. For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than $25 million and 15 firms had annual receipts of $25 million to $49,999,999. Thus, the Commission estimates that the majority of ''All Other Telecommunications'' firms potentially affected by its action can be considered small. TRS can be included within the

broad economic census category of All Other Telecommunications. Under this category and the associated small business size standard, a majority of the ten TRS providers can be considered small.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

154. *Compliance with Caps on Permanent Per-Minute Rate, and Ancillary Service Charges.* In the FNPRM, the Commission seeks comments on further reform of inmate calling services, including permanent rate caps on interstate and international telephone services and on revising ancillary service charges rules. To the extent that permanent rate caps are lower than the interim interstate and international rate caps or they apply to all types of facilities (including jails with average daily populations below 1,000), providers (including any smaller entities) must comply with the new rate caps. Likewise, providers of all sizes must comply with any new caps or limits on permissible ancillary service charges.

155. *Compliance with Requirements to Provide Access to Additional Telecommunications Relay Services.* In the FNPRM, the Commission seeks comment on requiring inmate calling services providers to provide access to several additional TRS and direct video communications services, and whether such services should be provided at no charge. If such rules are adopted, they would apply to inmate calling service providers of all sizes.

156. *Recordkeeping, Reporting, and Certification.* The FNPRM seeks comments on adopting an on-going periodic cost data collection to ensure calling services rates are just and reasonable. It also seeks comments on revising the Commission's definition of ''jail'' to include certain types of facilities. To the extent the Commission imposes a new periodic cost data collection and clarifies the term ''jail'' to include certain types of facilities, providers of all sizes must maintain and report their cost data in accordance with the Commission's rules. Similarly, if the Commission imposes expanded data collection or other new rules specific to services provided to incarcerated people with communication disabilities, the data collection and other rules will be applicable to inmate calling services providers of all sizes. However, some providers may opt to not make the data filings based on the ''safe harbor'' applicable to entities, basically, that offer more than the mandatory TRS services or that have had no complaints, provided that the safe harbor is expanded and not eliminated entirely.

5. Steps Taken To Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

157. The RFA requires an agency to describe any significant 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 and reporting requirements under the rules 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. The Commission will consider all of these factors when the Commission receives substantive comment from the public and potentially affected entities.

158. The Commission seeks comment on differences in costs between prisons, larger jails, and jails with average daily populations below 1,000 to account for differences in costs incurred by providers servicing these different facility types and sizes. To that end, the Commission seeks comment on provisioning of inmate calling services to small jails and different correctional facility costs involving different facility sizes. The Commission also seeks comment on employing separate zones of reasonableness in establishing permanent rate caps for prisons, larger jails, and jails with average daily populations below 1,000 to ensure that even small providers serving jails, which may be smaller, higher-cost facilities, and larger prisons, which often benefit from economies of scale, can recover their legitimate inmate calling services-related costs.

159. The Commission also seeks comment on whether it should revise its ancillary service charge caps on a standard periodic basis and if so, how frequently the Commission should do so while balancing related benefits and burdens to all relevant stakeholders and serve the public interest and ensuring that the interstate and international rates are just and reasonable and provide fair compensation to providers.

160. The Commission asks whether its proposed periodic data collection would impose unreasonable burdens and costs. The Commission also seeks comment on how to structure the data collection in order to maximize its benefits, while at the same time reducing the administrative burdens on providers by asking, for example, how frequently the Commission should require the cost data collection to occur and whether the Commission should allow a certification of no substantial change in lieu of a full data collection to alleviate burdens on providers.

161. Given the Commission's long-standing finding that every provider has a monopoly in the facilities it serves, the Commission seeks comment on whether calling services providers have market power in bidding for calling services contracts. The Commission also asks for comment on what kind of regulation would be appropriate in the event that market power in the bidding market is found to exist.

162. Regarding the provision of functionally equivalent access to people who are deaf, hard of hearing or deafblind, or have speech disabilities, the Commission does not expect that the implementation of new forms of TRS or direct video communication would have much impact on small providers of inmate calling services. The TRS itself is provided by other entities. Small inmate calling services providers would need to provide access to that TRS, which may require special equipment (such as videophones) and appropriate billing and security features. The data obtained from providing these additional services may be additional data that would be required for annual accessibility-related reports. The Commission seeks comment on the impact of expanded reporting requirements on small entities, including the modification or elimination of the safe harbor for entities that have had no TRS-related complaints.

163. The Commission will consider the economic impact on small entities, as identified in comments filed in response to the FNPRM and this IRFA, in reaching its final conclusions and promulgating rules in this proceeding.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

164. None.

VI. Ordering Clauses

165. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i)–(j), 201(b), 218, 220, 276, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201(b), 218, 220, 276, 403, and 617, this Fifth Further Notice of Proposed Rulemaking *is adopted.*

166. *It is further ordered* that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the

Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on this Fifth Further Notice of Proposed Rulemaking on or before 30 days after publication of a summary of this Fifth Further Notice of Proposed Rulemaking in the **Federal Register** and reply comments on or before 60 days after publication of a summary of this Fifth Further Notice of Proposed Rulemaking in the **Federal Register**.

167. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Fifth Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis and the Supplemental Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carriers, Individuals with disabilities, Prisons, Reporting and recordkeeping requirements, Telecommunications, Telephone, Waivers.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons set forth above, the Federal Communications Commission proposes to amend Part 64, subpart FF of Title 47 of the Code of Federal Regulations as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 is revised 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), 255, 262, 276, 403(b)(2)(B), (c), 616, 620, 716, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

■ 2. Amend § 64.6000 by revising paragraph (m)(3) and adding new paragraphs (y) through (aa) to read as follows:

§ 64.6000 Definitions.

* * * * *

(m) * * *

(3) Post-conviction and awaiting transfer to another facility. The term also includes city, county, or regional facilities that have contracted with a private company to manage day-to-day operations; privately-owned and operated facilities primarily engaged in housing city, county or regional Inmates; facilities used to detain individuals operated directly by the Federal Bureau of Prisons or U.S. Immigration and Customs Enforcement, or pursuant to a contract with those agencies; juvenile detention centers; and secure mental health facilities;

* * * * *

(y) *Incarcerated person with a communication disability* means an incarcerated individual who is deaf, hard of hearing, or deafblind, or has a speech disability.

(z) *Telecommunications relay services (TRS)* and other TRS-related terms used in this subpart are defined in 47 CFR 64.601.

(aa) *TRS Fund* means the Telecommunications Relay Services Fund described in 47 CFR 64.604(c)(5)(iii).

■ 3. Amend § 64.6040 by revising the section heading and paragraph (b) and adding paragraphs (c) through (d) to read as follows:

§ 64.6040 Communications Access for Incarcerated People with Communication Disabilities.

* * * * *

(b) No Provider shall levy or collect any charge or fee on or from any party to a TRS call to or from an incarcerated person, including any charge for the use of a device or transmission service when used to access TRS from a correctional facility.

(c) A Provider shall provide access for incarcerated people with communication disabilities to any form of TRS that is eligible for TRS Fund support.

(d) A Provider shall provide access to direct video service for incarcerated people eligible to access video relay service (VRS).

■ 4. Amend § 64.6060 by revising paragraphs (a)(5) and (6) to read as follows:

§ 64.6060 Annual reporting and certification requirement.

(a) * * *

(5) The number of calls provided per facility, and the number of dropped calls per facility, during the reporting period in each of the following categories:

(i) TTY-to-TTY Inmate Calling Services calls;

(ii) Direct video calls placed or received by ASL users;

(iii) TRS calls, broken down by each form of TRS that can be accessed from the facility; and

(6) The number of complaints that the reporting Provider received related to dropped calls and poor call quality, respectively, in each of the categories set forth in paragraph (a)(5) of this section.

* * * * *

[FR Doc. 2021–14728 Filed 7–27–21; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 86, No. 142
Wednesday, July 28, 2021

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Renew a Currently Approved Information Collection

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act and Office of Management and Budget (OMB) regulations, this notice announces the intention of the Agricultural Research Service (ARS) to seek approval to collect information in support of research and related activities.

DATES: Comments on this notice must be received on or September 27, 2021 to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Jill Lake, ARS Webmaster, 5601 Sunnyside Avenue, Beltsville, Maryland 20705.

FOR FURTHER INFORMATION CONTACT: Jill Lake, ARS Webmaster, *jill.lake@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Web Forms for Research Data, Models, Materials, and Publications as well as Study and Event Registration.

Type of Request: Extension and Revision of a Currently Approved Information Collection.

OMB Number: 0518–0032.

Expiration Date: February 28, 2022.

Abstract: Sections 1703 and 1705 of the Government Paperwork Elimination Act (GPEA), (Pub. L. 105–277) Title XVII, require agencies by October 21, 2003, to provide the public with the option of electronic submission of information. To advance GPEA goals, online forms are needed to allow the public to request from ARS research data, models, materials, and publications and to register for scientific studies and events. For the convenience of the public, the forms itemize the information needed to provide a timely response. Information from forms will be used by ARS only for the purposes identified.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 minutes per response (range: 1–5 minutes).

Respondents: Agricultural researchers; students; teachers; businesspeople; members of service organizations; community groups; other Federal, State, and local government agencies; and the general public.

Estimated Number of Respondents: 11,600. This is an increase of 2,850 from the 8,750 estimated respondents in the previous Approved Information Collection due to an annual increase in actual respondents since the 2018 estimate, as well as 10 more software models available for download. As of July 2021, 157 software models were available for download through the ARS website *https://www.ars.usda.gov/research/software/.*

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 580 hours.

Copies of forms used in this information collection can be obtained from Jill Lake, ARS Webmaster, *jill.lake@usda.gov.*

The information collection extension requested by ARS is for a period of 3 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 will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. 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.

Simon Y. Liu,

Acting Administrator, ARS.

[FR Doc. 2021–16055 Filed 7–27–21; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2015–0058]

Withdrawal of an Environmental Assessment and Finding of No Significant Impact for High Pathogenicity Avian Influenza Control in Commercial Poultry Operations—A National Approach

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we are withdrawing a final environmental assessment and finding of no significant impact that the Animal and Plant Health Inspection Service prepared under the National Environmental Policy Act relative to a national approach for the control of highly pathogenic avian influenza outbreaks within the United States. We are withdrawing the final environmental assessment and the associated finding of no significant impact pending further evaluation.

FOR FURTHER INFORMATION CONTACT: Ms. Lori Miller, PE, Senior Staff Officer and Environmental Engineer, APHIS Veterinary Services, 4700 River Road, Unit 41, Riverdale, MD 20737; (301) 851–3512.

SUPPLEMENTARY INFORMATION: Highly pathogenic avian influenza (HPAI) is an infectious and often fatal disease of poultry. In December 2014, two mixed-origin H5 viruses of HPAI were discovered in the United States. These viruses were subsequently detected in both migratory waterfowl and domestic poultry and affected domestic poultry production within the United States.

On February 9, 2016, the Animal and Plant Health Inspection Service (APHIS) published a notice in the **Federal Register** (81 FR 6828, Docket No.

APHIS–2015–0058) [1] announcing the availability of a December 2015 final environmental assessment (EA), entitled ''High Pathogenicity Avian Influenza Control in Commercial Poultry Operations—A National Approach,'' (2015 HPAI EA) and a finding of no significant impact (FONSI) relative to a national approach for the control of HPAI outbreaks within the United States. The 2015 HPAI EA recommended, and the FONSI selected, an alternative in which APHIS used its centralized management of carcass disposal activities to ensure consistency in responses to HPAI outbreaks throughout the United States. Under this alternative, APHIS provided information and other support to State and local authorities to help them determine which depopulation, disposal, and cleaning and disinfection methods were most appropriate for the situation.

According to the 2015 HPAI EA, ''[g]iven the magnitude of the HPAI poultry incidents during spring 2015, APHIS want[ed] to ensure adequate preparation for subsequent incidents in poultry.'' [2] Therefore, the 2015 HPAI EA was prepared ''to address the potential impacts of continuing to provide assistance with establishing and enforcing HPAI quarantines and conducting bird flu control activities as outbreaks occur across the nation.'' [3]

In the intervening years since APHIS issued the 2015 HPAI EA and FONSI, circumstances have changed. First, the 2014/2015 HPAI outbreak ended in approximately August 2016 and there has not been an HPAI outbreak of that scale or magnitude in the United States since that time. Second, avian influenza outbreaks involving HPAI that have occurred in the United States in the interim have been more localized. In one instance, APHIS elected to prepare a site-specific EA and FONSI. Third, APHIS issued the Record of Decision for the Carcass Management During a Mass Animal Health Emergency Final Programmatic Environmental Impact Statement (PEIS) on March 17, 2016, after finalizing the 2015 HPAI EA and FONSI. The PEIS provides an analysis of the environmental effects associated with various carcass management options during a mass animal health emergency. An HPAI outbreak necessitating the depopulation of flocks and the subsequent disposal of large amounts of poultry carcasses could qualify as an animal health emergency and as such, the analysis in the PEIS is relevant and addresses some of the same issues addressed in the 2015 HPAI EA and FONSI. Finally, fourth, APHIS reviewed its 2015 HPAI EA and FONSI. Through its review of the 2015 HPAI EA and FONSI, APHIS acknowledges that the documents could benefit from more extensive analysis. Additionally, because there is no current HPAI outbreak, the 2015 HPAI EA and FONSI serve no function at present. Withdrawal of the 2015 HPAI EA and FONSI will not hamper APHIS' ability to respond to an outbreak in the future.

Based on the analysis above, pending further evaluation, we are withdrawing the December 2015 final EA and the FONSI associated with the notice published on February 9, 2016.

Done in Washington, DC, this 22nd day of July 2021.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2021–16049 Filed 7–27–21; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice and supporting documents, go to *www.regulations.gov* and enter APHIS–2015–0058 in the Search field.

[2] USDA APHIS, High Pathogenicity Avian Influenza Control in Commercial Poultry Operations—A National Approach (Dec. 2015) on p.7.

[3] *Id.*

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2021–0036]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Specimen Submission

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with livestock disease surveillance programs.

DATES: We will consider all comments that we receive on or before September 27, 2021.

ADDRESSES: You may submit comments by either of the following methods.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2021–0036 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–2021–0036, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *regulations.gov* or in our reading room, which is 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.

FOR FURTHER INFORMATION CONTACT: For information regarding livestock disease surveillance programs, contact Ms. Lori Swiderski, Program Coordinator, Director's Office, National Veterinary Services Laboratories, Diagnostics and Biologics, VS, APHIS, 1920 Dayton Ave., Ames, IA 50010; (515) 337–7405. For more information on the information collection reporting process, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: Specimen Submission.

OMB Control Number: 0579–0090.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: The Animal Health Protection Act (7 U.S.C. 8301 *et seq.*) provides the Secretary of Agriculture broad authority to prohibit or restrict, through orders and regulations, the importation or entry and interstate movement of any animal, article, or means of conveyance if the U.S. Department of Agriculture (USDA) determines that the prohibition or restriction is necessary to prevent the introduction or spread of any pest or disease of livestock within the United States.

Disease prevention is the most effective method for maintaining a healthy animal population and for enhancing the United States' ability to globally compete in the trade of animals and animal products. However, animal disease prevention cannot be accomplished without the existence of an effective disease surveillance program, which is conducted by the USDA's Animal and Plant Health Inspection Service (APHIS), Veterinary Services (VS).

VS forms, which are critical to VS' mission, are routinely used whenever specimens (such as blood, milk, tissue, or urine) from any animal (such as

cattle, swine, sheep, goats, horses, and poultry) are submitted to the National Veterinary Services Laboratories for disease testing. If the information within these forms was not collected or collected less frequently, APHIS would not have the critical information necessary to effectively operate a disease surveillance program and identify the animals and herds from which the specimens were taken, allowing effective disease prevention and eradication.

The animal disease surveillance program is based on information submitted on the specimen submission form and continuation sheet, or similar document, and the Parasite Submission form submitted for the Cattle Fever Tick Eradication Program and the National Tick Surveillance Program to identify the individuals submitting tick samples and the animal sources of those samples.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. APHIS needs this outside input to help accomplish the following:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, *e.g.,* permitting electronic submission of responses).

Estimate of burden: The public burden for this collection of information is estimated to average 0.319 hours per response.

Respondents: State veterinarians and other State personnel who are qualified and authorized to collect and submit specimens for laboratory analysis, accredited veterinarians, private veterinarians, animal health technicians, herd owners, private laboratories, and research institutions.

Estimated annual number of respondents: 1,871.

Estimated annual number of responses per respondent: 17.

Estimated annual number of responses: 32,546.

Estimated total annual burden on respondents: 10,390 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 22nd day of July 2021.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2021–16033 Filed 7–27–21; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2021–0035]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Virus-Serum-Toxin Act and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the Virus-Serum-Toxin Act and regulations.

DATES: We will consider all comments that we receive on or before September 27, 2021. You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2021–0035 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–2021–0035, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *regulations.gov* or in our reading room, which is 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.

FOR FURTHER INFORMATION CONTACT: For information on the Virus-Serum-Toxin Act regulations, contact Ms. Bonnie Coyle, Section Leader, Program Information Management and Security, Center for Veterinary Biologics, Director's Office, VS, APHIS, 1920 Dayton Ave, P.O. Box 844, Ames, IA 50010; (515) 337–6561; email: *bonnie.m.coyle@usda.gov.* For information on the information collection reporting process, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483; *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Virus-Serum-Toxin Act and Regulations.

OMB Control Number: 0579–0013.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: Under the Virus-Serum-Toxin Act (21 U.S.C. 151–159), the Animal and Plant Health Inspection Service (APHIS) is authorized to promulgate regulations designed to prevent the importation, preparation, sale, or shipment of harmful veterinary biological products. These regulations are contained in 9 CFR parts 102 through 124.

Veterinary biological products include viruses, serums, toxins, and analogous products of natural or synthetic origin such as vaccines, antitoxins, or the immunizing components of microorganisms intended for the diagnosis, treatment, or prevention of diseases in domestic animals.

APHIS issues licenses to qualified establishments that produce veterinary biological products and issues permits to importers seeking to import such products into the United States. APHIS also enforces regulations concerning production, packaging, labeling, and shipping of these products, and sets standards for the testing of these products. These regulations ensure that veterinary biological products used in the United States are not worthless, contaminated, dangerous, or harmful.

To help ensure that veterinary biological products used in the United States are pure, safe, potent, and effective, APHIS requires certain information collection activities, including, among other things,

information needed to issue establishment and product licenses and track personnel qualifications; product permits; packaging and labeling; requests for materials; shipment authorizations; product and test reports; preparation and usage requests; development and field study summaries; stop distribution and sale notifications and inventories; due diligence petitions; and recordkeeping.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.356 seconds per response.

Respondents: Veterinary biological product developers and producers, foreign government officials, State government officials, and private individuals.

Estimated annual number of respondents: 478.

Estimated annual number of responses per respondent: 911,710.

Estimated annual number of responses: 435,797,533.

Estimated total annual burden on respondents: 43,072 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 22nd day of July 2021 .

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2021–16052 Filed 7–27–21; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Food Security Status and Well-Being of Nutrition Assistance Program (NAP) Participants in Puerto Rico

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection for the Food Security Status and Well-Being of Nutrition Assistance Program (NAP) Participants in Puerto Rico study. This is a new information collection request. This study informs the U.S. Department of Agriculture's (USDA) Food and Nutrition Service (FNS) about household food security, health, and well-being among Puerto Rico's population.

DATES: Written comments must be received on or before September 27, 2021.

ADDRESSES: Comments may be sent to Kristen Corey, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, VA 22314. Comments may also be submitted via email at *kristen.corey@usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Kristen Corey at (703) 305–2517.

SUPPLEMENTARY INFORMATION: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Food Security Status and Well-Being of Nutrition Assistance Program (NAP) Participants in Puerto Rico.

Form Number: Not Applicable.

OMB Number: 0584–NEW.

Expiration Date: Not Yet Determined.

Type of Request: New Information Collection Request.

Abstract: Following Hurricane Maria, Congress appropriated additional disaster relief funds provided by section 309 of Public Law 115–72 that were distributed through the Nutrition Assistance Program (NAP) to program participants in Puerto Rico. Under H.R. 2157, section 105, funds were appropriated for the Secretary of Agriculture to conduct an independent study, including a survey of NAP participants, to examine the food security, health status, and well-being of NAP participants and low-income residents in Puerto Rico.

FNS is conducting this study to establish baseline estimates of household food security status in Puerto Rico. FNS has identified five objectives for this study:

1. Produce descriptive statistics on key sociodemographic and economic variables, including household food security, in a representative sample of Puerto Rico households.

2. Produce descriptive statistics on key sociodemographic and economic variables, including household food insecurity, in multiple representative subsamples in Puerto Rico stratified according to the following classifications: NAP participants and low-income nonparticipants, adults aged 60 and older, disability status, employment status, and educational level.

3. Produce descriptive statistics for each subsample in Puerto Rico on key social, geospatial, and other policy-relevant elements of health and well-being associated with household food security.

4. Characterize the social context of food insecurity through in-depth interviews with individuals within the

NAP participant and low-income nonparticipant subgroups. Each interview will ask the individual to consider the household or family, community and Federal food assistance, and disaster relief contexts.

5. Develop a detailed concept/problem map of the systemic factors that shape the implementation of the NAP program, particularly as a disaster relief tool. The concept mapping process will include data collection from key informants with knowledge of one or more of the stages of the Puerto Rican food and nutrition system: production, processing, distribution, acquisition, preparation, consumption, digestion, transport, and metabolism.

To address these objectives, the study will employ a mixed-methods approach with three data collection components:

1. Household survey to measure and describe food security status among Puerto Rico residents and multiple representative subsamples; for each subsample, the survey will assess elements of health and well-being associated with household food security status in Puerto Rico.

2. In-depth interviews with NAP participants and low-income nonparticipants to gain a deeper understanding of factors that affect their food security status, particularly following natural disasters.

3. Development of a concept map of Puerto Rico's food system to identify policies that influence the delivery and effectiveness of NAP and gaps in knowledge of how NAP protects against low food security, particularly when natural disasters strike.

The household survey will use a dual-frame approach to identify a representative sample and collect data on food security and well-being among Puerto Rico's population. To build the household sample frames, the study team will use an administrative list of NAP participants provided by Administración de Desarollo Socioeconómico de la Familia (ADSEF), the agency that administers NAP, and an area probability sample using address-based sampling. The key subgroups of interest are NAP participants and low-income nonparticipants; households with children; households with at least one person aged 60 and older; and households with at least one person with a disability. Prior to administration, the survey instrument will be pretested with 8 Puerto Rico residents representing the subgroups of interest.

The study sample for the in-depth interviews will be drawn from survey respondents who agree to be contacted for an interview. In-depth interviews will be conducted with NAP participants and low-income nonparticipants. The study team will use survey responses to select an approximately equal number of households with and without children and an approximately equal number of households that are food secure, experiencing low food security, or experiencing very low food security. If too few survey respondents agree to be contacted for an in-depth interview, the study team will work with local organizations to recruit members of the target population to participate in interviews. The in-depth interviews will examine the social context of food security and the ways in which difficult life experiences, such as natural disasters, and positive experiences, such as community engagement, influence households' ability to cope with adverse life events. Prior to administration, the interview protocol will be pretested with 8 Puerto Rico residents representing the subgroups of interest.

The concept-mapping component will engage stakeholders who are knowledgeable about policies that affect food security in Puerto Rico and represent the primary interest groups engaged in food security issues. Stakeholders will include representatives from human service providers, public agencies, advocacy organizations, private businesses, and academia. The study team will convene five to six stakeholder groups with five to seven members each. Data collection will involve four stages, including two 1-hour virtual meetings with the stakeholder groups: (1) A first set of meetings with stakeholders to brainstorm initial policy and research recommendations, (2) prioritization and sorting of the recommendations, (3) a second set of meetings with stakeholders to gather qualitative feedback on the prioritized recommendations, and (4) feedback from the technical working group and FNS on the draft recommendations.

Data collected in all three components will be kept private; it will not be shared with anyone outside the study team and FNS research and administrative staff.

Affected Public: (1) Puerto Rican government; (2) business and nonprofit organizations; and (3) individuals

Respondent groups identified include the following:

1. *Puerto Rican government:* Staff from public agencies, such as human services, education, and healthcare agencies.

2. *Business and nonprofit organizations:* Staff from private businesses, such as agribusiness and food retailers; academia, such as nutritionists, economists, and political scientists; advocacy organizations, such as neighborhood associations, civic groups, and the faith community; human service providers, such as food banks, workforce development organizations, and community action agencies.

3. *Individuals:* Residents of Puerto Rico, including NAP participants and low-income nonparticipants.

Estimated Number of Respondents: The total estimated number of respondents is 12,497 (18 Puerto Rican government staff; 36 business and nonprofit stakeholder staff; and 12,443 individuals). Of the 12,497 contacted, 3,745 are estimated to be responsive, and 8,752 are estimated to be nonresponsive. The breakout of respondents follows:

1. *Puerto Rican government staff:* Of the 18 concept mapping respondents from Puerto Rican government agencies contacted, 14 are estimated to be responsive and 4 will be nonresponsive.

2. *Business and nonprofit organization stakeholder staff:* Of the 36 business and nonprofit staff contacted to participate in concept mapping, 28 are estimated to be responsive and 8 will be nonresponsive.

3. *Individuals:* Of the 12,280 individuals contacted to participate in the survey, 3,656 are estimated to be responsive and 8,624 will be nonresponsive. Of the nine individuals contacted to participate in the pretest of the survey instrument, nine will be responsive. Of the 865 individuals contacted to participate in an in-depth interview, 144 will be responsive and 721 will be nonresponsive. Of the nine individuals contacted to participate in the pretest of the interview guide, nine will be responsive.

Estimated Frequency of Responses per Respondent: 2.80487252—based on 35,052 total annual responses (7,960 responsive and 27,092 nonresponsive) made by the 12,497 respondents (3,745 responsive and 8,752 nonresponsive). See table 1 for the estimated number of responses per respondent for each type of respondent.

The breakout follows:

1. *Puerto Rican government staff (18):* The estimated number of responses per Puerto Rican government staff is 4.89: Of 18 government staff, 14 will respond to the concept mapping recruitment email. The same 14 staff will read advance materials for the first meeting, participate in the first virtual meeting, prioritize and sort results, read advance materials for the second meeting, and

participate in the second virtual meeting.

2. *Business and nonprofit stakeholder staff (36):* The estimated number of responses per business or nonprofit stakeholder staff is 4.89:

- Of 18 business or other for-profit stakeholder staff, 14 will respond to the concept mapping recruitment email. The same 14 staff will read advance materials for the first meeting, participate in the first virtual meeting, prioritize and sort results, read advance materials for the second meeting, and participate in the second virtual meeting.
- Of 18 nonprofit stakeholder staff, 14 will respond to the concept mapping recruitment email. The same 14 staff will read advance materials for the first meeting, participate in the first virtual meeting, prioritize and sort results, read advance materials for the second meeting, and participate in the second virtual meeting.

4. *Individuals (12,443).* The estimated number of responses per individual is 2.79582833:

- A total of 18 individuals will be invited to participate in instrument pretesting of the survey instrument and interview protocol.
  - A total of nine individuals will be invited to participate pretesting of the survey instrument and all of them will complete the pretest.
  - A total of nine individuals will be invited to participate pretesting of the interview protocol and all of them will complete the pretest.
- Of 3,170 NAP participant respondents, 923 respondents will complete the survey, and 2,247 respondents will not complete the survey.
  - A total of 380 NAP participants will read the first survey invitation letter and 2,790 will not read the letter. A total of 84 NAP participants will read the survey reminder postcard and 3,086 will not read the postcard. A total of 244 NAP participants will read the second survey invitation letter and 2,462 will not. A total of 149 NAP participants will read the third survey invitation letter and 2,313 will not. A total of 15 NAP participants will call to schedule a telephone-administered survey. A total of 51 NAP participants will schedule a telephone-administered survey when they are called and 615 will not.
- Of 9,110 area probability sample respondents, 2,733 respondents will complete the survey and 6,377 respondents will not complete the survey.
  - A total of 2,642 will read the survey invitation package and 6,468 will not read it. A total of 91 respondents will call to take the survey via telephone interview and all of them will receive a return scheduling call.
- Of 360 NAP survey participants called to participate in an in-depth interview, 58 will participate in an in-depth interview and 302 will not participate.
- Of 145 respondents recruited through local organizations called to participate in an in-depth interview, 29 will participate in an in-depth interview and 116 will not participate.
- Of 360 area probability sample survey respondents called to participate in an in-depth interview, 57 will participate in an in-depth interview and 303 will not participate.

Estimated Total Annual Responses: 35,052 (7,960 annual responses for responsive participants and 27,092 annual responses for nonresponsive participants).

Estimated Time per Response: 0.10706233 hours (0.4145 hours for responsive participants and 0.0167 hours for nonresponsive participants). The estimated time of response varies from 0.0167 hours to 1.00 hours, depending on respondent group and activity, as shown in table 1. The estimated time per response is calculated by dividing the 3,752.8 estimated total hours for responses by the 35,052 total estimated responses. The estimated average time per response is 0.4145 for respondents and 0.0167 for non-respondents.

Estimated Total Annual Burden on Respondents and Nonrespondents: 3,752.8016 hours (3,299.36 hours for responsive participants and 453.44 hours for nonresponsive participants). See table 1 for estimated total annual burden for each type of respondent.

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Table 1. Total Public Burden Hours

Respondent Category	Type of Respondent	Instruments and Activities	Sample Size	Responsive					Nonresponsive					Grand Total Annual Burden Estimate (Hours)	Hourly Wage Rate	Total Annualized Cost of Respondent Burden
				Number of Respondents	Frequency of Response	Total Annual Responses	Hours per Response	Annual Burden (Hours)	Number of Nonrespondents	Frequency of Response	Total Annual Responses	Hours per Response	Annual Burden (Hours)			
Puerto Rican Government																
Puerto Rican Government	Human services, education, and healthcare agency staff	Concept map: Recruitment email	18	14	1	14	0.2500	4	4	1	4	0.1002	0	3.9008	$80.88	$315.49
	Human services, education, and healthcare agency staff	Concept map: Advance materials for first virtual meeting	14	14	1	14	1.5000	21	0	1	0	0.1002	0	21.0000	$80.88	$1,698.42
	Human services, education, and healthcare agency staff	Concept map: First virtual meeting	14	14	1	14	1.0000	14	0	1	0	0.1002	0	14.0000	$80.88	$1,132.28
	Human services, education, and healthcare agency staff	Concept map: Summary of prioritization and sorting results	14	14	1	14	0.5000	7	0	1	0	0.1002	0	7.0000	$80.88	$566.14
	Human services, education, and healthcare agency staff	Concept map: Advance materials for second virtual meeting	14	14	1	14	0.2500	4	0	1	0	0.1002	0	3.5000	$80.88	$283.07
	Human services, education, and healthcare agency staff	Concept map: Second virtual meeting	14	14	1	14	1.0000	14	0	1	0	0.1002	0	14.0000	$80.88	$1,132.28
Puerto Rican government subtotal (unique)			**18**	**14**	**6**	**84**	**0.7500**	**63**	**4**	**1**	**4**	**0.1002**	**0.40**	**63.4008**	-	**$5,127.69**
Business and Nonprofit Organizations																
Business or Other For Profit																
Business or Other for Profit	Private business and academia staff	Concept map: Recruitment email	18	14	1	14	0.2500	4	4	1	4	0.1002	0	3.9008	$50.74	$197.92
	Private business and academia staff	Concept map: Advance materials for first virtual meeting	14	14	1	14	1.5000	21	0	1	0	0.1002	0	21.0000	$50.74	$1,065.53
	Private business and academia staff	Concept map: First virtual meeting	14	14	1	14	1.0000	14	0	1	0	0.1002	0	14.0000	$50.74	$710.35
	Private business and academia staff	Concept map: Summary of prioritization and sorting results	14	14	1	14	0.5000	7	0	1	0	0.1002	0	7.0000	$50.74	$355.18

Respondent Category	Type of Respondent	Instruments and Activities	Sample Size	Responsive					Nonresponsive					Grand Total Annual Burden Estimate (Hours)	Hourly Wage Rate	Total Annualized Cost of Respondent Burden
				Number of Respondents	Frequency of Response	Total Annual Responses	Hours per Response	Annual Burden (Hours)	Number of Nonrespondents	Frequency of Response	Total Annual Responses	Hours per Response	Annual Burden (Hours)			
	Private business and academia staff	Concept map: Advance materials for second virtual meeting	14	14	1	14	0.2500	4	0	1	0	0.1002	0	3.5000	$50.74	$177.59
	Private business and academia staff	Concept map: Second virtual meeting	14	14	1	14	1.0000	14	0	1	0	0.1002	0	14.0000	$50.74	$710.35
	Business or other for profit subtotal (unique)		**18**	**14**	**6**	**84**	**0.7500**	**63**	**4**	**1**	**4**	**0.100**	**0.40**	**63.4008**	-	**$3,216.92 -**
	Nonprofit Organizations															
Nonprofit Organizations	Advocacy organization, human service provider staff	Concept map: Recruitment email	18	14	1	14	0.2500	4	4	1	4	0.1002	0	3.9008	$33.37	$130.17
	Advocacy organization, human service provider staff	Concept map: Advance materials for first virtual meeting	14	14	1	14	1.5000	21	0	1	0	0.1002	0	21.0000	$33.37	$700.76
	Advocacy organization, human service provider staff	Concept map: First virtual meeting	14	14	1	14	1.0000	14	0	1	0	0.1002	0	14.0000	$33.37	$467.18
	Advocacy organization, human service provider staff	Concept map: Summary of prioritization and sorting results	14	14	1	14	0.5000	7	0	1	0	0.1002	0	7.0000	$33.37	$233.59
	Advocacy organization, human service provider staff	Concept map: Advance materials for second virtual meeting	14	14	1	14	0.2500	4	0	1	0	0.1002	0	3.5000	$33.37	$116.79
	Advocacy organization, human service provider staff	Concept map: Second virtual meeting	14	14	1	14	1.0000	14	0	1	0	0.1002	0	14.0000	$33.37	$467.18
	Nonprofit organizations subtotal (unique)		**18**	**14**	**6**	**84**	**0.7500**	**63**	**4**	**1**	**4**	**0.100**	**0.40**	**63.4008**	-	**$2,115.67**
Business and Nonprofit Organizations subtotal (unique)			**36**	**28**	**6**	**168**	**0.7500**	**126**	**8**	**1**	**8**	**0.100**	**0.80**	**126.8016**	-	**$5,332.59**
	Individuals															
Individuals	Pretest participants	Pretest: In-depth interview protocol	9	9	1	9	1.5000	13.500	0	0	0	0.0000	0.000	12.0000	$9.64	$130.17
	Pretest participants	Pretest: Survey instrument	9	9	1	9	1.5000	13.500	0	0	0	0.0000	0.000	12.0000	$9.64	$130.17
	Pretest participants (unique)		18	18	1.00	18	1.5000	27.000	0	0.00	0	0.0000	0.000	27.0000	-	$260.35

Respondent Category	Type of Respondent	Instruments and Activities	Sample Size	Responsive					Nonresponsive					Grand Total Annual Burden Estimate (Hours)	Hourly Wage Rate	Total Annualized Cost of Respondent Burden
				Number of Respondents	Frequency of Response	Total Annual Responses	Hours per Response	Annual Burden (Hours)	Number of Nonrespondents	Frequency of Response	Total Annual Responses	Hours per Response	Annual Burden (Hours)			
	NAP sample	Survey: First invitation letter with QR code	3170	380	1	380	0.0501	19.058	2790	1	2790	0.0167	46.586	65.6444	$9.64	$632.98
	NAP sample	Survey: Reminder postcard	3170	84	1	84	0.0167	1.398	3086	1	3086	0.0167	51.541	52.9390	$9.64	$510.46
	NAP sample	Survey: Second invitation letter with paper survey	2706	244	1	244	0.0501	12.201	2462	1	2462	0.0167	41.122	53.3227	$9.64	$514.16
	NAP sample	Survey: Third invitation letter with paper survey	2462	149	1	149	0.0501	7.464	2313	1	2313	0.0167	38.634	46.0975	$9.64	$444.49
	NAP sample	Survey: Inbound calls to schedule survey by phone	15	15	1	15	0.0167	0.251	0	1	0	0.0000	0.000	0.2505	$9.64	$2.42
	NAP sample	Survey: Outbound call script for survey	666	51	1	51	0.0501	2.555	615	1	615	0.0167	10.271	12.8256	$9.64	$123.67
	NAP sample	Survey of health and community well-being	3170	923	1	923	0.6680	616.293	2247	1	2247	0.0167	37.532	653.8245	$9.64	$6,304.50
	NAP sample	In-depth interview: Outbound calls to recruit participants	360	58	1	58	0.0501	2.906	302	1	302	0.0167	5.043	7.9492	$9.64	$76.65
	NAP sample	In-depth interview	58	58	1	58	1.0000	58.000	0	1	0	0.0167	0.000	58.0000	$9.64	$559.27
	NAP sample subtotal (unique)		**3170**	**923**	**2.13**	**1961**	**0.3672**	**720.124**	**2247**	**6.15**	**13816**	**0.0167**	**230.729**	**950.8534**	**-**	**$9,168.60**
	Local organization recruitment	In-depth interview: Outbound calls to recruit participants	145	29	1	29	0.0501	1.453	116	1	116	0.0167	1.937	3.3901	$9.64	$32.69
	Local organization recruitment	In-depth interview	29	29	1	29	1.0000	29.000	0	1	0	0.0167	0.000	29.0000	$9.64	$279.63
	Local organization recruitment subtotal (unique)		**145**	**29**	**2.00**	**58**	**0.5251**	**30.453**	**116**	**1.00**	**116**	**0.0167**	**1.937**	**32.3901**	**-**	**$312.32**
	Area probability sample	Survey invitation package	9110	2642	1	2642	0.1670	441.197	6468	1	6468	0.0167	108.017	549.2146	$9.64	$5,295.80
	Area probability sample	Survey: Inbound calls to schedule survey by phone	91	91	1	91	0.0167	1.521	0	1	0	0.0000	0.000	1.5214	$9.64	$14.67
	Area probability sample	Survey: Outbound call script for survey	91	91	1	91	0.0501	4.564	0	1	0	0.0000	0.000	4.5641	$9.64	$44.01
	Area probability sample	Survey of health and community well-being	9110	2733	1	2733	0.6680	1825.644	6377	1	6377	0.0167	106.496	1932.1399	$9.64	$18,630.66

Respondent Category	Type of Respondent	Instruments and Activities	Sample Size	Responsive					Nonresponsive					Grand Total Annual Burden Estimate (Hours)	Hourly Wage Rate	Total Annualized Cost of Respondent Burden
				Number of Respondents	Frequency of Response	Total Annual Responses	Hours per Response	Annual Burden (Hours)	Number of Nonrespondents	Frequency of Response	Total Annual Responses	Hours per Response	Annual Burden (Hours)			
	Area probability sample	In-depth interview: Outbound calls to recruit participants	360	57	1	57	0.0501	2.856	303	1	303	0.0167	5.060	7.9158	$9.64	$76.33
	Area probability sample	In-depth interview	57	57	1	57	1.0000	57.000	0	1	0	0.0167	0.000	57.0000	$9.64	$549.62
	Area probability participant subtotal (unique)		**9110**	**2733**	**2.08**	**5671**	**0.4113**	**2332.7825**	**6377**	**2.06**	**13148**	**0.0167**	**219.5733**	**2552.3558**	**-**	**$24,611.09**
All Individuals subtotal (unique)			**12443**	**3703**	**2.08**	**7708**	**0.4035**	**3110.3598**	**8740**	**3.10**	**27080**	**0.0167**	**452.2394**	**3559.5992**		**$34,352.36**
TOTAL			**12497**	**3745**	**2.12580803**	**7960**	**0.41447743**	**3299.3598**	**8752**	**3.09540074**	**27092**	**0.01673698**	**453.4418**	**3749.8016**		**$44,812.64**

Timothy English,

Acting Administrator, Food and Nutrition Service.

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BILLING CODE 3410–30–C

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Assessing Supplemental Nutrition Assistance Program (SNAP) Participants' Fitness for Work

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This is a new collection for: (1) Documenting the policies and guidelines used for making fitness for work determinations by all 53 State Agencies, which include the States, the District of Columbia, the U.S. Virgin Islands, and Guam; (2) describing the process State Agencies use for making fitness for work determinations; (3) determining any general patterns and trends in fitness for work and good cause determinations within and across four case study States; and (4) determining how closely caseworkers follow the States' fitness for work and good cause determination policies and requirements and the challenges they face in applying the policy in four case study States.

DATES: Written comments must be received on or before September 27, 2021.

ADDRESSES: Comments may be sent to: Eric Sean Williams, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, VA 22314, 703–305–2640. Comments may also be submitted via email to *eric.williams@usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Assessing SNAP Participants' Fitness for Work.

Form Number: Not Applicable.

OMB Number: 0584–NEW.

Expiration Date: Not Yet Determined.

Type of Request: New Collection.

Abstract: The Food and Nutrition Act of 2008 requires that Supplemental Nutritional Assistance Program (SNAP) participants between the ages 16 and 59 to meet certain work requirements, unless they are exempt or show good cause as to why they cannot work. Whether a participant is required to meet these work requirements is based upon a SNAP eligibility worker (caseworker) making a determination whether an individual is exempt from these work requirements, including a determination whether the individual is physically or mentally unfit for work. The U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) offers general guidance and States develop their own policies and procedures with little input from FNS. States are given a great degree of latitude in making determinations regarding unfitness for work exemptions. FNS has contracted with MEF Associates and its subcontractor, Mathematica, to conduct a study to better understand how States determine whether individuals are exempted from work requirements or have good cause for not meeting work requirements due to a physical or mental limitation. By surveying all 53 State SNAP Agencies, which include the States, the District of Columbia, the U.S. Virgin Islands, and Guam, and conducting in-depth case studies of four States, this study will provide FNS with valuable insights into how States develop and implement policies and procedures for making fitness for work determinations. This information can help FNS assess States' needs for technical assistance around fitness for work issues and identify lessons learned to share across all State SNAP Agencies.

Affected Public: Members of the public affected by the data collection include individuals and households, State and local governments, and business, not-for-profit, or other for-profit Agencies administering SNAP E&T programs.

Survey: After survey recruitment, FNS anticipates 100 percent participation from the State government Agencies. We will reach out to 53 State or territory SNAP directors to complete a survey and anticipate that all these SNAP directors will agree to participate in the survey. Each SNAP director may designate up to three staff to complete sections of the survey, accounting for an additional 159 State or territory staff participating as respondents (212 survey respondents total). This is the highest possible number of survey respondents; FNS expects fewer to participate in the survey.

Case Studies: FNS will reach out to a maximum of six States Agencies to participate in in-depth case studies and expects four to participate. The case studies will involve semi-structured interviews with program administrators and staff of State SNAP agencies, local offices, and businesses or other agencies that provide SNAP E&T services. After recruiting the four state SNAP agencies, FNS expects two selected local SNAP agencies and two local SNAP E&T providers to participate in each State. The case studies will also include observations of staff-participant interactions during eligibility interviews. The eligibility interviews that will be observed will not be recorded and no personally identifiable information will be recorded during the observations. FNS expects that approximately 25 percent of individuals/households invited to participate will choose not to participate and oversampled to account for nonresponse.

Respondent groups identified for the survey and case studies include the following:

- State Agency SNAP Directors (53 survey respondents, 0 survey nonrespondents, 4 case study recruitment respondents, 2 case study recruitment nonrespondents, 4 case study interview respondents, and 0 case study nonrespondents).
- State Agency SNAP policy staff (159 survey respondents, 24 case study interview respondents, and 0 survey or case study nonrespondents).
- Local SNAP office administrator (8 case study respondents and 0 case study nonrespondents).
- Local SNAP office supervisor (8 case study respondents and 0 case study nonrespondents).
- Local SNAP office frontline staff (64 case study interview respondents and 0

case study interview nonrespondents, 8 case study one-on-one observation participants, 0 case study observation nonparticipants).

- Business—SNAP E&T provider administrators from business or other for profit agencies (4 case study interview respondents and 0 case study interview nonrespondents).
- Business—SNAP E&T provider supervisors from business or other for profit agencies (4 case study interview respondents and 0 case study interview nonrespondents).
- Business—SNAP E&T provider frontline staff from business or other for profit agencies (32 case study interview respondents and 0 case study interview nonrespondents).
- Business—SNAP E&T provider administrators from not for profit agencies (4 case study interview respondents and 0 case study interview nonrespondents).
- Business—SNAP E&T provider supervisors from not for profit agencies (4 case study interview respondents and 0 case study interview nonrespondents).
- Business—SNAP E&T provider frontline staff from not for profit agencies (32 case study interview respondents and 0 case study interview nonrespondents).
- Individual/household—SNAP applicants (24 case study one-on-one observation participants, 6 case study one-on-one observation nonrespondents).

Estimated Number of Respondents: The total estimated number of respondents is 408. This includes:

- 53 State or territory SNAP directors will be asked to complete the survey (100 percent of whom will complete the survey instrument) and a max of 6 of whom will participate in a case study recruitment call (75 percent of whom will then participate in a semi-structured interview).
- 159 State or territory SNAP policy staff will be asked to complete the survey (100 percent of whom will complete the survey instrument; 24 of whom will participate in a semi-structured interview).
- 8 local SNAP office administrators will participate in a semi-structured interview.
- 8 local SNAP office supervisors will participate in a semi-structured interview.
- 64 local SNAP office frontline staff will participate in a semi-structured interview (8 of whom will participate in one-on-one observations).
- 4 SNAP E&T provider administrators from business not-for-profit agencies will participate in a semi-structured interview.
- 4 SNAP E&T supervisors from business not-for-profit agencies will participate in a semi-structured interview.
- 32 SNAP E&T provider frontline staff from business not-for-profit agencies will participate in a semi-structured interview.
- 4 SNAP E&T provider administrators from business or other for-profit agencies will participate in a semi-structured interview.
- 4 SNAP E&T supervisors from business or other for-profit agencies will participate in a semi-structured interview.
- 32 SNAP E&T provider frontline staff from business or other for-profit agencies will participate in a semi-structured interview.
- 30 SNAP applicants (individuals/households) will be asked to participate in one-on-one observation (24 will go on to participate and 6 will not go on to fully participate).

Estimated Number of Responses per Respondent: 1.2425. Each respondent completing a survey section will do so only once. State SNAP directors recruited for the case studies will each participate in one recruitment call. Each case study interview respondent will participate in one semi-structured interview. Staff participating in observations will participate in one observation. SNAP applicants participating in observations will participate in one observation each.

Estimated Total Annual Responses: 497.

Estimated Time per Response: 0.622 hours.

The estimated time of response varies from 0.1667 to 4 hours (10 minutes to 240 minutes) depending on the respondent group and activity, as shown in the table below, with an average estimated time of 0.622 hours (37 minutes) for all responses. The average estimated time is calculated by dividing the 329 estimated total hours for responses in the table below by the 497 total estimated responses. The estimated average time for the non-respondent is 0.4 hours (24 minutes) for all non-responses. The average estimated time is calculated by dividing the 3.2 estimated total hours for non-respondents in the table below by the 8 total estimated non-responses.

Estimated Total Annual Burden on Respondents: 332 hours. See the table below for estimated total annual burden for each type of respondent by data collection activity including the non-responses.

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				Responsive					Nonresponsive					
Respondent Category	**Type of Respondent**	**Activities**	**Sample Size**	**Number of Respondents**	**Frequency of Response**	**Total Annual Responses**	**Hours per Response**	**Annual Burden (Hours)**	**Number of**	**Frequency of Response**	**Total Annual**	**Hours per Response**	**Annual Burden (Hours)**	**Grand Total Annual Burden Estimate (Hours)**
State and Local Government														
State/local government	State Agency SNAP director	Case study recruitment	6	4	1	4.00	1.0000	4.00	2	1.00	2.00	1.00	2.00	6.00
	State Agency SNAP director	Submit program documents and aggregate data (case study)	4	4	1.00	4.00	4.0000	16	0	0.00	0.00	0.00	0.00	16.00
	State Agency SNAP director	Survey recruitment and reminders	53	53	1.00	53.00	0.2500	13.25	0	0.00	0.00	0.00	0.00	13.25
	State Agency SNAP director	Complete survey	53	53	1.00	53.00	0.1667	8.84	0	0.00	0.00	0.00	0.00	8.84
	State Agency SNAP director	Semi-structured interview (case study)	4	4	1.00	4.00	1.0000	4.00	0	0.00	0.00	0.0000	0.00	4.00

				Responsive					Nonresponsive					
Respondent Category	**Type of Respondent**	**Activities**	**Sample Size**	**Number of Respondents**	**Frequency of Response**	**Total Annual Responses**	**Hours per Response**	**Annual Burden (Hours)**	**Number of**	**Frequency of Response**	**Total Annual**	**Hours per Response**	**Annual Burden (Hours)**	**Grand Total Annual Burden Estimate (Hours)**
	State Agency SNAP policy staff	Complete survey	159	159	1.00	159.00	0.1944	30.91	0	0.00	0.00	0.00	0.00	30.91
	State Agencies SNAP policy staff	Site visit: Semi-structured interview	24	24	1.00	24.00	1.0000	24.00	0	0.00	0.00	0.00	0.00	24.00
	State Agencies SNAP policy staff	Submit program documents and aggregate data (case study)	4	4	1.00	4.00	4.0000	16.00	0	0.00	0.00	0.00	0.00	16.00
	Subtotal for State SNAP staff (unique)[1]		218	216	1.41	305.00	0.3836	117.00	2	1.00	2.00	1.0000	2.00	119.00
	Local SNAP office administrators	Semi-structured interview (case study)	8	8	1.00	8.00	1.0000	8.00	0	0.00	0.00	0.00	0.00	8.00

				Responsive					Nonresponsive					
Respondent Category	**Type of Respondent**	**Activities**	**Sample Size**	**Number of Respondents**	**Frequency of Response**	**Total Annual Responses**	**Hours per Response**	**Annual Burden (Hours)**	**Number of**	**Frequency of Response**	**Total Annual**	**Hours per Response**	**Annual Burden (Hours)**	**Grand Total Annual Burden Estimate (Hours)**
	Local SNAP office supervisor	Semi-structured interview (case study)	8	8	1.00	8.00	1.0000	8.00	0	0.00	0.00	0.00	0.00	8.00
	Local SNAP office frontline staff	Semi-structured interview (case study)	64	64	1.00	64.00	1.5000	96.00	0	0.00	0.00	0.00	0.00	96.00
	Local SNAP office frontline staff	Eligibility interview observation	8	8	1.00	8.00	1.0000	8.00	0	0.00	0.00	0.00	0.00	8.00
	Subtotal for local SNAP office staff (unique)[2]		80	80	1.10	88.00	1.3636	120.00	0	0.00	0.00	0.00	0.00	120.00
State/local government subtotal (unique)			298	296	1.33	393.00	0.6031	237.00	2	1.00	2.00	1.0000	2.00	239.00
Business or Other For-Profit														
Business or other for-profit	SNAP E&T provider administrators	Semi-structured interview (case study)	4	4	1.00	4.00	1.0000	4.00	0	0.00	0.00	0.00	0.00	4.00

				Responsive					Nonresponsive					
Respondent Category	**Type of Respondent**	**Activities**	**Sample Size**	**Number of Respondents**	**Frequency of Response**	**Total Annual Responses**	**Hours per Response**	**Annual Burden (Hours)**	**Number of**	**Frequency of Response**	**Total Annual**	**Hours per Response**	**Annual Burden (Hours)**	**Grand Total Annual Burden Estimate (Hours)**
	SNAP E&T provider supervisor	Semi-structured interview (case study)	4	4	1.00	4.00	1.0000	4.00	0	0.00	0.00	0.00	0.00	4.00
	SNAP E&T frontline staff	Semi-structured interview (case study)	32	32	1.00	32.00	1.0000	32.00	0	0.00	0.00	0.00	0.00	32.00
	Subtotal for business or other for-profit (unique)		40	40	1.00	40.00	1.0000	40.00	0	0.00	0.00	0.00	0.00	40.00
Not-for-profit	SNAP E&T provider administrators	Semi-structured interview (case study)	4	4	1.00	4.00	1.0000	4.00	0	0.00	0.00	0.00	0.00	4.00
	SNAP E&T provider supervisor	Semi-structured interview (case study)	4	4	1.00	4.00	1.0000	4.00	0	0.00	0.00	0.00	0.00	4.00
	SNAP E&T frontline staff	Semi-structured interview (case study)	32	32	1.00	32.00	1.0000	32.00	0	0.00	0.00	0.00	0.00	32.00

				Responsive					Nonresponsive					
Respondent Category	**Type of Respondent**	**Activities**	**Sample Size**	**Number of Respondents**	**Frequency of Response**	**Total Annual Responses**	**Hours per Response**	**Annual Burden (Hours)**	**Number of**	**Frequency of Response**	**Total Annual**	**Hours per Response**	**Annual Burden (Hours)**	**Grand Total Annual Burden Estimate (Hours)**
	Subtotal for not-for-profit (unique)		40	40	1.00	40.00	1.0000	40.00	0	0.00	0.00	0.00	0.00	40.00
Business for and not for profit subtotal (unique)			**80**	**80**	**1.00**	**80.00**	**1.0000**	**80.00**	**0**	**0.00**	**0.00**	**0.00**	**0.00**	**80.00**
Individuals														
Individuals	SNAP applicants	Site visit: Eligibility interview observation	30	24	1.00	24.00	0.5000	12.00	6	1.00	6.00	0.2000	1.20	13.20
SNAP E&T participant subtotal (unique)			30	24	1.00	24.00	0.5000	12.00	6	1.00	6.00	0.2000	1.20	13.20
	TOTAL		**408**	**400**	**1.2425**	**497.00**	**0.6220**	**329.00**	**8**	**1.00**	**8.00**	**0.4000**	**3.20**	**332.20**

Notes:

[1]State SNAP staff participating in site visit activities are a subset of the staff members participating in the survey, except for the four State policy staff submitting program documents and aggregate data for the case studies, but not participating in the survey. Therefore, the counts of unique individuals only include the up to four individuals from each of 53 States and territories not participating in the survey.

[2]Local SNAP office frontline staff participating in site visit observations are a subset of the staff members participating in site visit interviews. Therefore, the counts of unique individuals only include the staff participating in interviews.

Timothy English,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2021–15912 Filed 7–27–21; 8:45 am]

BILLING CODE 3410–30–C

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed New Fee Site

AGENCY: Forest Service, USDA.

ACTION: Notice of new fee site.

SUMMARY: The Dakota Prairie Grasslands will be implementing a new $10 expanded amenity recreation fee for overnight camping at Coal Creek campground, described in the **SUPPLEMENTARY INFORMATION** of this notice. The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** whenever new recreation fees are established.

DATES: The new fee will be implemented no earlier than six months following the publication of this notice, approximately January 28, 2022.

ADDRESSES: Dakota Prairie Grasslands, 2000 Miriam Circle, Bismarck, ND 58501

FOR FURTHER INFORMATION CONTACT: Jeff Ward, Regional Recreation Business Program Manager at 406–329–3587 or *jeffrey.p.ward@usda.gov.*

SUPPLEMENTARY INFORMATION: Coal Creek campground was constructed in 2014 to be ADA-accessible (Americans with Disabilities Act). It has two vault toilets, a solar-power potable water well, campfire rings, level parking pads with barriers, and a newly constructed trailhead with access to the popular Maah Daah Hey Trail. Fees are based on the level of amenities and services provided, cost of operation and maintenance, market assessment, and public comment. Funds collected from the new fee will be used for continued operation, maintenance, and future capital improvements. This new fee aligns the campground with other sites offering similar amenities and services.

This fee proposal was vetted through the U.S. Forest Service, Northern Region public involvement process which included announcement of the proposal in local and regional media outlets, on the Forest internet and social media sites, and briefing of federal and local elected officials. The results of these efforts were presented to the local Resource Advisory Committee (RAC) for evaluation and recommendation to implement the new recreation fee.

Reasonable fees, paid by users of these sites and services, will help ensure that the Grasslands can continue maintaining and improving recreation sites for future generations. A market analysis of surrounding recreation sites with similar amenities indicates that the proposed fees are comparable and reasonable.

Dated: July 23, 2021.

Jennifer Eberlien,

Associate Deputy Chief, National Forest System.

[FR Doc. 2021–16026 Filed 7–27–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Establishment for Sturgeon National Wild and Scenic River, Ottawa National Forest, Baraga and Houghton Counties, Michigan

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: In accordance with section 3(b) of the Wild and Scenic Rivers Act, the USDA Forest Service, Washington Office, is transmitting the final boundary for the Sturgeon National Wild and Scenic River to Congress.

FOR FURTHER INFORMATION CONTACT: Information may be obtained by contacting Jordan Ketola, Forest Land Surveyor, by telephone at (906) 428–5825 or via email at *Jordan.ketola@usda.gov.* Alternatively, contact the Ottawa National Forest Supervisor's Office at (906) 932–1330 or online at *https://www.fs.usda.gov/contactus/ottawa/about-forest/contactus.* Individuals who use telecommunication devices for the hearing-impaired (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Daylight Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Sturgeon Wild and Scenic River boundary description and map are available for review on the Ottawa National Forest website: *https://www.fs.usda.gov/alerts/ottawa/alerts-notices.*

Due to COVID–19 health and safety protocols to protect employees and visitors, many Forest Service offices are closed to the public. The Sturgeon Wild and Scenic River boundary description and maps are available for review at the following offices if arrangements are made in advance: USDA, Forest Service, Yates Building, 201 14th Street SW, Washington, DC 20024, phone (800) 832–1355; Eastern Regional Office, 626 East Wisconsin Avenue, Milwaukee, WI 53202, phone (414) 297–3600; and Ottawa National Forest Supervisor's Office, E6248 US2, Ironwood, MI 49938, phone (906) 932–1330. Please contact the appropriate office prior to arrival.

The Michigan Scenic River Act of 1991 (Pub. L. 102–249, dated March 3, 1992) designated Sturgeon River, Michigan as a National Wild and Scenic River, to be administered by the Secretary of Agriculture. As specified by law, the boundary will not be effective until 90 days after Congress receives the transmittal.

Dated: July 11, 2021.

Jennifer Eberlien,

Associate Deputy Chief, National Forest System.

[FR Doc. 2021–16018 Filed 7–27–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed New Fee Sites

AGENCY: Forest Service, USDA.

ACTION: Notice of new fee sites.

SUMMARY: The Custer Gallatin National Forest will be implementing new fees at three campgrounds and two rental cabins listed in **SUPPLEMENTARY INFORMATION** of this notice. Both cabins have received extensive renovations. One cabin has been completely restored to maintain its eligibility for the National Historic Register. All the campgrounds have had recent upgrades to improve the services and recreation experiences. Fees are based on the level of amenities and services provided, cost of operation and maintenance, market assessment, and public comment. Funds from the new fees will be used for continued operation, maintenance, and capital improvements to these recreation sites. The new fees will align the sites with other sites offering similar amenities and services.

DATES: These fees will be implemented no earlier than six months following the publication of this notice, approximately January 28, 2022.

ADDRESSES: Custer Gallatin National Forest, P.O. Box 130, Bozeman, MT 59715.

FOR FURTHER INFORMATION CONTACT: Jane Ruchman, Developed Sites Program Manager, 406–587–6966 or *jane.ruchman@usda.gov;* or Jeff Ward, Regional Recreation Business Program

Manager, 406–329–3587 or *jeffrey.p.ward@usda.gov.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** whenever new recreation fees are established.

Specifically, the Custer Gallatin National Forest will be implementing the following new fees:

- Eldridge Cabin; $75 per night;
- Sage Creek Cabin; $65 per night;
- Falls Creek and Hells Canyon Campgrounds; $10 per night, with an additional $5 extra vehicle fee per night.
- Battle Ridge Campground; $10 for single sites and $20 for double sites, per night, with an additional $5 extra vehicle fee per night (number of vehicles allowed per site varies by site capacity).

This proposal was vetted through the U.S. Forest Service, Northern Region public involvement process, which included announcement of the proposal in local and regional media outlets, on the Forest internet and social media sites, and briefing of federal and local elected officials. The results of these efforts were presented to the local Resource Advisory Committees (RAC) for evaluation and recommendation to implement the new fees.

Reasonable fees, paid by users of these sites and services, will help ensure the Forest can continue maintaining and improving the sites for future generations. A market analysis of surrounding recreation sites with similar amenities indicates the proposed fees are comparable and reasonable.

Advanced reservations for the Eldridge and Sage Creek Cabins will be available through *www.recreation.gov* or by calling 1–877–444–6777. The reservation service charges an $8.00 fee for reservations.

Dated: July 23, 2021.

Jennifer Eberlien,

Associate Deputy Chief, National Forest System.

[FR Doc. 2021–16027 Filed 7–27–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–953]

Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Yama Ribbons and Bows Co., Ltd. (Yama), an exporter/producer of narrow woven ribbons with woven selvedge (Ribbons) from the People's Republic of China (China), received countervailable subsidies during the period of review (POR) January 1, 2018, through December 31, 2018.

DATES: Applicable July 28, 2021.

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova or Amaris Wade, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1280 or (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

Background

The events that occurred since Commerce published the *Preliminary Results* [1] on January 27, 2021, are discussed in the Issues and Decision Memorandum.[2]

On April 1, 2021, Commerce extended the deadline for the final results of this administrative review until July 23, 2021.[3]

Scope of the Order

The products covered by the order are narrow woven ribbons with woven selvedge from China. For a complete description of the scope of this administrative review, *see* the *Preliminary Results* PDM.[4]

[1] *See Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2018,* 86 FR 7264 (January 27, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Decision Memorandum for the Final Results of 2018 Countervailing Duty Administrative Review: Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Extension of Deadline for the Final Results of the 2018 Countervailing Duty Administrative Review,'' dated April 1, 2021.

[4] *See Preliminary Results* PDM at 3–5.

Analysis of Comments Received

All issues raised in interested parties' briefs are addressed in the Issues and Decision Memorandum accompanying this notice. A list of the issues raised by interested parties and to which we responded in the Issues and Decision Memorandum is provided in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be access directly at *http://enforcement.trade.gov/frn/.*

Changes Since the Preliminary Results

Based on the comments received from interested parties, we made no changes to our subsidy rate calculations in the *Preliminary Results.* For a discussion of these issues, *see* the Issues and Decision Memorandum.

Methodology

Commerce conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[5] The Issues and Decision Memorandum contains a full description of the methodology underlying Commerce's conclusions, including any determination that relied upon the use of adverse facts available (AFA) pursuant to sections 776(a) and (b) of the Act.

Final Results of Administrative Review

In accordance with 19 CFR 351.221(b)(5), we calculated a countervailable subsidy rate for the producer/exporter under review for the period of January 1, 2018, through December 31, 2018 as follows:

Company	Subsidy rate (percent)
Yama Ribbons and Bows Co., Ltd	42.20

Assessment Rates

Consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), upon

[5] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

completion of the administrative review, Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Instructions

In accordance with section 751(a)(2)(C) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount shown above for Yama, 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 review. For all non-reviewed firms, Commerce will instruct CBP to continue to collect cash deposits at the most recent company-specific or all-others rate applicable to the company, as appropriate. Accordingly, the cash deposit requirements that will be applied to companies covered by this order, but not examined in this administrative review, are those established in the most recently completed segment of the proceeding for each company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to 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 or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

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(b)(5).

Dated: July 22, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2021–16080 Filed 7–27–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Renewal of Information Collection; Comment Request; Swiss–U.S. Privacy Shield; Invitation for Applications for Inclusion on the Supplemental List of Arbitrators

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before September 27, 2021.

ADDRESSES: Interested persons are invited to submit written comments by email to Towanda Carey, ITA Paperwork Clearance Officer, Department of Commerce, International Trade Administration at *PRAcomments@doc.gov.* Please reference OMB Control Number 0625–0278 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to David Ritchie, Senior Policy Advisor, Department of Commerce, International Trade Administration via email at *privacyshield@trade.gov,* or tel. 202–482–1512. More information on the arbitration mechanism may be found at *https://www.privacyshield.gov/servlet/servlet.FileDownload?file=015t000000079Gr.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Swiss-U.S. Privacy Shield Framework was designed by the U.S. Department of Commerce (Department) and the Swiss Administration to provide companies in both Switzerland and the United States with a mechanism to comply with data protection requirements when transferring personal data from Switzerland to the United States in support of transatlantic commerce. On January 12, 2017, the Swiss Administration deemed the Swiss-U.S. Privacy Shield Framework adequate to enable data transfers under Swiss law, and on April 12, 2017, the Department began accepting self-certifications from U.S. companies to join the program (82 FR 16375; April 12, 2017).

On September 8, 2020 the Federal Data Protection and Information Commissioner (FDPIC) of Switzerland issued an opinion concluding that the Swiss-U.S. Privacy Shield Framework does not provide an adequate level of protection for data transfers from Switzerland to the United States pursuant to Switzerland's Federal Act on Data Protection (FADP). As a result of that opinion, organizations wishing to rely on the Swiss-U.S. Privacy Shield to transfer personal data from Switzerland to the United States should seek guidance from the FDPIC or legal counsel. That opinion does not relieve participants in the Swiss-U.S. Privacy Shield of their obligations under the Swiss-U.S. Privacy Shield Framework. The Department continues to administer the Privacy Shield program while those

discussions proceed. For more information on the Privacy Shield, visit *https://www.privacyshield.gov/welcome.*

As described in Annex I of the Swiss-U.S. Privacy Shield Framework, the Department and the Swiss Administration committed to implement an arbitration mechanism to provide Swiss individuals with the ability to invoke binding arbitration to determine, for residual claims, whether an organization has violated its obligations under the Privacy Shield. Organizations voluntarily self-certify to the Swiss-U.S. Privacy Shield Framework and, upon certification, the commitments the organization has made to comply with the Swiss-U.S. Privacy Shield Framework become legally enforceable under U.S. law. Organizations that self-certify to the Swiss-U.S. Privacy Shield Framework commit to binding arbitration of residual claims if a Swiss individual chooses to exercise that option. Under the arbitration option, a Privacy Shield Panel (consisting of one or three arbitrators, as agreed by the parties) has the authority to impose individual-specific, non-monetary equitable relief (such as access, correction, deletion, or return of the Swiss individual's data in question) necessary to remedy the violation of the Swiss-U.S. Privacy Shield Framework only with respect to the individual. The parties will select the arbitrators from the list of arbitrators described below.

The Department and the Swiss Administration seek to maintain a list of up to five arbitrators to supplement the list of arbitrators developed under the EU–U.S. Privacy Shield Framework.[1] To be eligible for inclusion on the supplemental list, applicants must be admitted to practice law in the United States and have expertise in both U.S. privacy law and European or Swiss data protection law. Applicants shall not be subject to any instructions from, or be affiliated with, any Privacy Shield organization, or the U.S., Switzerland, EU, or any EU Member State or any other governmental authority, public authority or enforcement authority.

The Department previously requested and obtained approval of this information collection (OMB Control No. 0625–0278), which expires on 10/31/2021, and now seeks renewal of this information collection. Although the Department is not currently seeking additional applications, it may do so in the future as appropriate.

To be considered for inclusion on the Swiss-U.S. Privacy Shield Supplemental List of Arbitrators, eligible individuals will be evaluated on the basis of independence, integrity, and expertise:

Independence
- —Freedom from bias and prejudice.

Integrity
- —Held in the highest regard by peers for integrity, fairness and good judgment.
- —Demonstrates high ethical standards and commitment necessary to be an arbitrator.

Expertise Required:
- —Admission to practice law in the United States.
- —Level of demonstrated expertise in U.S. privacy law and European or Swiss data protection law.

Other expertise that may be considered includes any of the following:
- —Relevant educational degrees and professional licenses.
- —Relevant professional or academic experience or legal practice.
- —Relevant training or experience in arbitration or other forms of dispute resolution.

Evaluation of applications for inclusion on the list of arbitrators will be undertaken by the Department and the Swiss Administration. Selected applicants will remain on the list for a period of three years, absent exceptional circumstances; change in eligibility, or for cause, renewable for one additional period of three years.

The Department selected the International Centre for Dispute Resolution-American Arbitration Association (ICDR–AAA) as administrator for Privacy Shield arbitrations brought under either the EU–U.S. Privacy Shield Framework or the Swiss-U.S. Privacy Shield Framework. Among other things, the ICDR–AAA facilitates arbitrator fee arrangements, including the collection and timely payment of arbitrator fees and other expenses.

Arbitrators are expected to commit their time and effort when included on the Swiss-U.S. Privacy Shield Supplemental List of Arbitrators and to take reasonable steps to minimize the costs or fees of the arbitration.

Arbitrators are subject to a code of conduct consistent with Annex I of the Swiss-U.S. Privacy Shield Framework and generally accepted ethical standards for arbitrators. The Department and the Swiss Administration agreed to adopt an existing, well-established set of U.S. arbitral procedures to govern the arbitral proceedings, subject to considerations identified in Annex I of the Swiss-U.S. Privacy Shield Framework, including that materials submitted to arbitrators will be treated confidentially and will only be used in connection with the arbitration. For more information, please visit *https://www.privacyshield.gov/article?id=G-Arbitration-Procedures* where you can find information on the arbitration procedures. (Please note that the Arbitration procedures apply to both the EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework)

Applications

Applications must be typewritten and should be headed ''Application for Inclusion on the Swiss-U.S. Privacy Shield Supplemental List of Arbitrators.'' Applications should include the following information, and each section of the application should be numbered as indicated:

- —Name of applicant.
- —Address, telephone number, and email address.

1. Independence
   - —Description of the applicant's affiliations with any Privacy Shield organization, or the U.S., Switzerland, any EU Member State or any other governmental authority, public authority, or enforcement authority.
2. Integrity
   - —On a separate page, the names, addresses, telephone, and fax numbers of three individuals willing to provide information concerning the applicant's qualifications for service, including the applicant's character, reputation, reliability, and judgment.
   - —Description of the applicant's willingness and ability to make time commitments necessary to be an arbitrator.
3. Expertise
   - —Demonstration of admittance to practice law in the United States.
   - —Relevant academic degrees and professional training and licensing.
   - —Current employment, including title, description of responsibility, name and address of employer, and

[1] On July 16, 2020, the Court of Justice of the European Union (CJEU) issued a judgment declaring as ''invalid'' the European Commission's decision on the adequacy of the protection provided by the EU–U.S. Privacy Shield and as a result the EU–U.S. Privacy Shield Framework is no longer a valid mechanism to comply with EU data protection requirements when transferring personal data from the European Union to the United States. That judgment does not relieve participants in the EU–U.S. Privacy Shield of their obligations under the EU–U.S. Privacy Shield Framework. The Department and the Commission are discussing the potential for an enhanced EU–U.S. Privacy Shield Framework to comply with the July 16, 2020 judgment by the CJEU. The Department continues to administer the Privacy Shield program while those discussions proceed. For more information on the Privacy Shield, visit *https://www.privacyshield.gov/welcome.*

name and telephone number of supervisor or other reference.
—Employment history, including the dates and addresses of each prior position and a summary of responsibilities.
—Description of expertise in U.S. privacy law and European or Swiss data protection law.
—Description of training or experience in arbitration or other forms of dispute resolution, if applicable.
—A list of publications, testimony, and speeches, if any, concerning U.S. privacy law and European or Swiss data protection law, with copies appended.

II. Method of Collection

As stated above, the Department is not currently seeking additional applications, but may do so in the future as appropriate. The Department previously requested and obtained approval of this information collection (OMB Control No. 0625–0278), which expires on 10/31/2021, and now seeks renewal of this information collection. Future applications would be submitted to the Department by email. More information on the arbitration mechanism may be found at *https://www.privacyshield.gov/article?id=ANNEX-I-introduction.*

III. Data

OMB Control Number: 0625–0278.
Form Number(s): None.
Type of Review: Regular submission, revision of a current information collection.
Affected Public: Private individuals.
Estimated Number of Respondents: 20.
Estimated Time per Response: 240 minutes.
Estimated Total Annual Burden Hours: 80.
Estimated Total Annual Cost to Public: $0.
Respondent's Obligation: Required to obtain or retain benefits.
Legal Authority: The Department's statutory authority to foster, promote, and develop the foreign and domestic commerce of the United States (15 U.S.C. 1512).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this information collection request (ICR). Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–16019 Filed 7–27–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–882]

Certain Cold-Rolled Steel Flat Products From the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of certain cold-rolled steel flat products (cold-rolled steel) from the Republic of Korea. The period of review (POR) is January 1, 2018, through December 31, 2018.

DATES: Applicable July 28, 2021.

FOR FURTHER INFORMATION CONTACT: Moses Song or 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) 482–7885 or (202) 482–1121, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of this review on January 26, 2021.[1] On April 8, 2021, Commerce extended the deadline for the final results of this administrative review until July 23, 2021.[2] On May 25, 2021, Commerce issued a post-preliminary analysis on the electricity for less than adequate remuneration allegation and the equity infusions that Dongbu Steel Co., Ltd. (Dongbu Steel) received.[3] For a description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[4]

Scope of the Order

The product covered by this order is cold-rolled steel. For a complete description of the scope of this order, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in interested parties' case briefs are addressed in the Issues and Decision Memorandum accompanying this notice. A list of the issues raised by parties, and to which Commerce responded in the Issues and Decision Memorandum, is provided in Appendix I to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.*

Changes Since the Preliminary Results

Based on the comments received and record evidence, we made certain changes to the *Preliminary Results* with

[1] *See Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; 2018,* 86 FR 7063 (January 26, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Certain Cold-Rolled Steel Flat Products from the Republic of Korea; Countervailing Duty Administrative Review; 2018: Extension of Deadline for Final Results,'' dated April 8, 2021.

[3] *See* Memorandum, ''Countervailing Duty Administrative Review of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Post-Preliminary Analysis Memorandum—Electricity for Less than Adequate Remuneration and Equity Infusions,'' dated May 25, 2021.

[4] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2018 Administrative Review of the Countervailing Duty Order on Certain Cold-Rolled Steel Flat Products from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

respect to the net subsidy calculated for Dongbu Steel/Dongbu Incheon Steel Co., Ltd. (collectively, Dongbu), and for companies not selected for individual review. These changes are explained in the Issues and Decision Memorandum.

Methodology

Commerce conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[5] For a description of the methodology underlying all of Commerce's conclusions, *see* the Issues and Decision Memorandum.

In making these final results, Commerce is relying, in part, on facts otherwise available, including an adverse inference, pursuant to section 776(a) and 776(b) of the Act. For a full discussion of our application of facts otherwise available, *see* the *Preliminary Results*.[6]

Companies Not Selected for Individual Review

For the companies not selected for individual review, because the rates calculated for Dongbu and Hyundai Steel Co., Ltd. (Hyundai Steel) are above *de minimis* and not based entirely on facts available, we applied a subsidy rate based on the weighted-average of the subsidy rates calculated for Dongbu and Hyundai Steel using publicly ranged sales data submitted by the respondents.[7] This is consistent with the methodology that we use in an investigation to establish the all-others rate, pursuant to section 705(c)(5)(A) of the Act.

Final Results of Administrative Review

We determine that, for the period January 1, 2018 through December 31, 2018, the following net countervailable subsidy rates exist:

Company	Subsidy rate (percent *ad valorem*)
Dongbu Steel Co., Ltd./ Dongbu Incheon Steel Co., Ltd	9.18
Hyundai Steel Co., Ltd	0.51
Non-Selected Companies Under Review[8]	1.93

Assessment Rate

Pursuant to 19 CFR 351.212(b)(2), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries of subject merchandise in accordance with the final results of this review, for the above-listed companies at the applicable *ad valorem* assessment rates listed. Consistent with its recent notice,[9] Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Rates

In accordance with section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the companies listed above. 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 deposits, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Disclosure

Commerce intends to disclose the calculations performed for these final results of review within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Notice to Interested Parties

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: July 22, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

Appendix II

List of Non-Selected Companies

1. AJU Steel Co., Ltd.

[5] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[6] *See Preliminary Results* Preliminary Decision Memorandum at 16–18.

[7] With two respondents under review, Commerce normally calculates: (A) A weighted-average of the estimated subsidy rates calculated for the examined respondents; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company's publicly ranged U.S. sales values for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters.

[8] *See* Appendix II.

[9] *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).

2. Amerisource Korea
3. BC Trade
4. Busung Steel Co., Ltd.
5. Cenit Co., Ltd
6. Daewoo Logistics Corporation
7. Dai Yang Metal Co., Ltd.
8. DK GNS Co., Ltd.
9. Dong Jin Machinery
10. Dongkuk Steel Mill Co., Ltd.
11. Dongkuk Industries Co., Ltd.
12. Eunsan Shipping and Air Cargo Co., Ltd.
13. Euro Line Global Co., Ltd.
14. GS Global Corp.
15. Hanawell Co., Ltd.
16. Hankum Co., Ltd.
17. Hyosung TNC Corp.
18. Hyuk San Profile Co., Ltd.
19. Hyundai Group
20. Iljin NTS Co., Ltd.
21. Iljin Steel Corp.
22. Jeen Pung Industrial Co., Ltd.
23. Kolon Global Corporation
24. Nauri Logistics Co., Ltd.
25. Okaya Korea Co., Ltd.
26. PL Special Steel Co., Ltd.
27. POSCO
28. POSCO C&C Co., Ltd.
29. POSCO Daewoo Corp.
30. POSCO International Corp.
31. Samsung C&T Corp.
32. Samsung STS Co., Ltd.
33. SeAH Steel Corp.
34. SK Networks Co., Ltd.
35. Taihan Electric Wire Co., Ltd.
36. TGS Pipe Co., Ltd.
37. TI Automotive Ltd.
38. Xeno Energy

[FR Doc. 2021–16083 Filed 7–27–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 03–3A007]

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review to Great Lakes Fruit Exporters Association, LLC (''GLFEA''), Application No. 03–3A007.

SUMMARY: The Secretary of Commerce, through the Office of Trade and Economic Analysis (''OTEA''), issued an Export Trade Certificate of Review to GLFEA on July 19, 2021.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, OTEA, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) (''the Act'') authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325. OTEA is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

GLFEA's Export Trade Certificate of Review was amended as follows:

1. Added the following entities as new Members of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)):

- Applewood Fresh Growers, LLC, Sparta, Michigan
- Michigan Fresh Marketing, LLC, Comstock Park, Michigan

2. Removed the following entities as Members of the Certificate:

- Jack Brown Produce, Inc., Sparta, Michigan
- All Fresh GPS, LLC, Comstock Park, Michigan

Updated List of Members (Within the Meaning of Section 325.2(*l*) of the Regulations (15 CFR 325.2(l))

Applewood Fresh Growers, LLC, Sparta, Michigan
BelleHarvest Sales, Inc., Belding, Michigan
Greenridge Fruit, Inc., Grand Rapids, Michigan
Michigan Fresh Marketing, LLC, Comstock Park, Michigan
North Bay Produce, Inc., Traverse City, Michigan
Riveridge Produce Marketing, Inc., Sparta, Michigan

The effective date of the amended certificate is April 22, 2021, the date on which GLFEA's application to amend was deemed submitted.

Dated: July 22, 2021.

Joseph Flynn,

Director, Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 2021–15983 Filed 7–27–21; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 94–7A007]

Export Trade Certificate of Review

ACTION: Notice of issuance of an Amended Export Trade Certificate of Review to Florida Citrus Exports, L.C. (''FCE''), Application No. 94–7A007.

SUMMARY: The Secretary of Commerce, through the Office of Trade and Economic Analysis (''OTEA''), issued an Export Trade Certificate of Review to FCE on July 12, 2021.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, OTEA, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) (''the Act'') authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325. OTEA is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

FCE's Export Trade Certificate of Review was amended as follows:

1. Added the following entity as a new Member of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)):

- Heller Brothers Packing Corp., Winter Garden, Florida

2. Removed the following entities as Members of the Certificate:

- Hogan and Sons, Inc., Vero Beach, Florida
- Leroy E. Smith's Sons, Inc., Vero Beach, Florida
- Seald Sweet LLC, Vero Beach, Florida

Updated list of Members (within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)):

Egan Fruit Packing, LLC, Ft. Pierce, Florida
Golden River Fruit Co., Vero Beach, Florida
Heller Brothers Packing Corp., Winter Garden, Florida
Indian River Exchange Packers, Inc., Vero Beach, Florida
The Packers of Indian River, Ltd., Ft. Pierce, Florida
Premier Citrus Marketing, LLC, Vero Beach, Florida
River One International Marketing, Inc., Vero Beach, Florida
Riverfront Packing Co. LLC, Vero Beach, Florida

The effective date of the amended certificate is April 14, 2021, the date on which FCE's application to amend was deemed submitted.

Dated: July 23, 2021.

Joseph Flynn,

Director, Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 2021–16074 Filed 7–27–21; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB256]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Floating Dry Dock Project at Naval Base San Diego in San Diego, California

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

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: NMFS has received a request from the United States Navy for the re-issuance of a previously issued incidental harassment authorization (IHA) with the only change being effective dates. The initial IHA authorized take of one species of marine mammals, by Level B harassment, incidental to construction associated with the Floating Dry Dock Project at Naval Base San Diego in San Diego, California. The project has been delayed and none of the work covered in the initial IHA has been conducted. The initial IHA was effective from September 15, 2020, through September 14, 2021. The Navy has requested re-issuance with new effective dates of September 15, 2021, through September 14, 2022. The scope of the activities and anticipated effects remain the same, authorized take numbers are not changed, and the required mitigation, monitoring, and reporting remains the same as included in the initial IHA. NMFS is, therefore, issuing a second identical IHA to cover the incidental take analyzed and authorized in the initial IHA.

DATES: This authorization is effective from September 15, 2021, through September 14, 2022.

ADDRESSES: An electronic copy of the final 2020 IHA previously issued to the Navy, the Navy's application, and the **Federal Register** notices proposing and issuing the initial IHA may be obtained by visiting *www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-floating-dry-dock-project-naval-base-san-diego.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Dwayne Meadows, Ph.D., Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act (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 issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On June 1, 2020, NMFS published final notice of our issuance of an IHA authorizing take of marine mammals incidental to the Floating Dry Dock Project at Naval Base San Diego in San Diego, California (85 FR 33129). The effective dates of that IHA were September 15, 2020, through September 14, 2021. On July 12, 2021, the Navy informed NMFS that the project was delayed. None of the work identified in the initial IHA (*e.g.,* pile driving) has occurred. The Navy submitted a request that we reissue an identical IHA that would be effective from September 15, 2021, through September 14, 2022, in order to conduct the construction work that was analyzed and authorized through the previously issued IHA. Therefore, re-issuance of the IHA is appropriate.

Summary of Specified Activity and Anticipated Impacts

The planned activities (including mitigation, monitoring, and reporting), authorized incidental take, and anticipated impacts on the affected stocks are the same as those analyzed and authorized through the previously issued IHA.

The purpose of the Navy's construction project is to ensure the Naval Base San Diego's capability to conduct berth-side repair and maintenance of vessels. The need for the proposed action is to construct a floating dry dock by support by installing two mooring dolphins, fender piles, and a concrete ramp wharf and vehicle bridge. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the initial IHA. The mitigation and monitoring are also as prescribed in the initial IHA.

The only species that is expected to be taken by the planned activity is California sea lions (*Zalophus*

californianus). A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is found in the previous documents referenced above. The data inputs and methods of estimating take are identical to those used in the initial IHA. NMFS has reviewed recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts or take estimate under the initial IHA.

We refer to the documents related to the previously issued IHA, which include the **Federal Register** notice of the issuance of the initial 2020 IHA for the Navy's construction work (85 FR 33129; June 1, 2020), the Navy's application, the **Federal Register** notice of the proposed IHA (85 FR 21179; April 16, 2020), and all associated references and documents.

Determinations

The Navy will conduct activities as analyzed in the initial 2020 IHA. As described above, the number of authorized takes of the same species and stocks of marine mammals are identical to the numbers that were found to meet the negligible impact and small numbers standards and authorized under the initial IHA and no new information has emerged that would change those findings. The re-issued 2021 IHA includes identical required mitigation, monitoring, and reporting measures as the initial IHA, and there is no new information suggesting that our analysis or findings should change.

Based on the information 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; and (4) the Navy'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.

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 review our proposed action with respect to environmental consequences on the human environment.

Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review. This action is consistent with categories of activities identified in CE 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.

Endangered Species Act (ESA)

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.

However, no incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Authorization

NMFS has issued an IHA to the Navy for in-water construction activities associated with the specified activity from September 15, 2020, through September 14, 2021. All previously described mitigation, monitoring, and reporting requirements from the initial 2020 IHA are incorporated.

Dated: July 22, 2021.

Angela Somma,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–16022 Filed 7–27–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB194]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Off of Massachusetts and Rhode Island

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

ACTION: Notice; issuance of an 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 an incidental harassment authorization (IHA) to Vineyard Wind 1 to incidentally harass, by Level B harassment only, marine mammals during marine site characterization surveys off of Massachusetts and Rhode Island in the area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Area OCS–A 0501 and along the Offshore Export Cable Corridor.

DATES: This Authorization is applicable for a period of one year from the date of issuance.

FOR FURTHER INFORMATION CONTACT: Leah Davis, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* 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 issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be 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 the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On January 29, 2021, NMFS received a request from Vineyard Wind 1 for an IHA to take marine mammals incidental to marine site characterization surveys off of Massachusetts and Rhode Island for the 501 North wind energy project. The application was deemed adequate and complete on May 19, 2021. Vineyard Wind 1's request is for take of a small number of 14 species of marine mammals by Level B harassment only. Neither Vineyard Wind 1 nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued an IHA to Vineyard Wind LLC (Vineyard Wind) for similar marine site characterization surveys (85 FR 42357; July 14, 2020), and NMFS has received a request from Vineyard Wind for a renewal of that IHA.

Since issuance of Vineyard Wind's previous IHA (85 FR 42357; July 14, 2020), Vineyard Wind has split into separate corporate entities, Vineyard Wind (to which the previous IHA was issued), and Vineyard Wind 1, which holds assets associated with the 501 North wind energy project. Therefore, although the surveys analyzed in this IHA to Vineyard Wind 1 will occur in an area that overlaps with a portion of the project area included in the previous Vineyard Wind IHA and renewal of that IHA (86 FR 38296; July 20, 2021), this IHA is issued to a separate corporate entity (Vineyard Wind 1).

Description of the Specified Activity

Overview

As part of its overall marine site characterization survey operations, Vineyard Wind 1 plans to conduct high-resolution geophysical (HRG) surveys in the Lease Area and along the Offshore Export Cable Corridor (OECC) off of Massachusetts and Rhode Island.

The purpose of the marine site characterization surveys is to obtain a baseline assessment of seabed/sub-surface soil conditions in the Lease Area and cable route corridors to support the siting of potential future offshore wind projects. Underwater sound resulting from Vineyard Wind 1's planned site characterization survey activities, specifically HRG surveys, has the potential to result in incidental take of marine mammals in the form of behavioral harassment.

Dates and Duration

The total duration of survey activities will be approximately 170 survey days. Each day that a survey vessel is operating counts as a single survey day, *e.g.,* two survey vessels operating on the same day count as two survey days. This schedule is based on assumed 24-hour operations. Vineyard Wind 1 is beginning its survey activities in summer 2021, and will be continuing them for up to one year (though the actual duration will likely be shorter, particularly given the use of multiple vessels). The IHA is effective for one year from the date of issuance.

Specific Geographic Region

Vineyard Wind 1's planned survey activities will occur in the Lease Area, located approximately 24 kilometers (km) (13 nautical miles (nm)) from the southeast corner of Martha's Vineyard, and along the OECC route (landfall) in both Federal and State waters of Massachusetts (see Figure 1). The OECC routes will extend from the lease areas to shallow water areas near potential landfall locations. Water depths in the Lease Area range from about 35 to 60 meters (m; 115 to 197 feet (ft)). Water depths along the potential OECC route range from 2.5 to approximately 35 m (8 to approximately 115 ft). For the purpose of this IHA, the Lease Area and OECC are collectively referred to as the project area. The project area for this IHA overlaps with the project area for Vineyard Wind's previous IHA (85 FR 42357; July 14, 2020) for which NMFS has issued a renewal to Vineyard Wind (86 FR 38296; July 20, 2021).

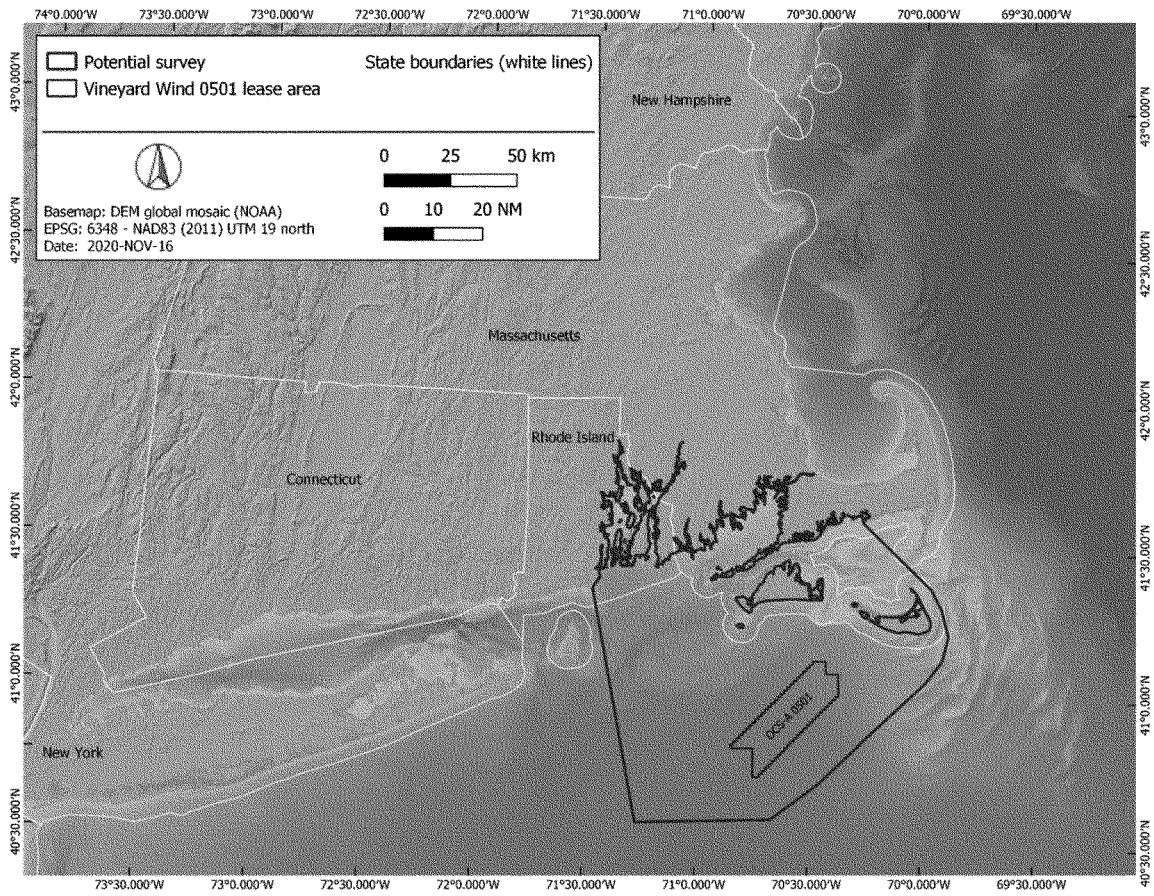

Figure 1 -- Survey Area

Detailed Description of Specific Activity

Vineyard Wind 1 plans to conduct HRG survey operations, including single and multibeam depth sounding, magnetic intensity measurements, seafloor imaging, and shallow and medium penetration sub bottom profiling. The HRG surveys may be conducted using any or all of the following equipment types: Side scan sonar, single and multibeam echosounders, magnetometers and gradiometers, parametric sub-bottom profiler (SBP), CHIRP SBP, boomers, or sparkers. HRG survey activities are anticipated to include multiple survey vessels (up to eight, depending on the season), which may operate concurrently, though surveys will be spaced to avoid geophysical interference with one another. Vineyard Wind 1 assumes that HRG survey activities will be conducted continuously 24 hours per day, with an assumed daily survey distance of 80 km (43 nm). Survey vessels will maintain a speed of approximately 4 knots (2.1 m/second) while surveying, which equates to 181 km per 24-hour period. However, based on past survey experience (*i.e.,* knowledge of typical daily downtime due to weather, system malfunctions, etc.), Vineyard Wind 1 assumes 80 km as the average daily distance.

The following acoustic sources planned for use during Vineyard Wind 1's HRG survey activities are conservatively assumed to have the potential to result in incidental take of marine mammals:

- Shallow Penetration Sub-bottom Profilers (SBP; Chirps) to map the near-surface stratigraphy (top 0 to 5 m (0 to 16 ft)) of sediment below seabed). A chirp system emits sonar pulses that increase in frequency from about 2 to 20 kHz over time. The pulse length frequency range can be adjusted to meet project variables. These sources are typically mounted on the hull of the vessel or from a side pole; and
- Medium Penetration SBPs (Boomers and Sparkers) to map deeper subsurface stratigraphy as needed. A boomer is a broadband sound source operating in the 3.5 Hz to 10 kHz frequency range. Sparkers create acoustic pulses from 50 Hz to 4 kHz omnidirectionally from the source that can penetrate several hundred meters into the seafloor. These sources are typically towed behind the vessel.

Additional acoustic sources not expected to have the potential to cause take of marine mammals were described in the notice of proposed IHA (86 FR 30266; June 7, 2021). Table 1 identifies the representative survey equipment with the expected potential to result in exposure of marine mammals and potentially result in take. The make and model of the listed survey equipment may vary depending on availability and the final equipment choices will vary depending on the final survey design, vessel availability, and survey contractor selection.

HRG surveys are expected to use several equipment types concurrently in order to collect multiple aspects of geophysical data along one transect. Selection of equipment combinations is based on specific survey objectives.

TABLE 1—SUMMARY OF REPRESENTATIVE HRG EQUIPMENT

System	Frequency (kHz)	Beam width (°)	Pulse duration (ms)	Repetition rate (Hz)	In-beam source level (dB)	
					RMS	Pk
Shallow subbottom profiler (non-impulsive)						
EdgeTech Chirp 216	2–16	65	2	3.75	178	182
Deep seismic profiler (impulsive)						
Applied Acoustics AA251 Boomer	0.2–15	180	0.8	2	205	212
GeoMarine Geo Spark 2000 (400 tip)	0.05–3	180	3.4	1	203	213

Note: While many of these sources overlap with Vineyard Wind's previous IHA (85 FR 42357; July 14, 2020), the operating parameters used as proxies in modeling some sources were changed as a result of HRG modeling recommendations from NMFS. For data source information, please see Table A–3 in Vineyard Wind 1's application.

Required mitigation, monitoring, and reporting measures are described in detail later in this document (see Mitigation Measures and Monitoring and Reporting).

Comments and Responses

A notice of NMFS' proposal to issue an IHA to Vineyard Wind 1 was published in the **Federal Register** on June 7, 2021 (86 FR 30266). That notice described, in detail, Vineyard Wind 1's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day comment period, NMFS received substantive comments from Oceana, and from a group of environmental non-governmental organizations (ENGOs) including the Natural Resources Defense Council, Conservation Law Foundation, National Wildlife Federation, Defenders of Wildlife, Southern Environmental Law Center, Surfrider Foundation, Mass Audubon, Friends of the Earth, International Fund for Animal Welfare, NY4WHALES, WDC Whale and Dolphin Conservation, Marine Mammal Alliance Nantucket, Gotham Whale, All Our Energy, Seatuck Environmental Association, Inland Ocean Coalition, Nassau Hiking & Outdoor Club, Connecticut Audubon Society, and Cetacean Society International. Summaries of all substantive comments, and our responses to these comments, are provided here. Please see the comment letters, available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-vineyard-wind-1-marine-site-characterization-surveys,* for full detail regarding the comments received.

Comment 1: The ENGOs stated that NMFS must ensure undisturbed access to foraging habitat to adequately protect North Atlantic right whales due to what the commenters describe as an energetically expensive foraging strategy. Oceana also noted the importance of the project area to North Atlantic right whales year-round, citing Oleson *et al.* (2020).

Response: As NMFS stated in the proposed IHA, part of the project area coincides directly with year-round ''core'' North Atlantic right whale foraging habitat (Oleson *et al.* 2020) south of Martha's Vineyard and Nantucket islands where both visual and acoustic detections of North Atlantic right whales indicate a nearly year-round presence (Oleson *et al.,* 2020). NMFS notes that prey for North Atlantic right whales are mobile and broadly distributed throughout the project area; therefore, North Atlantic right whales are expected to be able to resume foraging once they have moved away from any areas with potentially disturbing levels of underwater noise. There is ample foraging habitat adjacent to the project area that will not be ensonified by HRG sources, such as in the Great South Channel and Georges Bank Shelf Break feeding biologically important area (BIA). Furthermore, the spatial acoustic footprint of the survey is very small relative to the spatial extent of the available foraging habitat. Finally, we have established a 500-m shutdown zone for North Atlantic right whales, which is more than twice as large as the greatest Level B harassment isopleth calculated for the specified activities for this IHA.

Comment 2: Oceana commented that the IHA must include requirements for all vessels to maintain a separation distance of at least 500 m from North Atlantic right whales at all times.

Response: NMFS agrees with Oceana and has stipulated in both the **Federal Register** notice of proposed IHA (86 FR 30266; June 7, 2021) and this final IHA that survey vessels must maintain a separation distance of 500 m or greater from any sighted Endangered Species Act (ESA)-listed whale or other unidentified large marine mammals visible at the surface.

Comment 3: The ENGOs recommended that NMFS incorporate additional data sources into calculations of marine mammal density and take and that NMFS must ensure all available data are used to ensure that any potential shifts in habitat usage by endangered and protected species and stocks are reflected in estimations of marine mammal density and take. The ENGOs asserted in general that the density models used by NMFS do not fully reflect the abundance, distribution, and density of marine mammals for the U.S. East Coast and therefore should not be the only information source relied upon when estimating take. The ENGOs note that NMFS did increase the number of Level B harassment takes of common dolphins based on the daily rate of observations of this species during surveys conducted under Vineyard Wind's previous IHA, and the modification to the proposed Mayflower Wind IHA (May 20, 2021; 86 FR 27393). They note that NMFS compared density estimates derived from Mayflower Wind's 2020 HRG survey PSO data with those derived from the Roberts *et al.* (2016, 2017, 2018, 2020) models, and that NMFS used the larger of the take estimates as the basis for the proposed number of takes. The ENGOs state that rather than relying solely on observations previously recorded by the specific project for which authorization is currently being sought, NMFS should collectively examine PSO data from survey activities by multiple offshore wind energy projects being conducted in regional proximity (*e.g.,* off the coasts of Rhode Island and Massachusetts), as available, to inform the most conservative take estimate for each species and stock.

Response: Habitat-based density models produced by the Duke University Marine Geospatial Ecology

Lab (MGEL; Roberts *et al.* 2016, 2017, 2018, 2020) represent the best available scientific information concerning marine mammal occurrence within the U.S. Atlantic Ocean. Density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016); more information, including the model results and supplementary information for each of those models, is available at *https://seamap.env.duke.edu/models/Duke/EC/* . These models provided key improvements over previously available information, by incorporating additional aerial and shipboard survey data from NMFS and from other organizations collected over the period 1992–2014, incorporating 60 percent more shipboard and 500 percent more aerial survey hours than did previously available models; controlling for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting; and modeling density from an expanded set of 8 physiographic and 16 dynamic oceanographic and biological covariates. In subsequent years, certain models have been updated on the basis of additional data as well as methodological improvements. In addition, a new density model for seals was produced as part of the 2017–18 round of model updates.

Of particular note, Roberts *et al.* (2020) further updated density model results for North Atlantic right whales by incorporating additional sighting data and implementing three major changes: Increasing spatial resolution, generating monthly estimates on three time periods of survey data, and dividing the study area into 5 discrete regions. Model version nine for North Atlantic right whales—was undertaken with the following objectives (Roberts *et al.,* 2020):

- To account for recent changes to right whale distributions, the model should be based on survey data that extend through 2018, or later if possible. In addition to updates from existing collaborators, data should be solicited from two survey programs not used in prior model versions including aerial surveys of the Massachusetts and Rhode Island Wind Energy Areas led by New England Aquarium (Kraus *et al.,* 2016), spanning 2011–2015 and 2017–2018 and recent surveys of New York waters, either traditional aerial surveys initiated by the New York State Department of Environmental Conservation in 2017, or digital aerial surveys initiated by the New York State Energy Research and Development Authority in 2016, or both.
- To reflect a view in the right whale research community that spatiotemporal patterns in right whale density changed around the time the species entered a decline in approximately 2010, consider basing the new model only on recent years, including contrasting ''before'' and ''after'' models that might illustrate shifts in density, as well as a model spanning both periods, and specifically consider which model would best represent right whale density in the near future.
- To facilitate better application of the model to near-shore management questions, extend the spatial extent of the model farther in-shore, particularly north of New York.
- Increase the resolution of the model beyond 10 kilometers (km), if possible.

All of these objectives were met in developing the Version 9 update to the North Atlantic right whale density model.

As noted above, NMFS has determined that the Roberts *et al.* suite of density models represent the best available scientific information. However, NMFS acknowledges that there may be additional data that is not reflected in the models and/or that may inform our analyses, whether because the data were not available to the model authors or because the data is more recent than the latest model version for a specific taxon. Note there is now a Version 10 update to the North Atlantic right whale model which primarily focused on Massachusetts Bay, which does not overlap the project area and therefore, is not relevant to this IHA. However, Version 10 also included additional survey data in the ''Hatteras Island to Nantucket Shoals'' area (a portion of which does overlap the project area), which resulted in slightly higher densities in part of the project area south of Nantucket. While the difference in densities is very minor (0.0016/km^2 for Version 9 and 0.0018/km^2 for Version 10), NMFS updated the take estimate for North Atlantic right whale in the final IHA to reflect the Version 10 update (see the Estimated Take section). A Version 11 model update is also available; however, that model update changed predictions in Cape Cod Bay only, which is outside of this project area.

The ENGOs pointed to additional data that can be obtained from sightings databases, PAM efforts, satellite telemetry, aerial surveys, and autonomous vehicles. The ENGO's pointed specifically to monthly standardized marine mammal aerial surveys flown in the Massachusetts and Rhode Island and Massachusetts Wind Energy Areas by the New England Aquarium from October 2018 through August 2019 and March 2020 through July 2021. The 2018–2019 New England Aquarium study showed North Atlantic right whales were primarily found to the east of the Project Area although, distribution changed seasonally, with one sighting of North Atlantic right whale in Lease area OSC–A 0501 in the spring, and no other sightings in Vineyard Wind 1's lease area during other portions of the year. Limited numbers were found north of the Lease Area in the export cable corridor route occurring between Martha's Vineyard and Nantucket heading to a landfall location in Falmouth, MA. Information on the results from the 2020–2021 aerial survey is currently unavailable. The commenters also referenced a study funded by the Bureau of Offshore Energy Management (BOEM) using an autonomous vehicle for real-time acoustical monitoring of marine mammals from December 2019 through March 2020 and again from December 2020 through February 2021 on Cox Ledge, located approximately 35 miles east of Montauk Point, New York between Block Island and Martha's Vineyard. Between December 21, 2020 and March 30, 2020 (91 days) North Atlantic right whales were acoustically detected on 13 days and possibly detected on an additional 3 days. No North Atlantic right whales were detected in BOEM's study area between March 25, 2021 and July 01, 2021 (98 days). The data from these recent studies does not indicate that NMFS should employ seasonal restrictions or alter any of the required mitigation and monitoring requirements, particularly as NMFS considers impacts from these types of survey operations to be near *de minimis* and that Vineyard Wind 1 is already required to adhere to time and area seasonal restrictions. It would be difficult to draw any qualitative conclusions from these study results given that most of the observations and detections occurred in only small portions of Vineyard Wind 1's Project Area.

Regarding common dolphins, as noted by the ENGOs, given the number of common dolphins observed in the previous Vineyard Wind IHA (monitoring report available at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-vineyard-wind-llc-marine-site-characterization-surveys*), observed group sizes, and the overlap between that project area and the planned project area for this IHA, NMFS expects that the density-based common dolphin take estimate generated for this IHA may be an

underestimate, and proposed to authorize takes calculated based on the approximate daily rate of take calculated from data included in the monitoring report referenced above. NMFS determined this method was appropriate, in both the proposed IHA and this final IHA, given the large difference between the density-based estimate, and the data reported in the monitoring report referenced above. However, NMFS does not expect that such a calculation and comparison is necessary for all species in all offshore wind IHAs. NMFS agrees that consideration of PSO data from previous projects is important, but disagrees with the manner in which the data should be considered. Generally, NMFS has high confidence in the take estimates generated by the Roberts *et al.* models for the reasons stated above. In occasional instances where there is a large difference between the density-based take estimate and previous monitoring data in the same area, NMFS agrees that the previous monitoring data requires more extensive consideration. However, in most cases, particularly for species that occur in smaller groups, the Roberts *et al.* models already generates a conservative take estimate, and given the variability in location, seasonality, duration among surveys, calculation of an alternate take estimate for purposes of comparison with the density-based estimate is generally unnecessary. This is proven through review of prior monitoring reports for the region, with the aforementioned assumption of common dolphins.

NMFS will review other recommended data sources that become available to evaluate their applicability in a quantitative sense (*e.g.,* to an estimate of take numbers) and, separately, to ensure that relevant information is considered qualitatively when assessing the impacts of the specified activity on the affected species or stocks and their habitat. NMFS will continue to use the best available scientific information, and we welcome future input from interested parties on data sources that may be of use in analyzing the potential presence and movement patterns of marine mammals, including North Atlantic right whales, in U.S. Atlantic waters.

While the ENGO's referenced the additional data discussed above, no specific recommendations were made with regard to use of this information in informing the take estimates, other than that regarding the use of data from monitoring reports associated with previous IHAs. Rather, the commenters suggested that NMFS should ''collate and integrate these and more recent data sets to more accurately reflect marine mammal presence for future IHAs and other work.'' NMFS would welcome in the future constructive suggestions as to how these objectives might be more effectively accomplished. NMFS used the best scientific information available at the time the analyses for the proposed IHA was conducted, and has considered all available data, including sources referenced by the commenters, in reaching its determinations in support of issuance of the IHA requested by Vineyard Wind 1.

Comment 4: The ENGOs state that NMFS proposes to estimate take based on annual mean density estimates for each species and stock. They assert that by averaging monthly density estimates across the entire year, the nuances of North Atlantic right whale migration, including the elevated density expected during the winter and spring months off Rhode Island and Massachusetts, remain unaccounted for. The commenters assert that this approach will likely lead to inaccurate take estimates and that this approach runs counter to how NMFS has approached calculating take in other recent authorizations. For example, in the modification of the proposed IHA for Mayflower Wind, LLC (May 20, 2021; 86 FR 27393), the potential number of monthly takes were calculated by multiplying the monthly density for each species by the ensonified survey area for the corresponding month, and then summed to produce the total density-based calculated take. The commenters state that this approach more accurately captures variation in density across the year. The ENGOs ask NMFS to recalculate Level B harassment take in the proposed IHA to reflect the sum of monthly take estimates for the North Atlantic right whale, as well as other species. Further, the ENGOs reiterate the requests their groups have previously made that NMFS standardize its approach to take estimation and mitigation requirements across all authorizations related to offshore wind energy.

Response: NMFS recognizes that the density of North Atlantic right whales, as well as other species, varies by month. In some cases, it is appropriate to calculate a monthly take estimate by multiplying the monthly density for a species by the respective monthly ensonified area, as was done in NMFS' recent modified proposed IHA for Mayflower Wind, LLC (May 20, 2021; 86 FR 27393). However, for this IHA, Vineyard Wind 1 does not know how much survey activity will occur in which months, other than the seasonal restrictions included in this IHA. Therefore, in order to conduct a parallel analysis to that included in the modified proposed Mayflower IHA, one would theoretically assume equal survey activity in each month, in which case the density-based take estimate would not change. Further, if one did attempt to consider the likelihood of less survey activity due to the seasonal restrictions in such a calculation, that would result in a less-conservative take estimate for North Atlantic right whales.

Given the variability in proposed survey activities, and differences in available information sources for various projects, a standardized approach to take estimation would not always reflect the best available science, and therefore, NMFS does not use a standardized approach for all authorizations for offshore wind energy. NMFS considers the most appropriate approach to take estimation as well as the mitigation necessary to effect the least practicable adverse impact on the affected species or stocks on a case-by-case basis.

Comment 5: Oceana asserted that NMFS must use the best available science for assessing North Atlantic right whale abundance estimates. They state that North Atlantic right whales have experienced significant declines in the last decade and that NMFS should use the most recent population estimate to support the IHA, which they state is the Pettis *et al.* (2020) estimate of 356 North Atlantic right whales. They commented that this estimate is nearly 14 percent lower than the estimate NMFS used in the analysis to support previous IHAs for Vineyard Wind.

Response: NMFS agrees that the best available science should be used for assessing North Atlantic right whale abundance estimates in the IHA, but disagrees that the Pettis *et al.* (2020) study represents the most recent and best available estimate for North Atlantic right whale abundance. Rather the revised abundance estimate published by Pace (2021), which was used in the proposed IHA, provides the most recent and best available estimate, and suggests improvements to the model currently used to estimate North Atlantic right whale abundance. Specifically, Pace (2021) looked at a different way of characterizing annual estimates of age-specific survival. The results strengthened the case for a change in mean survival rates after 2010–2011, but did not significantly change other current estimates (population size, number of new animals, adult female survival) derived from the model. The estimate reported by Pace (2021) and used in the **Federal Register** notice of proposed IHA (86 FR

30266; June 7, 2021) and in this final IHA is 368 (95% CI 356–378) whales. Of note, the estimate proposed by Pettis *et al.* (2020) of 356 right whales is only three percent, not 14 percent, lower than this newly available estimate, which NMFS has determined is the most appropriate estimate to use.

Comment 6: The ENGOs recommended that NMFS require the implementation of seasonal restrictions on site characterization activities that have the potential to injure or harass the North Atlantic right whales from December 1, 2021 through April 30, 2022. The ENGOs further note that they consider source levels greater than 180 dB re 1 µPa (SPL) at 1-meter at frequencies between 7 Hz and 35 kHz to be potentially harmful to low-frequency cetaceans.

Response: NMFS is concerned about the status of the North Atlantic right whale, given that a UME has been in effect for this species since June of 2017 and that there have been a number of recent mortalities. NMFS appreciates the value of seasonal restrictions under some circumstances. However, in this case, we have determined additional seasonal restrictions are not warranted since NMFS considers impacts from these types of survey operations to be near *de minimis.* In particular, and as detailed in the notice of proposed IHA, the available evidence supports a conclusion that no injury to right whales (or any species) is likely to occur as a result of the proposed activity, regardless of mitigation.

NMFS, however, is requiring Vineyard Wind 1 to operate no more than three concurrent HRG survey vessels, with HRG survey equipment operating at or below 180 kHz, from January through April within the lease area or export cable corridor, not including coastal and bay waters. NMFS is also requiring Vineyard Wind 1 to comply with restrictions associated with identified seasonal management areas (SMAs) and with dynamic management areas (DMAs) and Slow Zones, if any are established near the project area. Furthermore, we have established a 500-m shutdown zone for North Atlantic right whales, which is more than twice as large as the greatest Level B harassment isopleth calculated for the specified activities for this IHA (178 m). Take estimation conservatively assumes that these acoustic sources will operate on all survey days although it is probable that Vineyard Wind 1 will only use boomers on a subset of survey days, and on the remaining days utilize HRG equipment with smaller Level B harassment isopleths and overall less potential to cause disturbance. Therefore, the number of Level B harassment takes is likely an overestimate. Finally, significantly shortening Vineyard Wind 1's work season is impracticable given the number of survey days planned for the specified activity for this IHA.

It is unclear how the commenters determined that source levels greater than 180 dB re 1 µPa (SPL) are potentially harmful to low-frequency cetaceans. NMFS historically applied a received level (RL; not source level) root mean square (rms) threshold of 180 dB SPL as the potential for marine mammals to incur PTS (*i.e.,* Level A (injury) harassment); however, in 2016, NMFS published it *Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing* which updated the 180 dB SPL Level A harassment threshold. Since that time, NMFS has been applying dual threshold criteria based on both peak and a weighted (to account for marine mammal hearing) cumulative sound exposure level. NMFS released a revised version of the Technical Guidance in 2018. The 2018 Technical Guidance is available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.* As described in the Estimated Take section, NMFS has established a PTS (Level A harassment) threshold of 183 dB cumulative SEL for low frequency specialists, and a right whale would need to approach within 1 meter of the source to potentially incur PTS from the largest source.

Comment 7: Oceana suggested that NMFS should fully consider both the use of the area and the effects of both acute and chronic stressors on the health and fitness of North Atlantic right whales. Oceana states that chronic stressors are an emerging concern for North Atlantic right whale conservation and recovery and that a recent peer-reviewed study suggests that a range of stresses on North Atlantic right whales have stunted growth rates (Stewart *et al.,* 2021). Oceana asserted that disruptive site characterization activities may do more than startle or spook North Atlantic right whales in this area and may cause chronic stress to the whales or cause the whales to seek other feeding areas at great energetic cost, decreasing their fitness, body condition and ability to successfully feed, socialize and mate.

Response: NMFS agrees with Oceana that both acute and chronic stressors are of concern for North Atlantic right whale conservation and recovery. We recognize that acute stress from acoustic exposure is one potential impact of these surveys, and that chronic stress can have fitness, reproductive, *etc.* impacts at the population-level scale. NMFS has carefully reviewed the best available scientific information in assessing impacts to marine mammals, and recognizes that the surveys have the potential to impact marine mammals through behavioral effects, stress responses, and auditory masking. However, NMFS does not expect that the generally short-term, intermittent, and transitory marine site characterization survey activities would create conditions of acute or chronic acoustic exposure leading to long-term physiological stress responses in marine mammals. NMFS has also prescribed a robust suite of mitigation measures, such as time-area limitations and extended distance shutdowns for certain species that are expected to further reduce the duration and intensity of acoustic exposure, while limiting the potential severity of any possible behavioral disruption. The potential for chronic stress was evaluated in making the determinations presented in NMFS's negligible impact analyses.

Comment 8: Oceana asserted that NMFS must fully consider the discrete effects of each activity and the cumulative effects of the suite of approved, proposed and potential activities on marine mammals and North Atlantic right whales in particular and ensure that the cumulative effects are not excessive before issuing or renewing an IHA. They noted that this was specifically important given the large number of offshore wind-related activities being considered in the northeast region.

Response: Neither the MMPA nor NMFS' codified implementing regulations call for consideration of other unrelated activities and their impacts on populations. The preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989) states in response to comments that the impacts from other past and ongoing anthropogenic activities are to be incorporated into the negligible impact analysis via their impacts on the baseline. Consistent with that direction, NMFS has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline, *e.g.,* as reflected in the density/distribution and status of the species, population size and growth rate, and other relevant stressors. The 1989 implementing regulations also addressed public comments regarding cumulative effects from future, unrelated activities. There NMFS stated that such effects are not considered in

making findings under section 101(a)(5) concerning negligible impact. In this case, both this IHA, as well as other IHAs currently in effect or proposed within the specified geographic region, are appropriately considered an unrelated activity relative to the others. The IHAs are unrelated in the sense that they are discrete actions under section 101(a)(5)(D), issued to discrete applicants.

Section 101(a)(5)(D) of the MMPA requires NMFS to make a determination that the take incidental to a ''specified activity'' will have a negligible impact on the affected species or stocks of marine mammals. NMFS' implementing regulations require applicants to include in their request a detailed description of the specified activity or class of activities that can be expected to result in incidental taking of marine mammals. 50 CFR 216.104(a)(1). Thus, the ''specified activity'' for which incidental take coverage is being sought under section 101(a)(5)(D) is generally defined and described by the applicant. Here, Vineyard Wind 1 was the applicant for the IHA, and we are responding to the specified activity as described in that application (and making the necessary findings on that basis). Through the response to public comments in the 1989 implementing regulations, we also indicated (1) that NMFS would consider cumulative effects that are reasonably foreseeable when preparing a NEPA analysis, and (2) that reasonably foreseeable cumulative effects would also be considered under section 7 of the ESA for ESA-listed species. In this case, cumulative impacts have been adequately addressed under NEPA in prior environmental analyses that form the basis for NMFS' determination that this action is appropriately categorically excluded from further NEPA analysis.

NMFS has previously written Environmental Assessments (EA) that addressed cumulative impacts related to substantially similar activities, in similar locations, *e.g.,* 2019 Ørsted EA for survey activities offshore southern New England; 2019 Avangrid EA for survey activities offshore North Carolina and Virginia; 2018 Deepwater Wind EA for survey activities offshore Delaware, Massachusetts, and Rhode Island. Separately, cumulative effects have been analyzed as required through NMFS' required intra-agency consultation under section 7 of the ESA for substantially similar activities, in similar locations (*e.g.,* the 2013 programmatic Biological Opinion for BOEM Lease and Site Assessment Rhode Island, Massachusetts, New York, and New Jersey Wind Energy Areas, and the programmatic consultation completed by NMFS Greater Atlantic Regional Fisheries Office (GARFO) on June 29, 2021), under which GARFO has determined multiple times that NMFS' action of issuing IHAs is not likely to adversely affect listed marine mammals or their critical habitat.

Comment 9: The ENGO's noted that harbor porpoises are particularly sensitive to noise, and, therefore, impacts to this species must be minimized and mitigated to the full extent practicable during offshore wind siting and development activities in the waters off the coast of Massachusetts and Rhode Island where this species regularly occurs.

Response: Harbor porpoises are classified as high-frequency cetaceans (NMFS, 2018) and are the hearing group with the lowest PTS onset thresholds, with maximum susceptibility to frequencies between 20 and 40 kHz (susceptibility decreases with outside this frequency range). However, the largest modeled distance to the Level A harassment threshold for any impulsive source for HF cetaceans was 53 m. Level A harassment would also be more likely to occur at close approach to the sound source or as a result of longer duration exposure to the sound source, and mitigation measures—including a 100 m exclusion zone (EZ) for harbor porpoises—are expected to minimize the potential for close approach or longer duration exposure to active HRG sources. In addition, harbor porpoises are known to be behaviorally sensitive species, in that they respond to comparatively lower RLs and are known to avoid vessels and other sound sources and, therefore, harbor porpoises would also be expected to avoid a sound source prior to that source reaching a level that would result in injury (Level A harassment). Therefore, NMFS has determined that take of harbor porpoises or any other animal by Level A harassment is unlikely to occur and has not authorized any such takes. Any takes by Level B harassment are anticipated to be limited to brief startling reactions and/or temporary avoidance of the project area. Further, appropriate mitigation measures have been included to ensure the least practicable adverse impact on harbor porpoises and other marine mammal species, and no harbor porpoises were observed by Vineyard Wind in their 2020–2021 year of survey activities according to their preliminary monitoring report (*https://www.fisheries.noaa.gov/action/incidental-take-authorization-vineyard-wind-llc-marine-site-characterization-surveys*).

Comment 10: The ENGOs recommended that geophysical surveys commence, with ramp up, only during daylight hours and periods of good visibility to maximize the probability that marine mammals are detected and confirmed clear of the exclusion zone before activities begin. If the activities are halted or delayed because of documented or suspected North Atlantic right whale presence in the area, the ENGOs recommend that NMFS should require Vineyard Wind 1 to wait until daylight hours and good visibility conditions to recommence survey activities.

Response: NMFS acknowledges the limitations inherent in detection of marine mammals at night. However, no injury is expected to result even in the absence of mitigation, given the characteristics of the sources planned for use (supported by the very small estimated Level A harassment zones; *i.e.,* <53 m for all impulsive sources). The ENGOs do not provide any support for the apparent contention that injury is a potential outcome of these activities. Regarding Level B harassment, any potential impacts would be limited to short-term behavioral responses, as described in greater detail herein. The commenters establish that the status of North Atlantic right whales in particular is precarious. NMFS agrees in general with the discussion of this status provided by the commenters. Note that NMFS considers impacts from this category of survey operations to be near *de minimis,* with the potential for Level A harassment for any species to be discountable and the severity of Level B harassment (and, therefore, the impacts of the take event on the affected individual), if any, to be low. Commenters provide no evidence to the contrary. NMFS is also requiring Vineyard Wind 1 to employ a PSO during nighttime hours who must have access to night-vision equipment (*i.e.,* night-vision goggles and/or infrared technology). Given these factors, NMFS has determined that more restrictive mitigation requirements are not warranted.

Restricting surveys in the manner suggested by the commenters may reduce marine mammal exposures by some degree in the short term, but would not result in any significant reduction in either intensity or duration of noise exposure. Vessels would also potentially be on the water for an extended time introducing noise into the marine environment. The restrictions recommended by the commenters could result in the surveys spending increased time on the water,

which may result in greater overall exposure to sound for marine mammals; thus the commenters have not demonstrated that such a requirement would result in a net benefit. Furthermore, restricting the ability of the applicant to begin operations only during daylight hours would have the potential to result in lengthy shutdowns of the survey equipment, which could result in the applicant failing to collect the data they have determined is necessary and, subsequently, the need to conduct additional surveys in the future. This would result in significantly increased costs incurred by the applicant. Thus the restriction suggested by the commenters would not be practicable for the applicant to implement. In consideration of the likely effects of the activity on marine mammals absent mitigation, potential unintended consequences of the measures as proposed by the commenters, and practicability of the recommended measures for the applicant, NMFS has determined that restricting operations as recommended is not warranted or practicable in this case.

Comment 11: The ENGOs noted that NMFS states that shutdown, pre-start clearance, and ramp-up procedures are not required during HRG survey operations using only non-impulsive sources (*e.g.,* USBL and parametric sub-bottom profilers) other than non-parametric sub-bottom profilers (*e.g.,* CHIRPs), and also that pre-clearance and ramp-up, but not shutdown, are required when using non-impulsive, non-parametric sub-bottom profilers. The ENGOs stated that NMFS should provide a detailed rationale for these requirements in the proposed IHA so they can be more easily understood and evaluated by the public.

Response: As noted in the *Detailed Description of Specific Activity* section of the notice of the proposed IHA (86 FR 30266; June 7, 2021), NMFS does not expect that sources planned for use by Vineyard Wind 1, other than the shallow penetration sub-bottom profilers (SBP; Chirps) and medium penetration SBPs (Boomers and Sparkers), will result in take of marine mammals, regardless of mitigation. As stated in that section, operation of the following survey equipment types is not reasonably expected to present risk of marine mammal take for the reasons provided below:

- Parametric SBPs, also called sediment echosounders, for providing high data density in sub-bottom profiles that are typically required for cable routes, very shallow water, and archaeological surveys. These sources generate short, very narrow-beam (1° to 3.5°) signals at high frequencies (generally around 85–100 kHz). The narrow beamwidth significantly reduces the potential that a marine mammal could be exposed to the signal, while the high frequency of operation means that the signal is rapidly attenuated in seawater. These sources are typically mounted on the hull of the vessel or from a side pole rather than towed behind the vessel;
- Ultra-Short Baseline (USBL) positioning systems are used to provide high accuracy ranges by measuring the time between the acoustic pulses transmitted by the vessel transceiver and the equipment transponder (or beacon) necessary to produce the acoustic profile. It is a two-component system with a hull or pole mounted transceiver and one or several transponders either on the seabed or on the equipment. USBLs are expected to produce extremely small acoustic propagation distances in their typical operating configuration;
- Single beam and Multibeam Echosounders (MBESs) to determine water depths and general bottom topography. The proposed single beam and MBES all have operating frequencies >180 kHz and are therefore outside the general hearing range of marine mammals;
- Side-scan Sonar (SSS) is used for seabed sediment classification purposes and to identify natural and man-made acoustic targets on the seafloor. The proposed SSSs all have operating frequencies >180 kHz and are therefore outside the general hearing range of marine mammals; and
- Magnetometer/Gradiometer has an operating frequency >180 kHz and is therefore outside the general hearing range of marine mammals.

Therefore, it is not necessary to implement shutdown, pre-start clearance, and ramp-up procedures during the use of those other sources in order to mitigate impacts to marine mammals from those sources, as none are expected. Additionally, shutdown is not required during use of non-impulsive, non-parametric sub-bottom profilers given the very small Level B harassment zones expected from use of those sources (4.3 m for the EdgeTech Chirp 216 planned for use by Vineyard Wind 1). However, we note that Vineyard Wind 1 is still required to implement the vessel strike avoidance measures during use of these sources.

Comment 12: Oceana recommended that when HRG surveys are safe to resume after a shutdown event, the surveys should be required to use a ramp-up procedure to encourage any nearby marine life to leave the area.

Response: NMFS agrees with this recommendation and included in the **Federal Register** notice of the proposed IHA (86 FR 30266, June 7, 2021) and this final IHA a stipulation that when technically feasible, survey equipment must be ramped up at the start or restart of survey activities. Ramp-up must begin with the power of the smallest acoustic equipment at its lowest practical power output appropriate for the survey. When technically feasible the power must then be gradually turned up and other acoustic sources added in a way such that the source level would increase gradually.

Comment 13: Based on the assertion that the 160 dB threshold for behavioral harassment is not supported by best available scientific information and grossly underestimates Level B harassment take, the ENGOs recommended that NMFS establish an EZ of 1,000 m around each vessel conducting activities with noise levels that they assert could result in injury or harassment to North Atlantic right whales, and a minimum EZ of 500 m for all other large whale species and strategic stocks of small cetaceans. Oceana recommended a 1,000 m exclusion zone for North Atlantic right whales also. The ENGOs further noted that they consider source levels greater than 180 dB re 1 μPa (SPL) at 1-meter at frequencies between 7 Hz and 35 kHz to be potentially harmful to low-frequency cetaceans.

Response: NMFS disagrees with this recommendation and the assertion that the 160 dB threshold for behavioral harassment grossly underestimates take by Level B harassment. NMFS acknowledges that the potential for behavioral response to an anthropogenic source is highly variable and context-specific and acknowledges the potential for Level B harassment at exposures to RLs below 160 dB rms. Alternatively, NMFS acknowledges the potential that not all animals exposed to RLs above 160 dB rms will respond in ways constituting behavioral harassment. There are a variety of studies indicating that contextual variables play a very important role in response to anthropogenic noise, and the severity of effects are not necessarily linear when compared to a RL. The commenters cited several studies (Nowacek *et al.,* 2004; Kastelein *et al.,* 2012 and 2015; Gomez *et al.,* 2016; Tyack & Thomas, 2019) that showed there were behavioral responses to sources below the 160 dB threshold, but also acknowledge the importance of context in these responses. For example, Nowacek *et al.,*

2004 reported the behavior of five out of six North Atlantic right whales was disrupted at RLs of only 133–148 dB re 1 µPa (returning to normal behavior within minutes) when exposed to an alert signal. However, the authors also reported that none of the whales responded to noise from transiting vessels or playbacks of ship noise even though the RLs were at least as strong, and contained similar frequencies, to those of the alert signal. The authors state that a possible explanation for why whales responded to the alert signal and did not respond to vessel noise is that the whales may have been habituated to vessel noise, while the alert signal was a novel sound. In addition, the authors noted differences between the characteristics of the vessel noise and alert signal which may also have played a part in the differences in responses to the two noise types. Therefore, it was concluded that the signal itself, as opposed to the RL, was responsible for the response. DeRuiter *et al.* (2013) also indicate that variability of responses to acoustic stimuli depends not only on the species receiving the sound and the sound source, but also on the social, behavioral, or environmental contexts of exposure. Finally, Gong *et al.* (2014) highlighted that behavioral responses depend on many contextual factors, including range to source, RL above background noise, novelty of the signal, and differences in behavioral state. Similarly, Kastelein *et al.,* 2015 (cited in the letter) examined behavioral responses of a harbor porpoise to sonar signals in a quiet pool, but stated behavioral responses of harbor porpoises at sea would vary with context such as social situation, sound propagation, and background noise levels.

NMFS uses 160 dB (rms) as the exposure level for estimating Level B harassment takes, while acknowledging that the 160 dB rms step-function approach is a simplistic approach. The commenters suggested that our use of the 160-dB threshold implies that we do not recognize the science indicating that animals may react in ways constituting behavioral harassment when exposed to lower RLs. However, we do recognize the potential for Level B harassment at exposures to RLs below 160 dB rms, in addition to the potential that animals exposed to RLs above 160 dB rms will not respond in ways constituting behavioral harassment (*e.g.,* Malme *et al.,* 1983, 1984, 1985, 1988; McCauley *et al.,* 1998, 2000a, 2000b; Barkaszi *et al.,* 2012; Stone, 2015a; Gailey *et al.,* 2016; Barkaszi and Kelly, 2018). These comments appear to evidence a misconception regarding the concept of the 160-dB threshold. While it is correct that in practice it works as a step-function, *i.e.,* animals exposed to received levels above the threshold are considered to be ''taken'' and those exposed to levels below the threshold are not, it is in fact intended as a sort of mid-point of likely behavioral responses (which are extremely complex depending on many factors including species, noise source, individual experience, and behavioral context). What this means is that, conceptually, the function recognizes that some animals exposed to levels below the threshold will in fact react in ways that are appropriately considered take, while others that are exposed to levels above the threshold will not. Use of the 160-dB threshold allows for a simplistic quantitative estimate of take, while we can qualitatively address the variation in responses across different received levels in our discussion and analysis.

Overall, we emphasize the lack of scientific consensus regarding what criteria might be more appropriate. Defining sound levels that disrupt behavioral patterns is difficult because responses depend on the context in which the animal receives the sound, including an animal's behavioral mode when it hears sounds (*e.g.,* feeding, resting, or migrating), prior experience, and biological factors (*e.g.,* age and sex). Other contextual factors, such as signal characteristics, distance from the source, and signal to noise ratio, may also help determine response to a given received level of sound. Therefore, levels at which responses occur are not necessarily consistent and can be difficult to predict (Southall *et al.,* 2007; Ellison *et al.,* 2012; Bain and Williams, 2006). Even experts have not previously been able to suggest specific new criteria due to these difficulties (*e.g.,* Southall *et al.* 2007; Gomez *et al.,* 2016). Further, we note that the sound sources and the equipment used in the specified activities are outside (higher than) the most sensitive range of mysticete hearing.

There is currently no agreement on these complex issues, and NMFS followed the practice at the time of submission and review of this analysis in assessing the likelihood of disruption of behavioral patterns by using the 160 dB threshold. This threshold has remained in use in part because of the practical need to use a relatively simple threshold based on available information that is both predictable and measurable for most activities. We note that the seminal review presented by Southall *et al.* (2007) did not suggest any specific new criteria due to lack of convergence in the data. NMFS is currently evaluating available information towards development of guidance for assessing the effects of anthropogenic sound on marine mammal behavior, such as a dose-response curve presented by Tyack and Thomas (2017) and referenced by the commenters. However, undertaking a process to derive defensible exposure-response relationships is complex (*e.g.,* NMFS previously attempted such an approach, but is currently re-evaluating the approach based on input collected during peer review of NMFS (2016)). A recent systematic review by Gomez *et al.* (2016) referenced by the commenters was unable to derive criteria expressing these types of exposure-response relationships based on currently available data.

NMFS acknowledges that there may be methods of assessing likely behavioral response to acoustic stimuli that better capture the variation and context-dependency of those responses than the simple 160 dB step-function used here, and that an approach reflecting a more complex probabilistic function may more effectively represent the known variation in responses at different levels due to differences in the receivers, the context of the exposure, and other factors. However, there is no agreement on what that method should be or how more complicated methods may be implemented by applicants. NMFS is committed to continuing its work in developing updated guidance with regard to acoustic thresholds, but pending additional consideration and process is reliant upon an established threshold that is reasonably reflective of available science.

Regarding the shutdown zone recommendation, we note that the 500-m EZ for North Atlantic right whales exceeds the modeled distance to the largest 160-dB Level B harassment isopleth distance (178 m) by a substantial margin. Given that calculated Level B harassment isopleths are likely conservative, and NMFS considers impacts from HRG survey activities to be near *de minimis,* a 100-m shutdown for other marine mammal species (including large whales and strategic stocks of small cetaceans) is sufficiently protective to effect the least practicable adverse impact on those species and stocks. Further, no injury is expected to result even in the absence of mitigation, given the characteristics of the sources planned for use (supported by the very small estimated Level A harassment zones; *i.e.,* <53 m for all impulsive sources).

Comment 14: Oceana recommended that a shutdown of HRG equipment be required should a North Atlantic right whale or other protected species enter an EZ, unless necessary for human safety. They further recommended that if and when such an exemption occurs the project must immediately notify NMFS with reasons and explanation for exemption and a summary of the frequency of these exceptions must be publicly available to ensure that these are the exception rather than the norm for the project.

Response: There are several shutdown requirements described in the **Federal Register** notice of the proposed IHA (86 FR 30266, June 7, 2021), and which are included in this final IHA, including the stipulation that geophysical survey equipment must be immediately shut down if any marine mammal is observed within or entering the relevant EZs while geophysical survey equipment is operational. There is no exemption for human safety and it is unclear what exemption the commenter is referring to. In regards to reporting, Vineyard Wind 1 must notify NMFS if a North Atlantic right whale is observed at any time by any project vessels during surveys or during vessel transit. Additionally, Vineyard Wind 1 is required to report the relevant survey activity information, such as such as the type of survey equipment in operation, acoustic source power output while in operation, and any other notes of significance (*i.e.,* pre-clearance survey, ramp-up, shutdown, end of operations, *etc.*) as well as the estimated distance to an animal and its heading relative to the survey vessel at the initial sighting and survey activity information. As documented in Vineyard Wind's preliminary monitoring report for the surveys completed under the previous 2020–2021 IHA (report available on our website at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-vineyard-wind-llc-marine-site-characterization-surveys*), except for excepted instances of voluntary approaches by delphinids, there were no instances where marine mammals were observed within the required shutdown zone and shutdown procedures were not implemented. If a right whale is detected within the EZ before a shutdown is implemented, the right whale and its distance from the sound source, including whether it is within the Level B or Level A harassment zones, would be reported in Vineyard Wind 1's final monitoring report and made publicly available on NMFS' website. Vineyard Wind 1 is required to immediately notify NMFS of any sightings of North Atlantic right whales and report upon survey activity information.

Comment 15: The ENGOs recommended that passive acoustic monitoring (PAM) operators for this and future wind development projects should be part of a migratory corridor-wide network of passive acoustic monitors organized by NOAA and BOEM in collaboration with state governments as well as private, academic, and non-profit partners. They also recommended that NMFS should also advance a robust and effective near real-time monitoring and mitigation system for North Atlantic right whales and other endangered and protected species that will be more responsive to the ongoing dynamic species distributional shifts resulting from climate change, as well as provide more flexibility to developers.

Response: NMFS is generally supportive of these concepts. A network of near real-time baleen whale monitoring devices are active or have been tested in portions of New England and Canadian waters. These systems employ various digital acoustic monitoring instruments which have been placed on autonomous platforms including slocum gliders, wave gliders, profiling floats and moored buoys. Systems that have proven to be successful will likely see increased use as operational tools for many whale monitoring and mitigation applications. In 2020, NMFS convened a workshop to address objectives related to monitoring North Atlantic right whales. The NMFS publication ''Technical Memorandum NMFS-OPR-64: North Atlantic Right Whale Monitoring and Surveillance: Report and Recommendations of the National Marine Fisheries Service's Expert Working Group'', available at: *https://www.fisheries.noaa.gov/resource/document/north-atlantic-right-whale-monitoring-and-surveillance-report-and-recommendations,* summarizes information from the workshop and presents the Expert Working Group's recommendations for a comprehensive monitoring strategy to guide future analyses and data collection. Among the numerous recommendations found in the report, the Expert Working Group encouraged the widespread deployment of auto-buoys to provide near real-time detections of North Atlantic right whale calls that visual survey teams can then respond to for collection of identification photographs or biological samples.

In regards to the current IHA, NMFS cannot require Vineyard Wind 1 to be a part of such monitoring networks until such a network of monitoring devices is formalized. However, NMFS will consider implementing such measures in the future should such a network be developed.

Comment 16: The ENGOs stated that it is their general view that NMFS must require a minimum of four PSOs following a two-on, two-off rotation, each responsible for scanning no more than 180° of the horizon. However, the ENGOs further stated that they strongly support Vineyard Wind 1's proposal to use PAM during nighttime HRG surveys, and recognize that in this case, a requirement to employ two PSOs during all nighttime survey operations is impracticable, given the limited availability of berths on the survey vessels and additional personnel required to conduct PAM. The ENGOs state that making this PSO requirement clear to IHA applicants will allow any logistical considerations to be addressed early in the survey planning process. In a related comment, Oceana recommended that all vessels associated with the proposed Vineyard Wind 1 site characterization should be required to carry and use PSOs at all times when underway. The ENGOs and Oceana recommend that NMFS require the use of infrared equipment during periods of darkness and during daylight hours to help maximize probability of detection of marine mammals.

Response: NMFS typically requires that a single PSO must be stationed at the highest vantage point and engaged in general 360-degree scanning during daylight hours. Although NMFS acknowledges that the single PSO cannot reasonably maintain observation of the entire 360-degree area around the vessel, it is reasonable to assume that the single PSO engaged in continual scanning of such a small area (*i.e.,* 500-m EZ, which is greater than the maximum 178-m harassment zone) will be successful in detecting marine mammals that are available for detection at the surface. Further, as noted by the commenters, and in the notice of the proposed IHA (86 FR 30266; June 7, 2021), a requirement to employ at least two PSOs during all nighttime survey operations is impracticable, given the limited available berths on the survey vessels and the additional personnel Vineyard Wind has conducting PAM. (As noted below, Vineyard Wind 1 plans to conduct PAM, though it is not required by this IHA given NMFS concerns with efficacy, as described in NMFS' response to the following comment). NMFS makes a concerted effort to communicate mitigation and monitoring requirements to applicants as early in the application process as

possible. NMFS has analyzed the potential for incidental take resulting from Vineyard Wind 1's activity and has determined that based on the nature of the activities, and in consideration of the mitigation measures included in the IHA, the potential for incidental take when HRG survey equipment is not operational is so low as to be discountable.

The monitoring reports submitted to NMFS have demonstrated that PSOs active only during daylight operations are able to detect marine mammals and implement appropriate mitigation measures. Nevertheless, as night vision technology has continued to improve, NMFS has adapted its practice. NMFS has included a requirement in the proposed IHA and this final IHA that night-vision equipment (*i.e.,* night-vision goggles and/or infrared technology) must be available for use during nighttime monitoring. Under the issued IHA, survey operators are not required to provide PSOs with infrared devices during the day but observers are not prohibited from employing them. Given that use of infrared devices for detecting marine mammals during the day has been shown to be helpful under certain conditions, NMFS will consider requiring them to be made accessible for daytime PSOs in the future as more information becomes available regarding this technology. NMFS is also requiring that all PSOs be equipped with binoculars and have the ability to estimate distances to marine mammals located in proximity to the vessel and/or EZs. We have determined that the PSO requirements in the IHA are sufficient to ensure the least practicable adverse impact on the affected species or stocks and their habitat.

Comment 17: The ENGOs noted that the proposed IHA does not require monitoring of a ''buffer zone'' or ''monitoring zone'' that were required by NMFS in the recent proposed Renewal IHA for Vineyard Wind (86 FR 30435; June 8, 2021). The commenters state that NMFS should explain why the requirements are inconsistent and less stringent monitoring is required in the Vineyard Wind 1 proposed IHA.

Response: This IHA does not explicitly state a specific ''buffer zone'' or ''monitoring zone'' that PSOs must monitor, as included in some previous IHAs such as the proposed Renewal IHA mentioned by the commenter (86 FR 30435; June 8, 2021). As stated previously in this notice, NMFS considers impacts from these types of survey operations to be near *de minimis,* and therefore, use of a buffer zone is unnecessary. Further, NMFS did not include this requirement in the IHA so as not to suggest that PSOs should limit their observations to just a specific ''buffer'' or ''monitoring'' zone. Rather, NMFS expects PSOs to report all marine mammal observations to the farthest extent that they are able to observe. Therefore, not including a specific ''buffer'' or ''monitoring'' zone does not result in less stringent monitoring requirements.

Comment 18: Oceana stated that the IHA must include a requirement for all phases of the Vineyard Wind 1 site characterization to subscribe to the highest level of transparency, including frequent reporting to federal agencies, requirements to report all visual and acoustic detections of North Atlantic right whales and any dead, injured, or entangled marine mammals to NMFS or the Coast Guard as soon as possible and no later than the end of the PSO shift. Oceana states that to foster stakeholder relationships and allow public engagement and oversight of the permitting, the IHA should require all reports and data to be accessible on a publicly available website.

Response: NMFS agrees with the need for reporting and indeed, the MMPA calls for IHAs to incorporate reporting requirements. As included in the proposed IHA, the final IHA includes requirements for reporting that supports Oceana's recommendations. Vineyard Wind 1 is required to submit a monitoring report to NMFS within 90 days after completion of survey activities that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, and describes, assesses and compares the effectiveness of monitoring and mitigation measures. PSO datasheets or raw sightings data must also be provided with the draft and final monitoring report. Further the draft IHA and final IHA stipulate that if a North Atlantic right whale is observed at any time by any project vessels, during surveys or during vessel transit, Vineyard Wind 1 must immediately report sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System and to the U.S. Coast Guard, and that any discoveries of injured or dead marine mammals be reported by Vineyard Wind 1 to the Office of Protected Resources, NMFS, and to the New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible. All reports and associated data submitted to NMFS are included on the project website for public inspection.

Comment 19: The ENGOs raised concerns regarding the ability of PSOs to effectively detect marine mammals, and state that PSOs alone are certain to underestimate the total number of large whales in the mitigation area based on sea state, and state that visual monitoring alone is insufficient. They state that the concern NMFS raises regarding PAM that relates to the masking that would occur from vessel noise and flow noise are entirely surmountable. They state that the passive acoustic protocol can and should be designed so the hydrophone is not masked by vessel or survey noise and NMFS should make this explicit in the Final IHA for Vineyard Wind 1. They further state that NMFS should require PAM at all times to maximize the probability of detection for North Atlantic right whales and, ideally, other endangered and protected species and stocks, including during periods of fog, precipitation, and high sea states, when PSOs and infrared technologies are less effective. It should be noted that PAM without visual observers would also be insufficient as individuals may not continually vocalize. Further, the ENGOs and Oceana recommended that a combination of visual monitoring by PSOs and PAM should be used at all times that survey work is underway in order to monitor exclusion zones and maximize the detection of protected species and stocks.

Response: The foremost concern expressed by the ENGOs in making the recommendation to require use of PAM is with regard to North Atlantic right whales. However, the commenters do not explain why they expect that PAM would be effective in detecting vocalizing mysticetes. It is generally well-accepted fact that, even in the absence of additional acoustic sources, using a towed passive acoustic sensor to detect baleen whales (including right whales) is not typically effective because the noise from the vessel, the flow noise, and the cable noise are in the same frequency band and will mask the vast majority of baleen whale calls. Vessels produce low-frequency noise, primarily through propeller cavitation, with main energy in the 5–300 Hertz (Hz) frequency range. Source levels range from about 140 to 195 decibel (dB) re 1 μPa (micropascal) at 1 m (NRC, 2003; Hildebrand, 2009), depending on factors such as ship type, load, and speed, and ship hull and propeller design. Studies of vessel noise show that it appears to increase background noise levels in the 71–224 Hz range by 10–13 dB (Hatch *et al.,* 2012; McKenna *et al.,* 2012; Rolland *et al.,* 2012). PAM systems employ hydrophones towed in streamer cables approximately 500 m behind a vessel. Noise from water flow around the cables and from strumming

of the cables themselves is also low-frequency and typically masks signals in the same range. Experienced PAM operators participating in a recent workshop (Thode *et al.,* 2017) emphasized that a PAM operation could easily report no acoustic encounters, depending on species present, simply because background noise levels rendered any acoustic detection impossible. The same workshop report stated that a typical eight-element array towed 500 m behind a vessel could be expected to detect delphinids, sperm whales, and beaked whales at the required range, but not baleen whales, due to expected background noise levels (including seismic noise, vessel noise, and flow noise). At present, NMFS is unaware of PAM design options that would avoid the masking issues described here and in the notice of the proposed IHA (86 FR 30266; June 7, 2021), and despite the commenters' claim that these issues are ''entirely surmountable,'' no recommendations are provided in this regard.

There are several additional reasons why we do not agree that use of PAM is warranted for 24-hour HRG surveys. While NMFS agrees that PAM can be an important tool for augmenting detection capabilities in certain circumstances, its utility in further reducing impact during HRG survey activities is limited. First, for this activity, the area expected to be ensonified above the Level B harassment threshold is relatively small (a maximum of 178 m)—this reflects the fact that, to start with, the source level is comparatively low and the intensity of any resulting impacts would be lower level and, further, it means that inasmuch as PAM will only detect a portion of any animals exposed within a zone, the overall probability of PAM detecting an animal in the harassment zone is low—together these factors support the limited value of PAM for use in reducing take with smaller zones. PAM is only capable of detecting animals that are actively vocalizing, while many marine mammal species vocalize infrequently or during certain activities, which means that only a subset of the animals within the range of the PAM would be detected (and potentially have reduced impacts). Additionally, localization and range detection can be challenging under certain scenarios. For example, odontocetes are fast moving and often travel in large or dispersed groups which makes localization difficult.

Given that the effects to marine mammals from the types of surveys authorized in this IHA are expected to be limited to low level behavioral harassment even in the absence of mitigation, the limited additional benefit anticipated by adding this detection method (especially for right whales and other low frequency cetaceans, species for which PAM has minimal efficacy—NMFS is unaware of any occasions on which a vocalizing mysticete (other than the occasional humpback whale, a species that often vocalizes at relatively high frequencies) has been detected through use of towed PAM), and the cost and impracticability of implementing a full-time PAM program, we have determined the current requirements for visual monitoring are sufficient to ensure the least practicable adverse impact on the affected species or stocks and their habitat. However, we note that Vineyard Wind 1 has stated their intention to voluntarily implement PAM during night operations as an added precautionary measure even though this is not a NMFS requirement due to its expected lack of efficacy.

Comment 20: The ENGOs and Oceana both expressed concerns that the proposed IHA sets no requirement to minimize the impacts of underwater noise through the use of best available technology and other methods to minimize sound levels from geophysical surveys. The ENGOs recommended that NMFS should require Vineyard Wind 1 to select sub-bottom profiling systems, and operate those systems at power settings that achieve the lowest practicable source level for the objective. Oceana recommended that to be consistent with the requirement to achieve ''the least practicable impact on such species or stock and its habitat,'' the IHA must include conditions for the survey activities that will first avoid adverse effects on North Atlantic right whales in and around the survey site and then minimize and mitigate the effects that cannot be avoided. They state that this should include a full assessment of which activities, technologies and strategies are truly necessary to provide information to inform development of Vineyard Wind 1 and which are not critical. If, for example, a lower impact technique or technology will provide necessary information about the site without adverse effects, Oceana recommended that technique or technology should be permitted while other tools with more frequent, intense or long-lasting effects should be prohibited. In general, the ENGOs and Oceana asserted that NMFS must require that all IHA applicants minimize the impacts of underwater noise to the fullest extent feasible, including through the use of best available technology and methods to minimize sound levels from geophysical surveys.

Response: The MMPA requires that an IHA include measures that will effect the least practicable adverse impact on the affected species and stock and, in practice, NMFS agrees that the IHA should include conditions for the survey activities that will first avoid adverse effects on North Atlantic right whales in and around the survey site, where practicable, and then minimize the effects that cannot be avoided. NMFS has determined that the IHA meets this requirement to effect the least practicable adverse impact. Oceana does not make any specific recommendations of measures to add to the IHA other than assessing which technologies and strategies are truly necessary to provide information to inform development of Vineyard Wind 1. While the ENGOs recommend the use of sub-bottom profiling systems, the Vineyard Wind 1 developers selected the equipment necessary during HRG surveys to achieve their objectives (which includes shallow sub-bottom profilers). As part of the analysis for all marine site characterization survey IHAs, NMFS evaluated the effects expected as a result of use of the specified activity (*i.e.,* the equipment described here), made the necessary findings, and prescribed mitigation requirements sufficient to achieve the least practicable adverse impact on the affected species and stocks of marine mammals. It is not within NMFS' purview to make judgments regarding what constitutes the ''lowest practicable source level'' for an operator's survey objectives or the appropriate techniques or technologies for an operator's survey objectives.

Comment 21: The ENGOs and Oceana both generally recommended that NMFS restrict all vessels of all sizes associated with the proposed survey activities to speeds less than 10 kn at all times due to the risk of vessel strikes to North Atlantic right whales and other large whales. The ENGOs note that an exception may be made in limited circumstances where the best available scientific information demonstrates that whales do not use the area at any time. The ENGOs also asserted that NMFS must acknowledge that vessel strikes can result in take by Level A harassment, and that NMFS must explicitly analyze the potential for such take resulting from vessel collisions in its take analysis for Vineyard Wind 1.

Response: While NMFS acknowledges that vessel strikes can result in injury or mortality, we have analyzed the potential for ship strike resulting from Vineyard Wind 1's activity and have determined that based on the nature of

the activity and the required mitigation measures specific to vessel strike avoidance included in the IHA, potential for vessel strike is so low as to be discountable. These mitigation measures, most of which were included in the proposed IHA and all of which are required in the final IHA, include: A requirement that all vessel operators comply with 10 kn (18.5 km/hour) or less speed restrictions in any SMA, DMA or Slow Zone (Slow Zones added since publication of the proposed IHA) while underway, and check daily for information regarding the establishment of mandatory or voluntary vessel strike avoidance areas (SMAs, DMAs, Slow Zones) and information regarding North Atlantic right whale sighting locations; a requirement that all vessels greater than or equal to 19.8 m in overall length operating from November 1 through April 30 operate at speeds of 10 kn (18.5 km/hour) or less, except while transiting in Nantucket Sound; a requirement that all vessel operators reduce vessel speed to 10 kn (18.5 km/hour) or less when any large whale, any mother/calf pairs, pods, or large assemblages of non-delphinid cetaceans are observed within 100 m of an underway vessel; a requirement that all survey vessels maintain a separation distance of 500-m or greater from any ESA-listed whales or other unidentified large marine mammals visible at the surface while underway; a requirement that, if underway, vessels must steer a course away from any sighted ESA-listed whale at 10 kn or less until the 500-m minimum separation distance has been established; a requirement that, if an ESA-listed whale is sighted in a vessel's path, or within 500 m of an underway vessel, the underway vessel must reduce speed and shift the engine to neutral; a requirement that all vessels underway must maintain a minimum separation distance of 100 m from all non-ESA-listed baleen whales; and a requirement that all vessels underway must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel). We have determined that the ship strike avoidance measures in the IHA are sufficient to ensure the least practicable adverse impact on species or stocks and their habitat. Furthermore, no documented vessel strikes have occurred for any marine site characterization surveys which were issued IHAs from NMFS during the survey activities themselves or while transiting to and from project sites.

Comment 22: Oceana recommended that the IHA should require all vessels supporting site characterization to be equipped with and using Class A Automatic Identification System (AIS) devices at all times while on the water in order to support oversight and enforcement of the conditions of the HRG survey. Oceana suggested this requirement should apply to all vessels, regardless of size, associated with the project.

Response: NMFS is generally supportive of the idea that vessels involved with survey activities be equipped with and using Class A Automatic Identification System (devices) at all times while on the water. Indeed, there is a precedent for NMFS requiring such a stipulation for geophysical surveys in the Atlantic Ocean (38 FR 63268, December 7, 2018); however, these activities carried the potential for much more significant impacts than the marine site characterization surveys to be carried out by Vineyard Wind 1, with the potential for both Level A and Level B harassment take. Given the small isopleths and small numbers of take authorized by this IHA, NMFS does not agree that the benefits of requiring AIS on all vessels associated with the survey activities outweighs and warrants the cost and practicability issues associated with this requirement.

Comment 23: Oceana asserts that the IHA must include requirements to hold all vessels associated with site characterization surveys accountable to the IHA requirements, including vessels owned by the developer, contractors, employees, and others regardless of ownership, operator, contract. They state that exceptions and exemptions will create enforcement uncertainty and incentives to evade regulations through reclassification and redesignation. They recommend that NMFS simplify this by requiring all vessels to abide by the same requirements, regardless of size, ownership, function, contract or other specifics.

Response: NMFS agrees with Oceana and required these measures in the proposed IHA and final IHA. The IHA requires that a copy of the IHA must be in the possession of Vineyard Wind 1, the vessel operators, the lead PSO, and any other relevant designees of Vineyard Wind 1 operating under the authority of this IHA. The IHA also states that Vineyard Wind 1 must ensure that the vessel operator and other relevant vessel personnel, including the PSO team, are briefed on all responsibilities, communication procedures, marine mammal monitoring protocols, operational procedures, and IHA requirements prior to the start of survey activity, and when relevant new personnel join the survey operations. Further, the IHA includes a measure that states that the IHA may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed in the IHA, or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

Comment 24: The ENGOs objected to NMFS' process to consider extending any one-year IHA with a truncated 15-day comment period as contrary to the MMPA.

Response: NMFS' IHA renewal process meets all statutory requirements. In prior responses to comments about IHA Renewals (*e.g.,* 84 FR 52464; October 02, 2019 and 85 FR 53342, August 28, 2020), NMFS has explained how the renewal process, as implemented, is consistent with the statutory requirements contained in section 101(a)(5)(D) of the MMPA, provides additional efficiencies beyond the use of abbreviated notices, and, further, promotes NMFS' goals of improving conservation of marine mammals and increasing efficiency in the MMPA compliance process. Therefore, we intend to continue implementing the renewal process.

The notice of the proposed IHA published in the **Federal Register** on June 7, 2021 (86 FR 30266) made clear that the agency was seeking comment on the proposed IHA and the potential issuance of a renewal for this project. Because any renewal is limited to another year of identical or nearly identical activities in the same location or the same activities that were not completed within the 1-year period of the initial IHA, reviewers have the information needed to effectively comment on both the immediate proposed IHA and a possible 1-year renewal, should the IHA holder choose to request one in the coming months.

While there would be additional documents submitted with a renewal request, for a qualifying renewal these would be limited to documentation that NMFS would make available and use to verify that the activities are identical to those in the initial IHA, are nearly identical such that the changes would have either no effect on impacts to marine mammals or decrease those impacts, or are a subset of activities already analyzed and authorized but not completed under the initial IHA. NMFS would also need to confirm, among other things, that the activities would occur in the same location; involve the same species and stocks; provide for

continuation of the same mitigation, monitoring, and reporting requirements; and that no new information has been received that would alter the prior analysis. The renewal request would also contain a preliminary monitoring report, in order to verify that effects from the activities do not indicate impacts of a scale or nature not previously analyzed. The additional 15-day public comment period provides the public an opportunity to review these few documents, provide any additional pertinent information and comment on whether they think the criteria for a renewal have been met. Between the initial 30-day comment period on these same activities and the additional 15 days, the total comment period for a renewal is 45 days.

Changes From the Proposed IHA to Final IHA

The final IHA includes a measure requiring Vineyard Wind 1 to abide by the relevant Project Design Criteria (PDC) of the programmatic consultation, completed by NMFS GARFO on June 29, 2021, pursuant to section 7 of the Endangered Species Act. The full list of PDC and BMPs are included in Appendix B of the 2021 Programmatic Consultation, which can be accessed on NMFS' website (*https://www.fisheries.noaa.gov/action/incidental-take-authorization-vineyard-wind-1-marine-site-characterization-surveys*). Further, NMFS has modified several measures in the final IHA to align more closely with the PDCs. We provide a summary here, and the changes are also described in the specific applicable sections below (*e.g.,* Mitigation Measures). The modifications include an update to the pre-start clearance observation requirement, which now reflects a 500 m radius for all ESA-listed marine mammals, rather than a 500 m radius for North Atlantic right whales only, as was included in the proposed IHA. Additionally, this pre-start clearance observation is now required for 30 minutes, rather than 60 minutes as initially proposed by Vineyard Wind 1 and included in the proposed IHA (86 FR 30266; June 7, 2021). Further, a 30 minute delay in initiation of acoustic sources is now required after a sighting of all marine mammals other than odontocetes and seals within the pre-start clearance zones, rather than a separate 60-minute delay for a sighting of North Atlantic right whales, as was initially proposed by Vineyard Wind 1 and included in the proposed IHA. A 30-minute pre-start clearance zone and 30-minute delay for sightings of North Atlantic right whales is consistent with numerous other HRG survey-related IHAs (*e.g.,* 86 FR 33664, June 25, 2021; 86 FR 38033, July 19, 2021; 86 FR 38296, July 20, 2021), as well as the 2021 programmatic consultation. The final IHA also includes an the additional requirement for Vineyard Wind 1 to follow speed restrictions in ''Slow Zones'' in addition to SMAs and DMAs included in the proposed IHA. Further, the final IHA requires Vineyard Wind 1 to check daily for information regarding the establishment of mandatory or voluntary vessel strike avoidance areas (SMAs, DMAs, Slow Zones) and information regarding North Atlantic right whale sighting locations, while the proposed IHA required Vineyard Wind 1 to monitor NMFS North Atlantic right whale reporting systems from November 1st through April 30th in order to ensure vessel operators are aware of any newly established DMAs. Lastly, the final IHA requires vessels to maintain a minimum separation distance of 500 m from ESA-listed whales or other unidentifiable large marine mammals visible at the surface, rather than keeping a 500 m distance from North Atlantic right whales only. Vessels must maintain a separation distance of 100 m from all non-ESA listed baleen whales. Additionally, NMFS modified a mitigation measure to state that ''Vineyard Wind 1 must not operate more than three concurrent HRG survey vessels concurrently, with HRG survey equipment operating at or below *180 kHz,* from January through April within the lease area or export cable corridor, not including coastal and bay waters,'' rather than applying this measure to equipment operating at or below 200 kHz, to align with the June 29, 2021 programmatic consultation also. Consistency among documents is expected to avoid confusion among vessel operators and other relevant personnel (including the PSO team) that may otherwise result.

Last, the final IHA authorizes 10 takes by Level B harassment of North Atlantic right whale, rather than 9 takes included in the proposed IHA, to reflect an updated density estimate. Please see the Estimated Take section for additional information.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks for which take is expected and authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow the Committee on Taxonomy (2020). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Atlantic and Gulf of Mexico SARs. All values presented in Table 2 are the most recent available at the time of publication and, except for North Atlantic right whale, are available in the 2019 SARs (Hayes *et al.,* 2020) and draft 2020 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*). The most recent North Atlantic right whale stock abundance estimate is presented in NOAA Technical Memorandum NMFS–NE–269 (Pace 2021).

TABLE 2—MARINE MAMMALS LIKELY TO OCCUR IN THE PROJECT AREA THAT MAY BE AFFECTED BY VINEYARD WIND 1'S PLANNED ACTIVITY

Common name	Scientific name	Stock	ESA/ MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenidae:						
North Atlantic right whale [4]	*Eubalaena glacialis*	Western North Atlantic	E/D; Y	368 (NA; 356; 2018)	0.8	18.6
Family Balaenopteridae (rorquals):						
Humpback whale	*Megaptera novaeangliae*	Gulf of Maine	-/-; Y	1,393 (0.15; 1,375; 2016)	22	58
Fin whale	*Balaenoptera physalus*	Western North Atlantic	E/D; Y	6,802 (0.24; 5,573; 2016)	11	2.35
Sei whale	*Balaenoptera borealis*	Nova Scotia	E/D; Y	6,292 (1.02; 3,098; 2016)	6.2	1.2
Minke whale	*Balaenoptera acutorostrata*	Canadian Eastern Coastal	-/-; N	21,968 (0.31; 17,002; 2016)	170	10.6
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae:						
Sperm whale	*Physeter macrocephalus*	North Atlantic	E; Y	4,349 (0.28; 3,451; 2016)	3.9	0
Family Delphinidae:						
Long-finned pilot whale	*Globicephala melas*	Western North Atlantic	-/-; N	39,215 (0.3; 30,627; 2016)	306	21
Bottlenose dolphin	*Tursiops spp.*	Western North Atlantic Offshore.	-/-; N	62,851 (0.213; 51,914; 2016)	519	28
Common dolphin	*Delphinus delphis*	Western North Atlantic	-/-; N	172,974 (0.21; 145,216; 2016)	1,452	399
Atlantic white-sided dolphin.	*Lagenorhynchus acutus*	Western North Atlantic	-/-; N	92,233 (0.71; 54,433; 2016)	544	26
Risso's dolphin	*Grampus griseus*	Western North Atlantic	-/-; N	35,493 (0.19; 30,289; 2016)	303	54.3
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy	-/-; N	95,543 (0.31; 74,034; 2016)	851	217
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals):						
Gray seal [5]	*Halichoerus grypus*	Western North Atlantic	-/-; N	27,131 (0.19; 23,158, 2016)	1,389	4,729
Harbor seal	*Phoca vitulina*	Western North Atlantic	-/-; N	75,834 (0.15; 66,884, 2012)	2,006	350

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable (NA).

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, vessel strike).

[4] This is the latest stock abundance estimate and N_{min} as presented in Pace (2021).

[5] NMFS stock abundance estimate (and associated PBR value) applies to U.S. population only. Total stock abundance (including animals in Canada) is approximately 451,431. The annual M/SI value is given for the total stock.

As indicated above, all 14 species (with 14 managed stocks) in Table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. In addition to what is included in Sections 3 and 4 of the application, the SARs, and NMFS's website, further detail informing the baseline for select species (*i.e.,* information regarding current Unusual Mortality Events (UME) and important habitat areas) was provided in the notice of proposed IHA (86 FR 30266; June 7, 2021) and is not repeated here. No new information is available since publication of that notice.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS (NMFS, 2018)

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Fourteen marine mammal species (12 cetacean and 2 phocids pinnipeds) have the reasonable potential to co-occur with the planned survey activities. Please refer to Table 2. Of the cetacean species that may be present, five are classified as low-frequency cetaceans (*i.e.,* all mysticete species), six are classified as mid-frequency cetaceans (*i.e.,* all delphinid species and the sperm whale), and one is classified as high-frequency cetaceans (*i.e.,* harbor porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The notice of proposed IHA included a summary of the ways that Vineyard Wind 1's specified activity may impact marine mammals and their habitat (86 FR 30266; June 7, 2021). Detailed descriptions of the potential effects of similar specified activities have been provided in other recent **Federal Register** notices, including for survey activities using the same methodology, over a similar amount of time, and occurring within the same specified geographical region (*e.g.,* 82 FR 20563, May 3, 2017; 85 FR 36537, June 17, 2020; 85 FR 37848, June 24, 2020; 85 FR 48179, August 10, 2020). No significant new information is available, and we refer the reader to the notice of proposed IHA (86 FR 30266; June 7, 2021) and to these documents rather than repeating the details here. The Estimated Take section includes a quantitative analysis of the number of individuals that are expected to be taken by Vineyard Wind 1's activity. The Negligible Impact Analysis and Determination section considers the potential effects of the specified activity, the Estimated Take section, and the Mitigation Measures section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks. The notice of proposed IHA (86 FR 30266; June 7, 2021) also provided background information regarding active acoustic sound sources and acoustic terminology, which is not repeated here.

The potential effects of Vineyard Wind 1's specified survey activity are expected to be limited to Level B behavioral harassment. No permanent or temporary auditory effects, or significant impacts to marine mammal habitat, including prey, are expected.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS's consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes are by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to HRG sources. Based primarily on the characteristics of the signals produced by the acoustic sources planned for use, Level A harassment is neither anticipated (even absent mitigation) nor authorized. Consideration of the anticipated effectiveness of the mitigation measures (*i.e.,* exclusion zones (EZs) and shutdown measures) discussed in detail below in the Mitigation Measures section, further strengthens the conclusion that Level A harassment is not a reasonably anticipated outcome of the survey activity. As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur permanent threshold shift (PTS) of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other

factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 160 dB re 1 µPa (rms) for the impulsive sources (*i.e.,* boomers, sparkers) and non-impulsive, intermittent sources (*e.g.,* chirp SBPs) evaluated here for Vineyard Wind 1's planned activity.

Level A Harassment—NMFS's Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). For more information, see NMFS's 2018 Technical Guidance, which may be accessed at *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

Vineyard Wind 1's planned activity includes the use of impulsive (*i.e.,* sparkers and boomers) and non-impulsive (*e.g.,* CHIRP SBP) sources. However, as discussed above, NMFS has concluded that Level A harassment is not a reasonably likely outcome for marine mammals exposed to noise through use of the sources planned for use here, and the potential for Level A harassment is not evaluated further in this document. Please see Vineyard Wind 1's application for details of a quantitative exposure analysis exercise, *i.e.,* calculated Level A harassment isopleths and estimated Level A harassment exposures. Maximum estimated Level A harassment isopleths were less than 5 m for all sources and hearing groups with the exception of an estimated 53 m zone calculated for high-frequency cetaceans during use of the Applied Acoustics AA251 Boomer, (see Table 1 for source characteristics). Vineyard Wind 1 did not request authorization of take by Level A harassment, and no take by Level A harassment is authorized by NMFS.

Ensonified Area

NMFS has developed a user-friendly methodology for estimating the extent of the Level B harassment isopleths associated with relevant HRG survey equipment (NMFS, 2020). This methodology incorporates frequency and directionality to refine estimated ensonified zones. For acoustic sources that operate with different beamwidths, the maximum beamwidth was used, and the lowest frequency of the source was used when calculating the frequency-dependent absorption coefficient (Table 1).

NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG equipment and, therefore, recommends that source levels provided by Crocker and Fratantonio (2016) be incorporated in the method described above to estimate isopleth distances to harassment thresholds. In cases when the source level for a specific type of HRG equipment is not provided in Crocker and Fratantonio (2016), NMFS recommends that either the source levels provided by the manufacturer be used, or, in instances where source levels provided by the manufacturer are unavailable or unreliable, a proxy from Crocker and Fratantonio (2016) be used instead. Table 1 shows the HRG equipment types that may be used during the planned surveys and the source levels associated with those HRG equipment types.

Results of modeling using the methodology described above indicated that, of the HRG survey equipment planned for use by Vineyard Wind 1 that has the potential to result in Level B harassment of marine mammals, the Applied Acoustics AA251 Boomer will produce the largest Level B harassment isopleth (178 m; see Table 7 of Vineyard Wind 1's application). The estimated Level B harassment isopleth associated with the GeoMarine Geo Spark 2000 (400 tip) system planned for use is 141 m. Although Vineyard Wind 1 does not expect to use the AA251 Boomer source on all planned survey days, it proposes to assume, for purposes of analysis, that the boomer will be used on all survey days. This is a conservative approach, as the actual sources used on individual survey days may produce smaller harassment distances.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

Density estimates for all species within the project area were derived from habitat-based density modeling results reported by Roberts *et al.* (2016, 2017, 2018, 2020). The data presented by Roberts *et al.* (2016, 2017, 2018, 2020) incorporates aerial and shipboard line-transect survey data from NMFS and other organizations and incorporates data from 8 physiographic and 16 dynamic oceanographic and biological covariates, and controls for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016). In subsequent years, certain models have been updated based on additional data as well as certain methodological improvements. More information is available online at *https://seamap.env.duke.edu/models/Duke/EC/.*

Marine mammal density estimates in the survey area (animals/km^2) were obtained using the most recent model results for all taxa (Roberts *et al.,* 2016, 2017, 2018, 2020). We note the availability of a more recent model version for the North Atlantic right whale. However, this latest update resulted in changed predictions only for Cape Cod Bay and, therefore, would not result in changes to the take estimate presented herein. More information is available online at: *https://seamap.env.duke.edu/models/Duke/EC/EC_North_Atlantic_right_whale_history.html.* The updated models incorporate additional sighting data, including sightings from NOAA's Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys. Roberts *et al.* (2016, 2017, 2018, 2020) provide abundance estimates for species or species guilds within 10 km x 10 km grid cells (100 km^2; except North Atlantic right whale—see discussion below) on a monthly or annual basis, depending on the species.

For the exposure analysis, density data from Roberts *et al.* (2016, 2017, 2018, 2020) were mapped using a geographic information system (GIS). Vineyard Wind 1 calculated densities within a 50 km buffer polygon around the wind development area perimeter. The 50 km limit was derived from studies demonstrating that received levels, distance from the source, and behavioral context are known to influence marine mammals' probability of behavioral response (Dunlop *et al.* 2017). The monthly density was determined by calculating the mean of

all grid cells partially or fully within the buffer polygon. The average monthly abundance for each species in each survey area was calculated as the mean value of the grid cells within the buffer area in each month and then converted to density (individuals/km^2) by dividing by 100 km^2 (Table 1). Annual mean densities were calculated from monthly densities (Table 4).

The estimated monthly densities of North Atlantic right whales were based on Version 10 model results from Roberts *et al.* (2020) (updated from the Version 9 model results included in the proposed IHA). As stated in the Comments and Responses section of this notice, the Version 10 update to the model was primarily focused on Massachusetts Bay, which does not overlap the project area and therefore, is not relevant to this IHA. However, Version 10 also included additional survey data in the ''Hatteras Island to Nantucket Shoals'' area (a portion of which does overlap the project area), which resulted in slightly higher densities in part of the project area south of Nantucket. Therefore, the Version 10 density for the project area is 0.0018/km^2, rather than 0.0016/km^2 in Version 9. NMFS updated the take estimate for North Atlantic right whale in the final IHA to reflect the Version 10 update. Additionally, as noted above, there has been an additional minor model update affecting predictions for Cape Cod Bay in the month of December, which is not relevant to the location of this survey off of Rhode Island and southern Massachusetts.) These updated data for North Atlantic right whales are provided as densities (individuals/1 km^2) within 5 km x 5 km grid cells (25 km^2) on a monthly basis. The same GIS process described above was used to select the appropriate grid cells from each month and the monthly North Atlantic right whale density in each survey area was calculated as the mean value of the grid cells as described above. Additional data regarding average group sizes from survey effort in the region was considered to ensure adequate take estimates are evaluated.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate. In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in harassment, radial distances to predicted isopleths corresponding to harassment thresholds are calculated, as described above. Those distances are then used to calculate the area(s) around the HRG survey equipment predicted to be ensonified to sound levels that exceed harassment thresholds. The area estimated to be ensonified to relevant thresholds in a single day (zone of influence (ZOI)) is then calculated, based on areas predicted to be ensonified around the HRG survey equipment (*i.e.,* 178 m) and the estimated trackline distance traveled per day by the survey vessel (*i.e.,* 80 km). Based on the maximum estimated distance to the Level B harassment threshold of 178 m (Applied Acoustics AA251 Boomer) and the maximum estimated daily track line distance of 80 km, the ZOI is estimated to be 28.58 km^2 during Vineyard Wind 1's planned HRG surveys. As described above, this is a conservative estimate as it assumes the HRG source that results in the greatest distance to the Level B harassment isopleth will be operated at all times during all vessel days.

$$ZOI = (Distance/day \times 2r) + \pi r^2$$

Where r is the linear distance from the source to the harassment isopleth.

Potential daily Level B harassment takes are estimated by multiplying the average annual marine mammal densities (animals/km^2), as described above, by the ZOI. Estimated numbers of each species taken over the duration of the authorization are calculated by multiplying the potential daily Level B harassment takes by the total number of vessel days plus a 10 percent buffer (*i.e.,* by 170 vessel days × 1.1 percent = 192.5 vessel days). The product is then rounded, to generate an estimate of the total number of instances of harassment expected for each species over the duration of the survey. A summary of this method is illustrated in the following formula:

$$Estimated\ Take = D \times ZOI \times vessel\ days$$

Where D = average species density (animals/km^2), ZOI = maximum daily ensonified area to relevant threshold, and vessel days = 192.5.

Take by Level B harassment authorized is shown in Table 4.

TABLE 4—TOTAL NUMBERS OF INCIDENTAL TAKE OF MARINE MAMMALS AUTHORIZED AND AUTHORIZED TAKES AS A PERCENTAGE OF POPULATION

Species of interest	Annual mean density (km^2)	Estimated takes by Level B harassment	Authorized takes by Level B harassment [a]	Abundance	Percent of stock
Fin whale	0.00149	8.22	8	6,802	0.13
Humpback whale	0.00084	4.63	5	1,393	0.36
Minke whale	0.00062	3.42	3	21,968	0.02
North Atlantic right whale [b]	0.0018	9.9	10	368	2.72
Sei whale	0.00005	0.28	2	6,292	0.03
Sperm whale	0.00006	0.33	2	4,349	0.05
Atlantic white sided dolphin	0.02226	122.78	123	92,233	0.13
Bottlenose dolphin	0.0403	222.29	222	62,851	0.35
Long-finned pilot whale	0.00459	25.32	25	39,215	0.07
Risso's dolphin	0.00012	0.66	8	35,493	0.02
Common dolphin	0.0544	300.06	3,484	172,974	2.01
Harbor porpoise	0.02858	157.64	158	95,543	0.17
Gray seal [c]	0.09784	539.67	540	27,131	1.99
Harbor seal [c]		539.67	540	75,834	0.71

[a] Increases from calculated values for sei whale, sperm whale, and Risso's dolphin are based on observed group sizes during Vineyard Wind LLC's 2018–2020 surveys (Vineyard Wind 2018, 2020a, 2020b).

[b] Updated to reflect the Roberts *et al.* (2020) Version 10 density estimate.

[c] Roberts *et al.* (2018) only provides density estimates for seals without differentiating by species. Harbor seals and gray seals are assumed to occur equally; therefore, density values were split evenly between the two species, *i.e.,* total estimated take for ''seals'' is 1,080.

The take numbers shown in Table 4 are those requested by Vineyard Wind 1, with the exception of certain minor rounding differences. Further, Vineyard Wind 1 requested take of the pilot whale guild, rather than just long-finned pilot whale, but as described previously, pilot whales in the project area are expected to be long-finned pilot whales. Additionally, NMFS increased authorized Level B harassment take of common dolphin to 3,484 takes. This take estimate reflects the daily rate of approximately 18.1 common dolphin observations within the Level B harassment zone per vessel day (3,332 dolphin observations over 184 days) during surveys under Vineyard Wind's previous IHA (85 FR 42357; July 14, 2020), and an estimated 192.5 vessel days, as described above (18.1 takes per day × 192.5 vessel days = 3,484 takes). Given the overlap in project areas, NMFS expects that this estimate is more appropriate than the density-based common dolphin take estimate calculated by Vineyard Wind 1. For all other species, NMFS concurs with the take numbers requested by Vineyard Wind 1 and proposes to authorize them.

Mitigation Measures

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

Mitigation for Marine Mammals and Their Habitat

NMFS requires the following mitigation measures be implemented during Vineyard Wind 1's planned marine site characterization surveys.

Marine Mammal Exclusion Zones and Harassment Zones

Marine mammal EZs will be established around the HRG survey equipment and monitored by protected species observers (PSO):

- 500 m (1,640 ft) EZ for North Atlantic right whales during use of impulsive acoustic sources (*e.g.,* boomers and/or sparkers) and certain non-impulsive acoustic sources (nonparametric sub-bottom profilers); and
- 100 m (328 ft) EZ for all other marine mammals, with certain exceptions specified below, during use of impulsive acoustic sources (*e.g.,* boomers and/or sparkers).

If a marine mammal is detected approaching or entering the EZs during the HRG survey, the vessel operator will adhere to the shutdown procedures described below to minimize noise impacts on the animals. These stated requirements will be included in the training to be provided to the survey team.

Pre-Clearance of the Exclusion Zones

Vineyard Wind 1 will implement a 30-minute pre-clearance period of the pre-clearance zones prior to the initiation of ramp-up of HRG equipment. This pre-clearance duration was proposed by Vineyard Wind 1. During this period, PSO(s) will monitor a 500 m zone for ESA-listed marine mammals (North Atlantic right whale, fin whale, sei whale, sperm whale) and a 100 m zone for non-ESA-listed marine mammals, using the appropriate visual technology. Ramp-up may not be initiated if any marine mammal(s) is within its respective zones. If a marine mammal is observed within the respective zone during the pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting its respective zone or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes and seals, 30 minutes for all other species).

Ramp-Up of Survey Equipment

When technically feasible, a ramp-up procedure will be used for HRG survey equipment capable of adjusting energy levels at the start or restart of survey activities. The ramp-up procedure will be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the survey area by allowing them to vacate the area prior to the commencement of survey equipment operation at full power.

A ramp-up will begin with the powering up of the smallest acoustic HRG equipment at its lowest practical power output appropriate for the survey. When technically feasible, the power will then be gradually turned up and other acoustic sources will be added.

Ramp-up activities will be delayed if a marine mammal(s) enters its respective EZ. Ramp-up will continue if the animal has been observed exiting its respective EZ or until an additional time period has elapsed with no further sighting (*i.e,* 15 minutes for small odontocetes and seals, 30 minutes for all other species).

Activation of survey equipment through ramp-up procedures may not occur when visual observation of the pre-clearance/exclusion zone is not expected to be effective using the appropriate visual technology (*i.e.,* during inclement conditions such as heavy rain or fog).

Shutdown Procedures

An immediate shutdown of the HRG survey equipment will be required if a marine mammal is sighted entering or within its respective EZ. The vessel operator must comply immediately with any call for shutdown by the PSO. Any disagreement between the PSO and vessel operator should be discussed only after shutdown has occurred. Subsequent restart of the survey equipment can be initiated if the animal has been observed exiting its respective EZ or until an additional time period has elapsed (*i.e,* 15 minutes for delphinid cetaceans and seals, 30 minutes for all other species).

If a species for which authorization has not been granted, or, a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the Level B harassment zone (178 m impulsive), shutdown will occur.

If the acoustic source is shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for less than 30 minutes, it may be activated again without ramp-up if PSOs have maintained constant observation and no detections of any marine mammal have occurred within the respective EZs. If the acoustic source is shut down for a period longer than 30 minutes and PSOs have maintained constant observation, then pre-clearance and ramp-up procedures will be initiated as described in the previous section.

The shutdown requirement will be waived for small delphinids of the following genera: *Delphinus, Lagenorhynchus (acutus* only*),* and *Tursiops.* Specifically, if a delphinid from the specified genera is visually detected approaching the vessel (*i.e.,* to bow ride) or towed equipment, shutdown is not required. Furthermore, if there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived), PSOs must use best professional judgement in making the decision to call for a shutdown. Additionally, shutdown is required if a delphinid detected in the EZ belongs to a genus other than those specified.

Shutdown, pre-start clearance, and ramp-up procedures are not required during HRG survey operations using only non-impulsive sources (*e.g.,* USBL and parametric sub-bottom profilers) other than non-parametric sub-bottom profilers (*e.g.,* CHIRPs). Pre-clearance and ramp-up, but not shutdown, are required when using non-impulsive, non-parametric sub-bottom profilers.

Vessel Strike Avoidance

Vineyard Wind 1 will ensure that vessel operators and crew maintain a vigilant watch for cetaceans and pinnipeds and slow down or stop their vessels to avoid striking these species. Survey vessel crew members responsible for navigation duties will receive site-specific training on marine mammals sighting/reporting and vessel strike avoidance measures. Vessel strike avoidance measures include the following, except under circumstances when complying with these requirements would put the safety of the vessel or crew at risk:

- Vessel operators and crews must maintain a vigilant watch for all protected species and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any protected species. A visual observer aboard the vessel must monitor a vessel strike avoidance zone based on the appropriate separation distance around the vessel (distances stated below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish protected species from other phenomena and (2) broadly to identify a marine mammal as a right whale, other whale (defined in this context as sperm whales or baleen whales other than right whales), or other marine mammal;
- All survey vessels, regardless of size, must observe a 10-knot speed restriction in specific areas designated by NMFS for the protection of North Atlantic right whales from vessel strikes including SMAs, DMAs, and Slow Zones when in effect;
- All vessels greater than or equal to 19.8 m in overall length operating from November 1 through April 30 will operate at speeds of 10 knots or less, except while transiting in Nantucket Sound;
- All vessels must reduce their speed to 10 knots or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel;
- All vessels must maintain a minimum separation distance of 500 m from ESA-listed whales or other unidentifiable large marine mammals visible at the surface;
- All vessels must maintain a minimum separation distance of 100 m from all non-ESA-listed baleen whales;
- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel);
- When marine mammals are sighted while a vessel is underway, the vessel shall take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If marine mammals are sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This does not apply to any vessel towing gear or any vessel that is navigationally constrained;
- These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply; and
- Members of the monitoring team will consult NMFS North Atlantic right whale reporting system and Whale Alert, as able, for the presence of North Atlantic right whales throughout survey operations, and for the establishment of a DMA or Slow Zone. If NMFS should establish a DMA or Slow Zone in the survey area during survey operations, the vessels will abide by speed restrictions in the DMA or Slow Zone.

Passive Acoustic Monitoring

Vineyard Wind 1 plans to employ trained PAM operators to monitor for acoustic detections of marine mammals during nighttime HRG survey activities. PAM operators will communicate nighttime detections to the lead PSO on duty who will ensure the implementation of the appropriate mitigation measure. If PAM is not used or is deemed non-functional at any time during the survey, the survey will be shut down until PAM is restored. NMFS does not concur that PAM is an effective technique for detecting mysticetes in order to implement mitigation measures during HRG surveys, given masking that would occur from vessel noise and flow noise. Therefore, NMFS has not included it as a requirement in this IHA.

Seasonal Restrictions

Vineyard Wind 1 will not operate more than three survey vessels concurrently, with HRG survey equipment operating below 180 kHz, from January through April within the lease area or export cable corridor, not including coastal and bay waters. Additionally, the monitoring team will consult NMFS's North Atlantic right whale reporting systems for any observed right whales throughout survey operations within or adjacent to SMAs, DMAs, and/or Slow Zones and will comply with 10 knot speed restrictions in any SMA, DMA, or Slow Zone as noted above.

Crew Training

Prior to initiation of survey work, all crew members will undergo environmental training, a component of which will focus on the procedures for sighting and protection of marine mammals.

In addition to the measures discussed in detail in this section, Vineyard Wind 1 must abide by the relevant Project Design Criteria (PDC) of the programmatic consultation completed by NMFS GARFO on June 29, 2021, pursuant to section 7 of the Endangered Species Act.

Based on our evaluation of the applicant's planned measures, NMFS has determined that the 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

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the planned action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

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.

Monitoring Measures

As described above, visual monitoring will be performed by qualified and NMFS-approved PSOs, the resumes of whom will be provided to NMFS for review and approval prior to the start of survey activities. Vineyard Wind 1 will employ independent, dedicated, trained PSOs, meaning that the PSOs must (1) be employed by a third-party observer provider, (2) have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements (including brief alerts regarding maritime hazards), and (3) have successfully completed an approved PSO training course appropriate for their designated task.

The PSOs will be responsible for monitoring the waters surrounding each survey vessel to the farthest extent permitted by sighting conditions, including exclusion zones, during all HRG survey operations. PSOs will visually monitor and identify marine mammals, including those approaching or entering the established exclusion zones during survey activities. It will be the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

During all HRG survey operations (*e.g.,* any day on which use of an HRG source is planned to occur), a minimum of one PSO must be on duty and conducting visual observations at all times on all active survey vessels when HRG equipment operating at or below 200 kHz is operating, including both daytime and nighttime operations. Visual monitoring will begin no less than 30 minutes prior to initiation of HRG survey equipment and will continue until 30 minutes after use of the acoustic source ceases. Vineyard Wind 1 states that a requirement to employ at least two PSOs during all nighttime survey operations is impracticable, given the limited available berths on the survey vessels and additional personnel required to conduct PAM.

Observations will take place from the highest available vantage point on the survey vessel. In cases where more than one PSO is on duty at a time PSOs will coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts. PSOs may be on watch for a maximum of 4 consecutive hours followed by a break of at least 2 hours between watches and may conduct a maximum of 12 hours of observation per 24-hour period. In cases where multiple vessels are surveying concurrently, any observations of marine mammals will be communicated to PSOs on all survey vessels.

PSOs must be equipped with binoculars and have the ability to estimate distance and bearing to detect marine mammals, particularly in proximity to exclusion zones. Reticulated binoculars will also be available to PSOs for use as appropriate based on conditions and visibility to support the monitoring of marine mammals. PSOs must use night-vision technology during nighttime surveys when the sources are active. Position data will be recorded using hand-held or vessel GPS units for each sighting.

During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), to the maximum extent practicable, PSOs will conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the acoustic source. Any observations of marine mammals by crew members aboard any vessel associated with the survey will be relayed to the PSO team. Data on all PSO observations will be recorded based on standard PSO collection requirements. This will include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (*e.g.,* species, numbers, behavior); and details of any observed marine mammal take that occurs (*e.g.,* noted behavioral disturbances).

Reporting Measures

Within 90 days after completion of survey activities, a final technical report will be provided to NMFS that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, summarizes the number of marine mammals estimated to have been taken during survey activities (by species, when known), summarizes the mitigation actions taken during surveys (including what type of mitigation and the species and number of animals that prompted the mitigation action, when known), and provides an interpretation of the results and effectiveness of all mitigation and monitoring measures. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS. PSO datasheets or raw sightings data must also be provided with the draft and final

monitoring report. All draft and final monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *ITP.Davis@noaa.gov.*

The report must contain at minimum, the following:

- PSO names and affiliations;
- Dates of departures and returns to port with port name;
- Dates and times (Greenwich Mean Time) of survey effort and times corresponding with PSO effort;
- Vessel location (latitude/longitude) when survey effort begins and ends; vessel location at beginning and end of visual PSO duty shifts;
- Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change;
- Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including wind speed and direction, Beaufort sea state, Beaufort wind force, swell height, weather conditions, cloud cover, sun glare, and overall visibility to the horizon;
- Factors that may be contributing to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions); and
- Survey activity information, such as type of survey equipment in operation, acoustic source power output while in operation, and any other notes of significance (*i.e.,* pre-clearance survey, ramp-up, shutdown, end of operations, *etc.*).

If a marine mammal is sighted, the following information should be recorded:

- Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
- PSO who sighted the animal;
- Time of sighting;
- Vessel location at time of sighting;
- Water depth;
- Direction of vessel's travel (compass direction);
- Direction of animal's travel relative to the vessel;
- Pace of the animal;
- Estimated distance to the animal and its heading relative to vessel at initial sighting;
- Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified); also note the composition of the group if there is a mix of species;
- Estimated number of animals (high/low/best);
- Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, *etc.*);
- Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
- Detailed behavior observations (*e.g.,* number of blows, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);
- Animal's closest point of approach and/or closest distance from the center point of the acoustic source; and
- Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up, speed or course alteration, etc.) and time and location of the action.

If a North Atlantic right whale is observed at any time by PSOs or personnel on any project vessels, during surveys or during vessel transit, Vineyard Wind 1 must immediately report sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System: (866) 755–6622. North Atlantic right whale sightings in any location may also be reported to the U.S. Coast Guard via channel 16.

In the event that personnel involved in the survey activities covered by the authorization discover an injured or dead marine mammal, Vineyard Wind 1 must report the incident to the NMFS Office of Protected Resources (OPR) and the NMFS New England/Mid-Atlantic Stranding Coordinator as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

In the event of a vessel strike of a marine mammal by any vessel involved in the activities covered by the authorization, Vineyard Wind 1 must report the incident to the NMFS OPR and the NMFS New England/Mid-Atlantic Stranding Coordinator as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Species identification (if known) or description of the animal(s) involved;
- Vessel's speed during and leading up to the incident;
- Vessel's course/heading and what operations were being conducted (if applicable);
- Status of all sound sources in use;
- Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
- Estimated size and length of animal that was struck;
- Description of the behavior of the marine mammal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
- Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
- To the extent practicable, photographs or video footage of the animal(s).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their

impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all the species listed in Table 2, given that NMFS expects the anticipated effects of the planned survey to be similar in nature. Where there are meaningful differences between species or stocks—as is the case of the North Atlantic right whale—they are included as separate subsections below. NMFS does not anticipate that serious injury or mortality would occur as a result from Vineyard Wind 1's planned survey activities, even in the absence of mitigation, and no serious injury or mortality is authorized. As discussed in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section, non-auditory physical effects and vessel strike are not expected to occur. NMFS expects that all potential takes will be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007). Even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. As described above, Level A harassment is not expected to occur given the nature of the operations, the estimated size of the Level A harassment zones, and the required shutdown zones for certain activities.

In addition to being temporary, the maximum expected harassment zone around a survey vessel is 178 m. Although this distance is assumed for all survey activity in estimating take numbers authorized and evaluated here, in reality much of the survey activity will involve use of acoustic sources with smaller acoustic harassment zones, producing expected effects of particularly low severity. Therefore, the ensonified area surrounding each vessel is relatively small compared to the overall distribution of the animals in the area and their use of the habitat. Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the survey area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

There are no rookeries, mating or calving grounds known to be biologically important to marine mammals within the planned survey area. (Biologically important areas for feeding and migration are discussed below.) There is no designated critical habitat for any ESA-listed marine mammals in the planned survey area.

North Atlantic Right Whales

The status of the North Atlantic right whale population is of heightened concern and, therefore, merits additional analysis. As noted previously, elevated North Atlantic right whale mortalities began in June 2017 and there is an active UME. Overall, preliminary findings support human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of right whales.

As noted previously, the planned project area overlaps a migratory corridor BIA for North Atlantic right whales (March–April and November–December). In addition to the migratory BIA, Oleson *et al.* (2020) identified an area south of Martha's Vineyard and Nantucket, referred to as ''South of the Islands,'' as a newer, year-round, core North Atlantic right whale foraging habitat. The South of the Islands area overlaps with most of Vineyard Wind 1's project area.

As stated previously, the largest Level B harassment isopleth for Vineyard Wind 1's survey is 178 m. Therefore, even if Vineyard Wind 1 operates multiple survey vessels concurrently in this area, the total area ensonified above the Level B harassment threshold will be minimal in comparison with the remaining South of the Islands feeding habitat, and habitat within the migratory corridor BIA available to North Atlantic right whales. Additionally, NMFS is also requiring Vineyard Wind 1 to limit the number of survey vessels operating concurrently in the lease area or export cable corridor (not including coastal and bay waters) to no more than three from January through April, when North Atlantic right whale densities are the highest. Given the factors discussed above, and the temporary nature of the surveys, right whale migration is not expected to be impacted by the planned survey, and feeding is not expected to be affected to a degree that will affect North Atlantic right whale foraging success in the South of the Islands important feeding area.

No vessel strike is expected to occur during Vineyard Wind 1's planned activities, and required vessel strike avoidance measures will decrease risk of vessel strike, including during migration and feeding. HRG survey operations are required to maintain a 500 m EZ and shutdown if a North Atlantic right whale is sighted at or within the EZ. Regarding take by Level B harassment, the 500 m shutdown zone for right whales is conservative, considering the Level B harassment isopleth for the most impactful acoustic source (*i.e.,* boomer) is estimated to be 178 m. Therefore, this EZ minimizes the potential for behavioral harassment of this species. Additionally, as noted previously, Level A harassment take is not expected for any species, including North Atlantic right whales, given the small PTS zones associated with HRG equipment types planned for use.

The authorized Level B harassment takes of North Atlantic right whale are not expected to exacerbate or compound upon the ongoing UME. The limited North Atlantic right whale Level B harassment takes authorized are expected to be of a short duration, and given the number of estimated takes, repeated exposures of the same individual are not expected. Therefore, the takes are not expected to impact individual fitness or annual rates of recruitment or survival. Further, given the relatively small size of the ensonified area during surveys, it is unlikely that North Atlantic right whale prey availability will be adversely affected by HRG survey operations.

Biologically Important Area for Fin Whales

The planned project area overlaps with a feeding BIA for fin whales (March–October). The fin whale feeding BIA is large (2,933 km^2), and the acoustic footprint of the planned survey is sufficiently small such that feeding opportunities for these whales will not be reduced appreciably. Any fin whales temporarily displaced from the planned survey area will be expected to have sufficient remaining feeding habitat available to them, and will not be prevented from feeding in other areas within the biologically important feeding habitat. In addition, any displacement of fin whales from the BIA or interruption of foraging bouts would be expected to be temporary in nature. Therefore, we do not expect fin whales feeding within the feeding BIAs to be

impacted by the planned survey to an extent that would affect fitness or reproduction.

Other Marine Mammal Species With Active UMEs

As noted previously, there are several active UMEs occurring in the vicinity of Vineyard Wind 1's planned survey area. Elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately half had evidence of human interaction (vessel strike or entanglement). Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or distinct population segment (DPS)) remains stable at approximately 12,000 individuals, and the authorized Level B harassment takes of humpback whale are not expected to exacerbate or compound the ongoing UME.

Beginning in January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. The likely population abundance is greater than 20,000 whales, and the authorized Level B harassment takes of minke whale are not expected to exacerbate or compound upon the ongoing UME.

Elevated numbers of harbor seal and gray seal mortalities were first observed in July 2018 and have occurred across Maine, New Hampshire, and Massachusetts. Based on tests conducted so far, the main pathogen found in the seals is phocine distemper virus, although additional testing to identify other factors that may be involved in this UME are underway. The authorized Level B harassment takes of harbor seal and gray seal are not expected to exacerbate or compound upon the ongoing UME. For harbor seals, the population abundance is over 75,000 and annual M/SI (350) is well below PBR (2,006) (Hayes *et al.,* 2020). The population abundance for gray seals in the United States is over 27,000, with an estimated abundance, including seals in Canada, of approximately 450,000. In addition, the abundance of gray seals is likely increasing in the U.S. Atlantic as well as in Canada (Hayes *et al.,* 2020).

The required mitigation measures are expected to reduce the number and/or severity of takes for all species listed in Table 2, including those with active UMEs, to the level of least practicable adverse impact. In particular they will provide animals the opportunity to move away from the sound source throughout the survey area before HRG survey equipment reaches full energy, thus preventing them from being exposed to sound levels that have the potential to cause injury (Level A harassment) or more severe Level B harassment. No Level A harassment is anticipated, even in the absence of mitigation measures, or authorized.

NMFS expects that takes will be in the form of short-term Level B behavioral harassment by way of brief startling reactions and/or temporary vacating of the area, or decreased foraging (if such activity was occurring)—reactions that (at the scale and intensity anticipated here) are considered to be of low severity, with no lasting biological consequences. Since both the sources and marine mammals are mobile, animals will only be exposed briefly to a small ensonified area that might result in take. Additionally, required mitigation measures will further reduce exposure to sound that could result in more severe behavioral harassment.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or authorized;
- No Level A harassment (PTS) is anticipated, even in the absence of mitigation measures, or authorized;
- Foraging success is not likely to be significantly impacted as effects on species that serve as prey species for marine mammals from the survey are expected to be minimal;
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the planned survey to avoid exposure to sounds from the activity;
- Take is anticipated to be primarily Level B behavioral harassment consisting of brief startling reactions and/or temporary avoidance of the survey area;
- While the survey area overlaps areas noted as a migratory BIA for North Atlantic right whales, the activities will occur in such a comparatively small area such that any avoidance of the survey area due to activities will not affect migration. In addition, mitigation measures to shutdown at 500 m to minimize potential for Level B behavioral harassment will limit any take of the species;
- Similarly, due to the relatively small footprint of the survey activities in relation to the size of the fin whale feeding BIA and South of the Islands North Atlantic right whale feeding area, the survey activities will not affect foraging success of these species; and
- The required mitigation measures, including visual monitoring and shutdowns, are expected to minimize potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from Vineyard Wind 1's planned HRG survey activities will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Take of all species or stocks is below one third of the estimated stock abundance (in fact, take of individuals is less than 3 percent of the abundance for all affected stocks) as shown in Table 4. Based on the analysis contained herein of the planned activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

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 issuance of the 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 this 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, in this case with NMFS GARFO.

The NMFS OPR is authorizing the incidental take of fin whale, North Atlantic right whale, sei whale, and sperm whale, which are listed under the ESA. We requested initiation of consultation under section 7 of the ESA with NMFS GARFO for issuance of this IHA. On July 13, 2021, NMFS GARFO determined that OPR's issuance of an IHA to Vineyard Wind 1 would be covered under the June 29, 2021 programmatic consultation, and that issuance of the IHA is not likely to adversely affect fin whale, North Atlantic right whale, sei whale, and sperm whale or the critical habitat of any ESA-listed species or result in the take of any marine mammals in violation of the ESA.

Authorization

NMFS has issued an IHA to Vineyard Wind 1 for the potential harassment of small numbers of 14 marine mammal species incidental to conducting marine site characterization surveys offshore of Massachusetts and Rhode Island in the area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Area OCS–A 0501 and along the Offshore Export Cable Corridor provided the previously mentioned mitigation, monitoring and reporting requirements are followed.

Dated: July 22, 2021.

Angela Somma,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–16025 Filed 7–27–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB263]

Gulf of Mexico Fishery Management Council; Federal Funding Opportunity

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

ACTION: Notice.

SUMMARY: The Gulf of Mexico Fishery Management Council is requesting proposals from highly-qualified contractors to organize and expand a vessel position monitoring system for the federally permitted Gulf of Mexico shrimp industry.

DATES: This will be a 12–18 month project and a maximum $350,000 is available to fund the work. Proposal Submission Deadline: August 20, 2021 by 11:59 p.m. EST.

ADDRESSES: *Council address:* Gulf of Mexico Fishery Management Council, 4701 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Carrie Simmons, Executive Director, Gulf of Mexico Fishery Management Council; *carrie.simmons@gulfcouncil.org;* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Proposal Submission Deadline Friday, August 20, 2021 by 11:59 p.m. EST

The Gulf of Mexico Fishery Management Council (Council) seeks a highly-qualified contractor to organize and expand a vessel position monitoring system for the federally permitted Gulf of Mexico shrimp industry. The current Gulf of Mexico electronic logbook (ELB) program that utilized a 3G cellular network to transmit data is no longer supported, and the server became unviable for data storage in December 2020. Approximately ⅓ of the vessels in the shrimp industry have been selected by the Science and Research Director to participate in the ELB monitoring program.[1] After transmission of the data from the shrimp vessels, vessel position monitoring data are securely housed by the National Marine Fisheries Service (NMFS) Southeast Fisheries Science Center (Science Center) and used for assessment and monitoring efforts including bycatch of finfish and interactions with protected resources across the Gulf of Mexico.

The Council, in coordination with NMFS, is seeking to develop a new program that will provide for continued collection, storage, and transmission of shrimp vessel position data that are used to estimate shrimping effort. This new program is intended to replace the recently discontinued shrimp ELB program. In the interim, the Council is developing a document to require the owner or operator of a vessel with a valid federal shrimp permit to install an approved vessel monitoring system that archives vessel location and automatically transmits this data to NMFS. In addition, the newly developed program will be required to meet NMFS hardware/software type approval.[2] Thus, the intent and need for this study is to test the P-Sea WindPlot [3] software program with a portion of the shrimp fleet in the near term to determine if it meets the needs of industry, Council, and NMFS.

Proposals should identify by region/state the number of vessels that will volunteer to participate in the proposed pilot program for vessel position monitoring in the Gulf of Mexico. The proposed work should clearly define methodology and intent for meeting the NMFS software and hardware requirements while documenting the estimated costs to the industry. The proposal should detail the methodology proposed for archiving the vessel location, data retention, and automatic transmission of the data to NMFS when within cellular/satellite range of land.

A team will establish selection criteria and review the proposals after the proposal submission deadline. The Council will develop an agreement with the selected contractor(s) with milestones and deliverables after the review and selection process. The selected contractor(s) will work with Council staff.

[1] *https://ecfr.io/Title-50/Section-622.51.*

[2] *https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=40795e9b7e80ab071d63d0f076d60d11&mc=true&r=SUBPART&n=sp50.12.600.q.*

[3] *http://www.p-sea.com/.*

Background

During its January 2021 meeting, the Council identified unspent Council funds from the 2020 fiscal year. The Council is considering funding an expanded study that utilizes P-Sea WindPlot software as a replacement for the recently discontinued shrimp ELB program. Preliminary meetings with industry, such as the Shrimp Advisory Panel meeting [4] suggest that a majority of the shrimp fleet currently use the P-Sea WindPlot software program, which is installed on a desktop or laptop computer housed onboard the vessel; thus, the learning curve and potential annual cellular/satellite expenses are anticipated to be minimal. Further, leaders in the Gulf of Mexico shrimp industry support using this type of software program.

Scope of Work

The contractor will be responsible for all data products outlined below and is encouraged to contribute additional products and suggestions in the proposal for this work. The selected contractor will also be responsible for presenting the mid-term and final project summary report to the Council's Scientific and Statistical Committees and to the Council. The proposed scope of work should include the following:

- The proposal must consider the use of P-Sea WindPlot software to collect the vessel position data for shrimp vessels, as this is the preferred software by industry. However, the contractor may also propose testing other hardware/software options simultaneously that meet the needs of industry, Council, and NMFS. The proposal should include the rationale and viability of any other hardware-software options proposed.
- The proposal should detail the methodology proposed for archiving the vessel position location, data retention, security, and automatic transmission of the data to a secure server when within cellular/satellite range of land.
- The proposal should identify, by state, the number of shrimp vessels actively participating in the fishery that will volunteer to participate in the proposed work in the Gulf of Mexico. This should be a representative subsample of the fleet using a random stratified approach.
- The proposed work should clearly define methodology and intent for meeting the NMFS software and hardware requirements approval process. For example, outline the methodology proposed to automatically transmit vessel position data, from the hardware/software device(s) onboard the shrimp vessel to a secure server when within cellular/satellite range.
- The proposal should detail the estimated costs to the industry for hardware/software, vessel position data storage, and monthly cellular/satellite transmission fees. The proposal should outline details about analysis of data from individual position points per vessel in the program that will be synthesized into vessel effort monitoring on a monthly basis.

Results and outcomes from this work will be provided to the Council and NMFS Southeast Fisheries Science Center.

Application Process

Contractor Qualifications: The successful applicant or applicant team will have demonstrable experience in fisheries, marine ecology, spatial management, or related field.

How to Apply: Applicants should submit a proposal to Gulf of Mexico Fishery Management Council by email (*rfp.shrimpmonitoring@gulfcouncil.org*) by 11:59 p.m. EST on August 20, 2021. Requests for additional information can also be accepted at this email address. Proposals should include the following elements and should not exceed 25 pages, excluding the Qualifications of Applicant and Letters of Support:

Executive Summary: A summary of the work proposed, including a brief summary of the applicant's qualifications.

Proposed Scope of Work: See bulleted list above.

Qualifications of Applicant: A summary of the qualifications of the applicant and other team members, if applicable. A curriculum vitae should be included for each individual who is expected to work on the project.

Proposed Budget: A detailed budget, including the basis for the charges (*e.g.,* hourly rates, fixed fees, approved federally negotiated overhead rate and other costs consistent with federally allowable costs for sub-contractors). Travel costs for meeting with industry volunteers should be detailed. The proposal should also budget for traveling to SSC and Council meetings to present a mid-term and a final report, for an approximate total of four in-person meetings.

Letters of Support: Letters demonstrating collaboration with shrimp industry leaders will be ranked higher.

Proposed Timeline: A detailed timeline for working with industry representatives, testing of hardware/software devices, data transmission testing, data analyses, and mid-term and final reports should be provided.

Applicant References: Names, titles, full addresses, email addresses, and phone numbers for three clients for whom the applicant has provided similar services to those requested or are familiar with the applicant's work and the quality of the applicant's work products.

Proposal Evaluation Criteria and Next Steps

Proposals will be evaluated based on methodology and scope outlined in the proposed work plan including but not limited to the ability to deliver, in a timely manner a quality work product, references, timeline, and budget. The Council may request additional information as deemed necessary or negotiate modifications prior to providing support for a proposal. Once a proposal is selected for funding, a formal contract will be developed with the applicants.

Disclaimer

1. This project is being funded by federal funding authorized under the Magnuson-Stevens Fishery Conservation and Management Act through NOAA Fisheries Service and the Gulf of Mexico Fishery Management Council NOAA award number: NA20NMF4410011. Compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Pub. L. 104–208 as amended), the current requirements of the Federal Office of Management and Budget, the Department of Commerce financial assistance standard terms and conditions, the National Oceanic and Atmospheric financial assistance administrative terms, all special award conditions specific to this award and all parts of the Uniform Guidance at Title 2 of the Code of Federal Regulations must be maintained.

2. The contractor is responsible for all costs conducting the work and presenting the mid-term and final results to the Scientific and Statistical Committees and Council.

3. Proposals and their accompanying documentation will not be returned, but retained as part of the Council's administrative documents.

4. All applicants included in the proposal must disclose any conflicts of interest and/or pending civil/criminal/fishery legal actions.

5. The Council reserves the right to accept or reject any or all applications received, negotiate with all qualified applicants, cancel or modify this request for proposals in part or in its entirety,

[4] *https://gulfcouncil.org/wp-content/uploads/D-8-Shrimp-AP-Summary-March-2021_final_revised.pdf.*

or change the application guidelines, when it is in the best interests of the Council.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 22, 2021.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2021–16012 Filed 7–27–21; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Community Bank Advisory Council Meeting

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Community Bank Advisory Council (CBAC or Council) of the Bureau of Consumer Financial Protection (Bureau). The notice also describes the functions of the Council.

DATES: The meeting date is Thursday, August 12, 2021, from approximately 1:00 p.m. to 5:15 p.m. eastern daylight time. This meeting will be held virtually and is open to the general public. Members of the public will receive the agenda and dial-in information when they RSVP.

FOR FURTHER INFORMATION CONTACT: Kim George, Outreach and Engagement Associate, Consumer Advisory Board and Councils Office, External Affairs, at 202–450–8617, or email: *CFPB_CABandCouncilsEvents@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 2 of the CBAC Charter provides that pursuant to the executive and administrative powers conferred on the Bureau by section 1012 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Director established the Community Bank Advisory Council under agency authority.

Section 3 of the CBAC Charter states: ''The purpose of the Advisory Council is to advise the Bureau in the exercise of its functions under the Federal consumer financial laws as they pertain to community banks with total assets of $10 billion or less.''

II. Agenda

The CBAC will discuss broad policy matters related to the Bureau's Unified Regulatory Agenda and general scope of authority. Discussions will include recent Bureau initiatives related to the COVID–19 recovery and trends and themes in the mortgage, and student lending marketplace.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten (10) business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. The Bureau will strive to provide but cannot guarantee that accommodation will be provided for late requests.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the CBAC members for consideration. Individuals who wish to join the Council must RSVP via this link *https://surveys.consumerfinance.gov/jfe/form/SV_b4unKaNdE2OQBvM* by noon, August 11, 2021. Members of the public must RSVP by the due date.

III. Availability

The Council's agenda will be made available to the public on Wednesday, August 11, 2021, via *consumerfinance.gov.* Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and summary of this meeting will be available after the meeting on the Bureau's website *consumerfinance.gov.*

Dated: July 20, 2021.

Jocelyn Sutton,

Deputy Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2021–15751 Filed 7–27–21; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Academic Research Council Meeting

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Academic Research Council (ARC or Council) of the Bureau of Consumer Financial Protection (Bureau). The notice also describes the functions of the Council.

DATES: The meeting date is Friday, August 13, 2021, from approximately 1:00 p.m. to 4:30 p.m. eastern daylight time. This meeting will be held virtually and is open to the general public. Members of the public will receive the agenda and dial-in information when they RSVP.

FOR FURTHER INFORMATION CONTACT: Kim George, Outreach and Engagement Associate, at 202–450–8617, or email: *CFPB_CABandCouncilsEvents@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 2 of the of the ARC Charter provides that pursuant to the executive and administrative powers conferred on the Bureau by section 1012 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Director established the Academic Research Council under agency authority. Section 3 of the ARC Charter states: The committee will (1) provide the Bureau with advice about its strategic research planning process and research agenda, including views on the research that the Bureau should conduct relating to consumer financial products or services, consumer behavior, cost-benefit analysis, or other topics to enable the agency to further its statutory purposes and objectives; and (2) provide the Office of Research with technical advice and feedback on research methodologies, data collection strategies, and methods of analysis, including methodologies and strategies for quantifying the costs and benefits of regulatory actions.

II. Agenda

The ARC will discuss broad policy matters related to the Bureau's Unified Regulatory Agenda and general scope of authority. The ARC will also discuss research methodologies and assist with providing direction for consumer finance research at the Bureau.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, l–855–233–0362, or 202–435–9742 (TTY) at least ten (10) business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. The Bureau will strive to provide but

cannot guarantee that accommodation will be provided for late requests.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the ARC members for consideration. Individuals who wish to join the ARC must RSVP via this link *https://surveys.consumerfinance.gov/jfe/form/SV_41mlg3YfofvRYpw* by noon, August 12, 2021. Members of the public must RSVP by the due date.

III. Availability

The Council's agenda will be made available to the public on Thursday, August 12, 2021, via *consumerfinance.gov.* Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and transcript of this meeting will be available after the meeting on the Bureau's website *consumerfinance.gov.*

Dated: July 20, 2021.

Jocelyn Sutton,

Deputy Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2021–15754 Filed 7–27–21; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Credit Union Advisory Council Meeting

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Credit Union Advisory Council (CUAC or Council) of the Bureau of Consumer Financial Protection (Bureau). The notice also describes the functions of the Council.

DATES: The meeting date is Thursday, August 12, 2021, from approximately 1:00 p.m. to 5:15 p.m. eastern daylight time. This meeting will be held virtually and is open to the general public. Members of the public will receive the agenda and dial-in information when they RSVP.

FOR FURTHER INFORMATION CONTACT: Kim George, Outreach and Engagement Associate, Consumer Advisory Board and Councils Office, External Affairs, at 202–450–8617, or email: *CFPB_CABandCouncilsEvents@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 2 of the CUAC Charter provides that pursuant to the executive and administrative powers conferred on the Bureau by section 1012 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Director established the Credit Union Advisory Council under agency authority.

Section 3 of the CUAC Charter states: ''The purpose of the Advisory Council is to advise the Bureau in the exercise of its functions under the Federal consumer financial laws as they pertain to credit unions with total assets of $10 billion or less.''

II. Agenda

The CUAC will discuss broad policy matters related to the Bureau's Unified Regulatory Agenda and general scope of authority. Discussions will include recent Bureau initiatives related to the COVID–19 recovery and trends and themes in the mortgage, and student lending marketplace.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten (10) business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. The Bureau will strive to provide but cannot guarantee that accommodation will be provided for late requests.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the CUAC members for consideration. Individuals who wish to join the CUAC must RSVP via this link *https://surveys.consumerfinance.gov/jfe/form/SV_b4unKaNdE2OQBvM* by noon, August 11, 2021. Members of the public must RSVP by the due date.

III. Availability

The Council's agenda will be made available to the public on Wednesday, August 11, 2021 via *consumerfinance.gov.* Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and summary of this meeting will be available after the meeting on the Bureau's website *consumerfinance.gov.*

Dated: July 20, 2021.

Jocelyn Sutton,

Deputy Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2021–15749 Filed 7–27–21; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Consumer Advisory Board Meeting

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Consumer Advisory Board (CAB or Board) of the Bureau of Consumer Financial Protection (Bureau). The notice also describes the functions of the Board.

DATES: The meeting date is Wednesday, August 11, 2021, from approximately 1:00 p.m. to 5:15 p.m. eastern daylight time. This meeting will be held virtually and is open to the general public. Members of the public will receive the agenda and dial-in information when they RSVP.

FOR FURTHER INFORMATION CONTACT: Kim George, Outreach and Engagement Associate, Advisory Board and Councils Office, External Affairs, at 202–450–8617, or email: *CFPB_CABandCouncilsEvents@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 3 of the Charter of the Board states that: The purpose of the Board is outlined in section 1014(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which states that the Board shall ''advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws'' and ''provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.''

To carry out the Board's purpose, the scope of its activities shall include providing information, analysis, and recommendations to the Bureau. The Board will generally serve as a vehicle for market intelligence and expertise for the Bureau. Its objectives will include identifying and assessing the impact on consumers and other market participants of new, emerging, and

changing products, practices, or services.

II. Agenda

The CAB will discuss broad policy matters related to the Bureau's Unified Regulatory Agenda and general scope of authority. Discussions will include recent Bureau initiatives related to the COVID–19 recovery and trends and themes in the mortgage, and student lending marketplace.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten (10) business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. The Bureau will strive to provide but cannot guarantee that accommodation will be provided for late requests.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the CAB members for consideration. Individuals who wish to join the Board must RSVP via this link *https://surveys.consumerfinance.gov/jfe/form/SV_0ewnAUxQLT61oTs* by noon, August 10, 2021. Members of the public must RSVP by the due date.

III. Availability

The Board's agenda will be made available to the public on Tuesday, August 10, 2021, via *consumerfinance.gov.* Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and summary of this meeting will be available after the meeting on the Bureau's website *consumerfinance.gov.*

Dated: July 20, 2021.

Jocelyn Sutton,

Deputy Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2021–15752 Filed 7–27–21; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2021–OS–0076]

Privacy Act of 1974; System of Records

AGENCY: Department of Defense Human Resources Activity (DHRA), Department of Defense (DoD).

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, DoD is establishing a new system of records titled ''Survey Data and Assessment,'' DHRA 03. In alignment with the Office of People Analytics (OPA) strategic mission, the system provides key metrics to meet the requirement of the Under Secretary of Defense (Personnel and Readiness) Human Resources Strategic Plan. The system facilitates the development of key strategic indicators on personnel career plans, retention decisions, morals, and commitments, and historically provide the ability to evaluate the impact of policies and programs with regards to readiness and retention.

DATES: This system of records is effective upon publication; however, comments on the Routine Uses will be accepted on or before August 27, 2021. The Routine Uses are effective at the close of the comment period.

ADDRESSES: You may submit comments, identified by docket number and title, by either of the following methods:

Federal Rulemaking Portal: https://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 and docket number 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 *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jessica M. Levin, DHRA Component Privacy Officer, 4800 Mark Center Drive, Suite 08F05, Alexandria, VA 22350; *dodhra.mc-alex.dhra-hq.mbx.privacy@mail.mil* or 571–372–1964.

SUPPLEMENTARY INFORMATION:

I. Background

The Survey Data and Assessment, DHRA 03, system of records maintains data about individuals who completed DoD-sponsored survey questionnaires or participated in DoD-sponsored focus group data collections, including military members, military spouses, civilians, persons eligible for DoD benefits (including retirees), and Service Academy students. It also maintains data about individuals involved in market research studies, including men and women of military age, and applicants to the military services.

This system of records uses this information to assess characteristics of DoD personnel and households to support manpower and benefits research; to assess DoD personnel attitudes, opinions, and or experiences related to social issues; and to assess attitudes toward joining the military and reasons for leaving. This information is used to provide the DoD with fast, accurate assessments of the attitudes and opinions of the entire DoD community in order to evaluate existing programs/policies, establish baseline measures before implementing new programs/policies, and monitor the progress of programs/policies and their effects on the total force.

DoD SORNs have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties, and Transparency Division website at *https://dpcld.defense.gov/privacy.*

II. Privacy Act

Under the Privacy Act, a ''system of records'' is a group of records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined as a U.S. citizen or lawful permanent resident.

In accordance with 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) Circular No. A–108, DPCLTD has provided a report of this system of records to the OMB and to Congress.

Dated: July 21, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

Survey Data and Assessment, DHRA 03.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Department of Defense Human Resources Activity, 4800 Mark Center Drive, Alexandria, VA 22350; Defense Manpower Data Center, 400 Gigling Road, Seaside, CA 93944; Data Recognition Corporation (DRC), 3490 Bass Lake Rd., Maple Grove, MN 55311; and Fors Marsh Group, 1010 N Glebe Rd., Unit 51, Arlington, VA 22201.

SYSTEM MANAGER(S):

Director, Office of People Analytics, 4800 Mark Center Drive, Suite 06E25, Alexandria, VA 22350, *contactOPA@mail.mil,* 571–372–0727.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 481, Racial and ethnic issues; gender issues: Surveys; 10 U.S.C. 503(a), Enlistments: Recruiting campaigns; 10 U.S.C. 1782, Surveys of military families; 10 U.S.C. 2358, Research and development projects; Section 572 of Public Law 112–239, National Defense Authorization Act for Fiscal Year 2013, DoD Instruction (DoDI) 1100.13, DoD Surveys; DoDI 1332.14, Enlisted Administrative Separations; DoDI 1332.30, Commissioned Officer Administrative Separations; DoDI 5505.18, Investigation of Adult Sexual Assault in the Department of Defense; DoDI 6945.02, Volume 1, Sexual Assault Prevention and Response (SAPR): Program Procedures.

PURPOSE(S) OF THE SYSTEM:

To maintain information collected by DoD through surveys, focus groups, and other information collection methodologies, in order to (1) assess characteristics of DoD personnel and households to support manpower and benefits research; (2) assess DoD personnel attitudes, opinions, and/or experiences related to social issues; and (3) assess attitudes toward joining the military and reasons for leaving. This system of records supports the collection of fast, accurate assessments of the attitudes and opinions of the entire DoD community in order to evaluate existing programs/policies, establish baseline measures before implementing new programs/policies, and monitor progress of programs/policies and their effects on the total force. The data is also used to support manpower research sponsored by DoD and the military services. Survey results provide direct feedback on key Departmental strategic indicators. These indicators provide primary data on personnel career plans, discrimination, sexual harassment/assault, suicide ideation, retention decisions, morale, and commitment, and historically provide the ability to evaluate the impact of policies and programs with regard to readiness and retention. The surveys also serve as benchmarks by which senior DoD officials can track trends over time.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who completed survey questionnaires or participated in focus group data collections, including Service members, Service member spouses, civilians, persons eligible for DoD benefits (including retirees), and Service Academy students; individuals involved in market research studies, including men and women of military age, and applicants to the military services.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Individual's identifying and demographic data, such as name, gender, marital status, birth date, race/ethnicity, citizenship; contact information, such as personal/work address, email, and phone numbers; education information; employment information (military or civilian organization) such as rank, date of rank, date entered service, pay grade, title/occupational series, duty position; number and age of dependents; and unique survey ID number.

B. Survey responses may also include: Attitudes and opinions on satisfaction with leadership, reasons to join the military, military way of life, use of programs and services, and experiences related to sexual harassment, sexual assault, race/ethic discrimination, hazing, bullying, and retaliation. Defense Equal Opportunity Climate Survey (DEOCS) survey results also include DoD ID Numbers.

RECORD SOURCE CATEGORIES:

The survey information is provided by the individual. Additional data is obtained from the following DoD datasets: Active Duty Personnel Master File, Reserve Components Common Personnel Data System (RCCPDS), Active Duty Family File, Basic Allowance for Housing Population Edit Master File, Unit Identification Code (UIC) Address File, Defense Enrollment Eligibility Reporting System (DEERS) Point In Time Extract, DEERS Point In Time Medical Extract, DEERS Database Extract, and Contingency Tracking System Deployment File, Appropriated Fund Civilian Personnel Master Edit File, Civilian Pay File, Reserve Address File, Reserve Family File, Reserve Pay File, Non-Appropriated Funds Civilian File, Active Duty Pay File, and the Active Duty Service File.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To contractors, grantees, experts, consultants, students, and other performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government when necessary to accomplish an agency function related to this system of records.

B. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil or regulatory in nature.

C. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

D. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

E. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

F. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

G. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms a breach of the system of records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (including its information systems, programs, and operations), the Federal Government, or

national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

H. To another Federal agency or Federal entity, when the DoD determines information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

I. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

J. To other Federal agencies in order to support manpower research sponsored by DoD and those agencies.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records may be stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, or digital media; in agency-owned cloud environments; or in vendor Cloud Service Offerings certified under the Federal Risk and Authorization Management Program (FedRAMP). To maintain confidentiality of survey responses, DoD ID numbers or other direct identifiers are never stored in the same database as survey responses, but are maintained in bridge files with access only limited to a small number of Office of People Analytics staff.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records can be retrieved using an OPA survey bridge file that contains DoD ID Number and survey ID number. Each survey participant is assigned a survey ID number. Retrievals are only made in compliance with all privacy, human subject protections, and Confidentiality Certificates requirements.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

A. Master file, system documentation, codebooks, record layouts, and other system documentation. Permanent, cut off on completion of the report for the DoD office requiring the creation of the report. Transfer master file and system documentation to NARA at cutoff in accordance with standards of 36 CFR 1228.270 and 36 CFR 1234.

B. Hard copy survey questionnaires (inputs/source records). Temporary. Destroy after computer records have been created and validated.

C. Summary reports (electronic or paper). Temporary. Delete/destroy when no longer needed for operational purposes.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in controlled areas accessible only to authorized personnel. Access to personal information is further restricted by the use of Common Access Card and user ID/passwords. Paper records are maintained in a controlled facility where physical entry is restricted by the use of locks, a card access control system, staffed reception areas, and cameras inside and outside which monitor all doors. Technical controls in place are user identification and passwords, Intrusion Detection System, encryption, firewalls, Virtual Private Networks, and Public Key Infrastructure Certificates. Administrative controls in place are periodic security audits, ensuring only authorized personnel have access to PII, encryption of backups containing sensitive data, and securing backups off-site. Additionally, to maintain confidentiality of survey responses, DoD ID numbers or other direct identifiers are never stored in the same database as survey responses, but are maintained in bridge files with access only limited to a small number of Office of People Analytics staff.

RECORD ACCESS PROCEDURES:

Individuals seeking access their records should follow the procedures in 32 CFR part 310. Individuals should address written inquiries to the Office of the Secretary of Defense/Joint Staff, Freedom of Information Act Requester Service Center, Office of Freedom of Information, 1155 Defense Pentagon, Washington, DC 20301. Signed written request should contain individual's full name, DoD ID Number and current address and telephone number of the individual. In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

CONTESTING RECORD PROCEDURES:

The DoD rules for accessing records, contesting contents and appealing initial agency determinations are contained in 32 CFR part 310.

NOTIFICATION PROCEDURES:

The DoD rules for accessing records, contesting contents, and appealing initial Component determinations are contained in 32 CFR part 310, or may be obtained from the system manager.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

October 02, 2007, 72 FR 56062.

[FR Doc. 2021–16054 Filed 7–27–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Science and Technology Reinvention Laboratory (STRL) Personnel Demonstration (Demo) Project Program

AGENCY: Office of the Under Secretary of Defense for Research and Engineering (OUSD(R&E)), Department of Defense (DoD).

ACTION: Notice of amendment; STRL Personnel Demonstration Project reduction-in-force (RIF) procedures.

SUMMARY: This notice amends STRL Personnel Demonstration Project reduction-in-force (RIF) procedures. STRL RIF procedures will ensure employees involuntarily separated through a RIF are separated primarily based on performance, as determined under any applicable performance-management system.

DATES: This proposal may not be implemented until a 30-day comment period is provided, comments addressed, and a final **Federal Register** notice (FRN) published. To be considered, written comments must be submitted on or before August 27, 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:

Department of the Air Force:

- Air Force Research Laboratory: Ms. Rosalyn Jones-Byrd, 937–656–9747, *Rosalyn.Jones-Byrd@us.af.mil*.
- Joint Warfare Analysis Center: Ms. Amy Balmaz, 540–653–8598, *Amy.T.Balmaz.civ@mail.mil*.

Department of the Army:

- Army Futures Command: Ms. Johnna Thompson, 830–469–2057, *johnna.i.thompson.civ@mail.mil*.
- Army Research Institute for the Behavioral and Social Sciences: Dr. Scott Shadrick, 254–288–3800, *Scott.B.Shadrick.civ@mail.mil*.
- Combat Capabilities Development Command Armaments Center: Mr. Mike Nicotra, 973–724–7764, *Michael.J.Nicotra.civ@mail.mil*.
- Combat Capabilities Development Command Army Research Laboratory: Mr. Christopher Tahaney, 410–278–9069, *Christopher.S.Tahaney.civ@mail.mil*.
- Combat Capabilities Development Command Aviation and Missile Center: Ms. Nancy Salmon, 256–876–9647, *Nancy.C.Salmon2.civ@mail.mil*.
- Combat Capabilities Development Command Chemical Biological Center: Ms. Patricia Milwicz, 410–417–2343, *Patricia.L.Milwicz.civ@mail.mil*.
- Combat Capabilities Development Command Command, Control, Communications, Computers, Cyber, Intelligence, Surveillance, and Reconnaissance Center: Ms. Angela Clybourn, 443–395–2110, *Angela.M.Clyborn.civ@mail.mil*.
- Combat Capabilities Development Command Ground Vehicle Systems Center: Ms. Jennifer Davis, 586–306–4166, *Jennifer.L.Davis1.civ@mail.mil*.
- Combat Capabilities Development Command Soldier Center: Ms. Joelle Montecalvo, 508–206–3421, *Joelle.K.Montecalvo.civ@mail.mil*.
- Engineer Research and Development Center: Ms. Patricia Sullivan, 601–634–3065, *Patricia.M.Sullivan@usace.army.mil*.
- Medical Research and Development Command: Ms. Linda Krout, 301–619–7276, *Linda.J.Krout.civ@mail.mil*.
- Technical Center, Space and Missile Defense Command: Dr. Chad Marshall, 256–955–5697, *Chad.J.Marshall.civ@mail.mil*.

Department of the Navy:

- Naval Air Warfare Center, Weapons Division and Aircraft Division: Mr. Richard Cracraft, 760–939–8115, *Richard.Cracraft@navy.mil*.
- Naval Facilities Engineering Command Engineering and Expeditionary Warfare Center: Ms. Lori Leigh, 805–901–5917, *Lori.Leigh@navy.mil*.
- Naval Information Warfare Centers:
  - Naval Information Warfare Center Atlantic: Mr. Michael Gagnon, 843–218–3871, *Michael.L.Gagnon@navy.mil*.
  - Naval Information Warfare Center Pacific: Ms. Angela Hanson, 619–553–0833, *Angela.Hanson@navy.mil*.
- Naval Medical Research Center: Dr. Richard Arnold, 937–938–3877, *Richard.Arnold.10@us.af.mil*.
- Naval Research Laboratory: Ms. Ginger Kisamore, 202–767–3792, *Ginger.Kisamore@nrl.navy.mil*.
- Naval Sea Systems Command Warfare Centers: Ms. Diane Brown, 215–897–1619, *Diane.J.Brown@navy.mil*.
- Office of Naval Research: Ms. Margaret J. Mitchell, 703–588–2364, *Margaret.J.Mitchell@navy.mil*.

DoD:

- Dr. Jagadeesh Pamulapati, Director, Laboratories and Personnel Office, 571–372–6372, *Jagadeesh.Pamulapati.civ@mail.mil*.

SUPPLEMENTARY INFORMATION:

1. Background

Section 342(b) of Public Law (Pub. L.) 103–337, as amended by Section 1109 of the National Defense Authorization Act (NDAA) for FY 2000, Public Law 106–65, Section 1114 of the NDAA for FY 2001, Public Law 106–398, and Section 211 of the NDAA for FY 2017, Public Law 114–328 (10 U.S.C. 2358 note), authorizes the Secretary of Defense (SECDEF), through the USD(R&E), to conduct personnel demonstration projects at DoD laboratories designated as STRLs. An STRL implementing these flexibilities must have an approved personnel demonstration project plan published in a FRN and must fulfill any collective bargaining obligations. Procedures described herein supersede and cancel the RIF procedures described in previously published STRL FRNs (Appendix B) and establish performance, also referred to as ''contribution,'' as the primary basis for determining which employees will be separated from employment when implementing a RIF. STRL internal operating procedures (IOPs) will describe the use of discretionary flexibilities when conducting a RIF.

The 21 current STRLS are:

- Air Force Research Laboratory
- Joint Warfare Analysis Center
- Army Futures Command
- Army Research Institute for the Behavioral and Social Sciences
- Combat Capabilities Development Command Army Research Laboratory
- Combat Capabilities Development Command Armaments Center
- Combat Capabilities Development Command Aviation and Missile Center
- Combat Capabilities Development Command Chemical Biological Center
- Combat Capabilities Development Command Command, Control, Communications, Computers, Cyber, Intelligence, Surveillance, and Reconnaissance Center
- Combat Capabilities Development Command Ground Vehicle Systems Center
- Combat Capabilities Development Command Soldier Center
- Engineer Research and Development Center
- Medical Research and Development Command
- Technical Center, U.S. Army Space and Missile Defense Command
- Naval Air Warfare Center
- Naval Facilities Engineering Command Engineering and Expeditionary Warfare Center
- Naval Information Warfare Centers, Atlantic and Pacific
- Naval Medical Research Center
- Naval Research Laboratory
- Naval Sea Systems Command Warfare Centers
- Office of Naval Research

2. Overview

I. Introduction

A. Purpose

Section 1597 of Title 10, United States Code (U.S.C.), requires procedures to be established to ensure that, when implementing a RIF, all DoD employees in the competitive or excepted services are separated from employment ''primarily on the basis of performance, as determined under any applicable performance management system.'' This notice implements RIF procedures for the STRLs and is an overarching FRN applicable to all STRLs.

B. Required Waivers to Law and Regulations

Waivers and adaptations of certain Title 5, U.S.C., and Title 5, Code of Federal Regulations (CFR), provisions are required only to the extent that these statutory and regulatory provisions limit or are inconsistent with the actions authorized under these demonstration

projects. Appendix A lists waivers needed to enact authorities described in this FRN. Nothing in this plan is intended to preclude the STRLs from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this FRN.

C. Participating Organizations and Employees

All DoD laboratories designated as STRLs under Section 1105 of the NDAA for FY 2010, Public Law 111–84, as amended by Section 1103 of the NDAA for FY 2015, Public Law 113–291, and Section 1104 of the NDAA for FY 2018, Public Law 115–91, including any newly designated STRLs authorized by the SECDEF or subsequent legislation, with approved personnel demonstration project plans published in FRNs must use the provisions described in this FRN.

II. Personnel System Changes

A. Authority

For any RIF of civilian employees in the competitive and excepted services in DoD, the determination as to which employees will be separated from employment will be primarily based on performance, also referred to as ''contribution.''

The STRLs will consider every reasonably available option to mitigate the impact of a proposed RIF, including but not limited to job changes or retraining, the use of voluntary early retirement authority or voluntary separation incentive payments, hiring freezes, termination of temporary employees, termination of employees in tenure group 0, reduction in work hours, curtailment of discretionary spending, and other pre-RIF placement activities for employees eligible for placement assistance and referral programs. Use of any such options shall be consistent with applicable policies and procedures.

B. Definitions

Career path—A grouping of occupations with similar characteristics composed of pay bands designed to facilitate career progression. May also be referred to as career track, occupational family, or pay plan.

Displace/Displacement—The assignment of an employee to a continuing position that is held by another employee with a lower retention standing (*i.e.,* ''bumping'' another employee). Displacement may be at the same band or the next lower band below the employee's existing band as documented in STRL IOPs. A preference-eligible employee with a compensable service-connected disability of 30 percent or more (veteran preference category AD) may displace to positions two bands (or equivalent to five grades) below his/her current band. A released employee may have displacement rights to a position without regard to whether the employee previously held the position of the employee with lower retention standing.

Flexible and renewable term technical appointment—An appointment that affords eligibility for employee programs and benefits comparable to those provided to similar employees with permanent appointments, to include opportunities for professional development and eligibility for award programs, as described in Section 1109 of the NDAA for FY 2016, as amended by Section 1112 of the NDAA for FY 2019 and in 82 FR 43339, as amended. Appointments may be made in six-year increments and extended without limit in up to six-year increments.

Fully qualified—Employee meets the Office of Personnel Management qualification standards, or standard-level descriptors as described in STRL IOPs, and has the capacity, adaptability, and special skills needed to satisfactorily perform the duties of the position without undue interruption, *e.g.,* within 90 days. Determination as to whether an impacted employee is fully qualified for RIF placement will be made by an STRL subject matter expert.

Modified term appointment—An appointment used to fill a position for a period of more than one year but not more than five years when the need for an employee's services is not permanent. The modified term appointment differs from the term employment as described in 5 CFR part 316 in that it may be made for up to five years, compared to four years for the term appointment, and may be extended for an additional year. An employee hired under this appointment authority may be eligible for conversion to a career or career-conditional appointment. It may also be referred to as a contingent term appointment.

Non-rated employee—Employee with no rating of record, who is not eligible for a modal or presumptive rating. A non-rated (NR) designation will be used when an employee has not fulfilled the time period, as required by the STRL performance-management system, to receive a rating and has no assessed rating from any DoD-recognized performance-management system within the four-year period preceding the ''cutoff date'' established for the RIF.

Performance—For the purposes of a RIF in the STRLs, performance is determined by each STRL performance-management system, including contribution-based or performance-based systems, as recorded in the rating of record.

Period of performance—STRL performance-management plans may specify a minimum number of months to receive a performance assessment. Such periods will be at least 90 days and generally allow all employees to receive at least one performance assessment prior to implementation of a RIF.

Retreat—The assignment of an employee released from their competitive level to a position held by another employee lower in retention standing if the position is the same position or an essentially identical position formerly held by the released employee. This assignment may be to an essentially identical position in the released employee's current band or to the next lower band, regardless of career path as documented in STRL IOPs.

Unacceptable rating—Documented ratings of record of unacceptable, unsuccessful, failure, or unsatisfactory are used synonymously and reflect summary level 1 as described in 5 CFR 430.208.

C. Provisions

(1) *Identification of Positions Being Abolished.* Positions may be identified to be abolished based on budget, research area, project funding, lack of work, reorganization, or other elements identified by the STRL.

(2) *Scope of Competition.* STRLs will determine the retention standing of each employee competing in the RIF based on any factors outlined in this FRN, as long as performance, as documented in the rating of record, is the primary consideration.

a. *Competitive Areas.* The STRL may determine the competitive area by career path (pay plan), occupational group, line of business, product line, organizational unit, funding line, occupational series, functional area, competency area, technology directorate, or geographical location, or a combination of these elements, and must include all demonstration project employees within the defined competitive area. The competitive area must be defined at least 90 days prior to the effective date of the RIF and descriptions of all competitive areas must be made readily available for review.

b. *Competitive Levels.* Competitive levels may or may not be used, as documented in STRL IOPs. If competitive levels are used, they are assigned at the time the position

description is classified and may be based on demonstration project criteria, such as specialty areas or functional codes, so long as these criteria serve to define those positions that are similar enough in duties and qualification requirements such that an incumbent of one position may be reassigned to another in the competitive level without causing an undue interruption in work. When competitive levels are used and established, employees will be released as described in II.C.(7)b and II.C.(7)c.2. If competitive levels are not used, employees will be released as described in II.C.(7)c.1.

(3) *Retention Standing.* Competitive-service employees and excepted-service employees are placed on separate retention registers, with performance as the first factor as documented in ratings of record. Sample retention registers are in Appendix C.

(4) *Periods of Assessed Performance.* Because the primary consideration is performance, STRL employees with no performance assessment under a DoD-recognized performance system (annotated as ''NR'') may not be placed above those with an assessed rating of less than fully successful/acceptable. STRLs may, but are not required to, group employees based on periods of assessed performance (*e.g.,* those with a period of assessed performance of at least 90 days, those with a period of assessed performance of a least 180 days, etc.), as documented in STRL IOPs.

(5) *Retention Factors.* Competing employees will first be listed on a retention register based on rating of record (as documented in the personnel data system). If meaningful distinctions do not exist in the rating of record, each STRL may, as secondary criteria, differentiate based on average score or other performance-related factor. Each STRL may further differentiate based on any of the following retention factors: Tenure group; average score or other performance-related factor as determined by the STRL (where not previously utilized); veterans' preference; DoD service computation date-RIF (DoD SCD–RIF); SCD–RIF adjusted by additional service credit for performance; or period of performance.

a. *Rating of Record.* Rating of record is documented by each STRL in accordance with its designated performance or contribution management cycle. Additionally, STRL procedures may provide that a single rating of record or multiple ratings of record will be used and averaged, as described in its IOPs. When multiple ratings of record are used, they will be drawn from the ratings within the four year period preceding the ''cutoff date'' established for the RIF. However, when the most recent rating of record is ''unacceptable,'' only that rating of record will be considered for purposes of a RIF. STRL procedures will provide a method for converting an employee's rating pattern from another system when it does not align with the STRL performance-management system, as documented in STRL IOPs.

1. *Presumptive Ratings.* A presumptive rating will be used as the current rating of record for purposes of a RIF when an employee did not receive a performance appraisal due to an absence resulting from: Uniformed military service; performance of duties under the expeditionary civilian deployment program; extended leave or sabbatical; a work-related injury approved for compensation pursuant to an Office of Workers' Compensation Program; or other similar absence. The presumptive rating of record will be the employee's last performance appraisal of record prior to the period of absence or as specified in STRL IOPs.

2. *Modal Ratings.* A modal rating will be used as the rating of record for those employees who do not have any previous performance appraisals under any DoD-recognized performance-management system within the four-year period preceding the cutoff date established for the RIF and have an absence resulting from: Uniformed military service; performance of duties under the expeditionary civilian deployment program; extended leave or sabbatical; a work-related injury approved for compensation pursuant to an Office of Workers' Compensation Program; or other similar absence. The modal rating is the rating of record most frequently used among the actual ratings of record given to employees within the same competitive area for the appropriate rating cycle or cycles.

3. *Non-Rated.* An NR designation will be used when an employee has not met the time period, as specified in the STRL performance-management plan, to receive a rating and has no assessed rating from any DoD-recognized performance-management system within the four-year period preceding the cutoff date established for the RIF.

b. *Average Score or Other Performance-Related Factor as Determined by the STRL.* STRLs may assign numeric values to other aspects of their performance-management systems that further differentiate levels of performance or contribution. For example, if an STRL utilizes a contribution-based system, the delta overall contribution score or assessment category score may be used; in a performance-based system, the assigned decimal score may be used, as documented in STRL IOPs. STRLs using Pass/Fail as the rating of record must use average score or other performance-related factor as the second retention factor.

c. *Tenure Group.*

1. Tenure groups are defined in 5 CFR 351.501(b) for competitive service and 5 CFR 351.502(b) for excepted service, or in an STRL's FRN. In addition, STRLs may consider tenure group 1 and 2 employees as tenure group 1 for RIF purposes and employees on modified term appointments as tenure group 0 or tenure group 3, as documented in STRL IOPs.

2. Employees on modified term or flexible-length and renewable term appointments who were previously selected through competitive procedures, and who otherwise meet conditions required for such conversion, may be converted to permanent appointments (tenure group 1 or tenure group 2, as appropriate), provided such conversions are effective not less than 90 days prior to the effective date of the RIF.

3. Employees on flexible-length and renewable term appointments who have completed three years of service may be treated as permanent employees (tenure group 1) and those with less than three years may be treated as tenure group 2, as documented in STRL IOPs.

4. Employees treated as tenure group 3 are ranked below any tenure group 1 or 2 employees, notwithstanding any other retention factor.

d. *Veterans' Preference.* Competing employees are placed in a veterans' preference category as described in 5 CFR 351.501(c).

e. *DoD SCD–RIF.* The SCD–RIF includes all creditable service authorized by 5 CFR 351.503(a) and (b). The STRLs may further differentiate an employee's retention standing by utilizing the retention service credit for performance as described in 5 CFR 351.504. If used, this is referred to as DoD SCD–RIF adjusted.

(6) *Creation of the Retention Register.* STRLs will determine and document the order of retention in a manner that ensures retention decisions are based primarily on performance, as documented in the rating of record. Other factors which may receive secondary consideration are tenure group, veterans' preference, SCD RIF, SCD RIF adjusted, and period of performance. Factors will be weighted in a manner that generally ensures that high-performing employees are not displaced.

(7) *Order of Release.*

a. *Employees to be Released First.*

1. STRLs can release Tenure 0 employees prior to RIF competition based on mission needs.

2. STRLs will release employees from the competitive level (if used) with a written decision of removal under 5 CFR 432 or 752 before releasing any employee competing in the RIF.

3. Employees demoted for unacceptable performance who have not received a rating on their current position will have ratings of record drawn from within the four-year period preceding the cutoff date established for the RIF (to include any rating of record of ''unacceptable''), if the STRL uses multiple ratings in its retention factors.

b. If competitive levels are utilized by an STRL, employees will be released beginning with the employee with the lowest retention standing on the retention register for that competitive level. An STRL may provide for intervening displacement within the competitive level before final release of the employee with the lowest retention standing from the competitive level.

c. STRL employees have assignment rights under RIF procedures if the current performance appraisal reflects a rating of record of at least minimally successful/minimally acceptable.

d. STRLs may apply assignment rights described in 5 CFR 351.701 or other assignment rights as described below.

1. *Single Round.* When a specific position is to be abolished, the incumbent of that position may displace an employee within the band or at the next lower band, as documented in STRL IOPs, when the incumbent has a higher retention standing and is fully qualified for a position occupied by an employee with a lower retention standing among those competing in the RIF. A preference-eligible employee with a compensable service-connected disability of 30 percent or more (veterans' preference category AD) may displace to positions two bands (or equivalent to five grades) below his/her current band. If there is no position in which an employee can be placed using this process or through assignment to a vacant position, that employee will be separated.

2. *Two Round.* When reducing positions in the same occupational series and pay band, competitive levels—consisting of such positions that are similar enough in duties, qualification requirements, and working conditions that the incumbent of one position can successfully perform the duties of any other position in the competitive level without unduly interrupting the work program—will be established. In round one, STRLs identify employees for release beginning with the employees with the lowest retention standing in the competitive level. In round two, within each competitive area, an employee identified for release in round one may displace an employee within the band or at the next lower band, as documented in STRL IOPs, when the released employee has a higher retention standing and is fully qualified for a position occupied by an employee with a lower standing among those competing in the RIF. A preference-eligible employee with a compensable service-connected disability of 30 percent or more (veterans' preference category AD) may displace to positions two bands (or equivalent to five grades) below the band of the position from which he/she is released. If there is no position in which an employee can be placed using this process or through assignment to a vacant position, that employee will be separated.

3. *Retreat during RIF.* STRLs may establish procedures permitting an employee identified for release to displace an employee within the band or at the next lower band when the released employee has a higher retention standing than the displaced employee and previously served in the displaced employee's position, or an essentially identical position, regardless of career path.

4. *Offers of Vacant Position.* When an STRL chooses to utilize vacancies for which released employees qualify, the STRL must consider the relative retention standing of all released employees and must offer the position to the released employee with the highest retention standing.

e. *Exceptions.* STRLs must comply with protections afforded employees pursuant to 5 CFR 351.606, including protections under the Uniformed Services Employment and Reemployment Rights Act.

III. Required Waivers to Law and Regulations

The following waivers and adaptations of certain Title 5, U.S.C., and Title 5, CFR, provisions are required only to the extent to which these statutory and regulatory provisions limit or are inconsistent with the actions contemplated under these STRL demonstration project RIF procedures. Nothing in this plan is intended to preclude the demonstration projects from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this notice.

BILLING CODE 5001–06–P

Appendix A. Waivers to Law and Regulations

Title 5, United States Code	Title 5, Code of Federal Regulations
5 U.S.C. 3502 – Order of Retention is waived to allow STRLs to determine the appropriate order of retention as described in this FRN.	5 CFR 351 Subparts B, D, E, F, and G are waived to the extent necessary to allow the provisions of reduction in force as described in this FRN.

Appendix B. Authorized STRLs and Federal Register Notices

STRL	**Federal Register Notice**
Air Force Research Laboratory	61 FR 60400 amended by 75 FR 53076
Joint Warfare Analysis Center	85 FR 29414
Army Futures Command,	Not yet published
Army Research Institute for the Behavioral and Social Sciences	85 FR 76038
Combat Capabilities Development Command Armaments Center	76 FR 3744
Combat Capabilities Development Command Army Research Laboratory	63 FR 10680
Combat Capabilities Development Command Aviation and Missile Center	62 FR 34906 and 62 FR 34876 amended by 65 FR 53142 (AVRDEC and AMRDEC merged together)
Combat Capabilities Development Command Chemical Biological Center	74 FR 68936
Combat Capabilities Development Command Command, Control, Communications, Cyber, Intelligence, Surveillance, and Reconnaissance Center	66 FR 54872

Combat Capabilities Development Command Ground Vehicle Systems Center	76 FR 12508
Combat Capabilities Development Command Soldier Center	74 FR 68448
Engineer Research and Development Center	63 FR 14580 amended by 65 FR 32135
Medical Research and Development Command	63 FR 10440
Technical Center, U.S. Army Space and Missile Defense Command	85 FR 3339
Naval Air Systems Command Warfare Centers	76 FR 8530
Naval Facilities Engineering Command Engineering and Expeditionary Warfare Center	86 FR 14084
Naval Information Warfare Centers, Atlantic and Pacific	76 FR 1924
Naval Medical Research Center	Not yet published
Naval Research Laboratory	64 FR 33970
Naval Sea Systems Command Warfare Centers	62 FR 64050
Office of Naval Research	75 FR 77380

Appendix C. Sample Retention Registers

Sample 1: Based on Rating of Record, Tenure, Average Score Calculation, Veterans' Preference, and DoD SCD-RIF Retention Factors, as Determined by the STRL

Name	Average Rating of Record	Tenure	Average Score Calculation	Veterans' Preference	DoD SCD-RIF
Maddie	5	I	4.8	AD	17-Dec-1979
Eleanor	5	I	4.8	A	3-Nov-1990
Ian	5	I	4.5	B	6-May-2013
Dylan	5	II	4.8	B	28-Feb-2015
Rich	5	II	4.3	A	10-Jul-2012
Thomas	5	II	4.3	A	18-Jun-2015
Susan	4	I	4.2	B	12-June-1995
Valerie	4	I	3.5	A	9-Jul-1995
Sherri	4	I	3.5	B	6-Aug-1996
Peter	4	II	4.3	B	5-Sep-2015
Paul	4	II	3.5	B	12-Dec-2015
Paula	3	I	4.2	B	25-Mar-1987
Jason	3	I	3.9	A	13-Aug-2013
Regina	3	I	3.8	A	19-Aug-1984
Garrett	3	I	3	B	5-Sep-2011
Vicki	3	II	3.7	B	27-Mar-2015
Brandon	3	II	3	A	3-Jan-2015
Justin	2	I	2	AD	10-Jan-2010
Joe	1	I	0	AD	11-Jan-2010
Sally	NR	I	NR	AD	11-Jan-2010

Joe has an unacceptable rating. Sally has no rating and is therefore at the bottom of the retention register.

Sample 2: Based on Average Rating of Record, Veterans' Preference, Tenure, DoD SCD-RIF Retention Factors, as Determined by the STRL

(STRL Does Not Use an Average Score Calculation)

Name	Average Rating of Record	Veterans' Preference	Tenure	DoD SCD-RIF
Maddie	5	AD	I	17-Dec-1979
Eleanor	5	A	I	3-Nov-1990
Rich	5	A	II	10-Jul-2012
Thomas	5	A	II	18-Jun-2015
Ian	5	B	I	6-May-2013
Dylan	5	B	II	28-Feb-2015
Valerie	4	A	I	9-Jul-1995
Susan	4	B	I	I 2-June-1995
Sherri	4	B	I	6-Aug-1996
Peter	4	B	II	5-Sep-2015
Paul	4	B	II	12-Dec-2015
Jason	3	A	I	13-Aug-2013
Regina	3	A	I	19-Aug-1984
Brandon	3	A	II	3-Jan-2015
Paula	3	B	I	25-Mar-1987
Garrett	3	B	I	5-Sep-2011
Vicki	3	B	II	27-Mar-2015
Justin	2	AD	I	10-Jan-2010
Joe	1	AD	I	11-Jan-2010
Sally	NR	AD	I	11-Jan-2010

Joe has an unacceptable rating. Sally has no rating and is therefore at the bottom of the retention register.

Sample 3: Based on Pass/Fail Rating of Record, Average Score, Veterans' Preference, Tenure, and DoD SCD RIF Retention Factors, as Determined by the STRL

Name	Rating of Record (Pass or Fail)	Average Score	Veterans' Preference	Tenure	DoD SCD-RIF
Maddie	P	4.8	AD	I	17-Dec-1979
Eleanor	P	4.8	A	I	3-Nov-1990
Rich	P	4.5	A	II	10-Jul-2012
Thomas	P	4.3	A	II	18-Jun-2015
Ian	P	4.3	B	I	6-May-2013
Dylan	P	4.2	B	II	28-Feb-2015
Valerie	P	4.2	A	I	9-Jul-1995
Susan	P	3.9	B	I	12-June-1995
Sherri	P	3.8	B	I	6-Aug-1996
Peter	P	3.7	B	II	5-Sep-2015
Paul	P	3.5	B	II	12-Dec-2015
Jason	P	3.3	A	I	13-Aug-2013
Regina	P	3	A	I	19-Aug-1984
Brandon	P	3	A	II	3-Jan-2015
Paula	P	2	B	I	25-Mar-1987
Garrett	P	2	B	I	5-Sep-2011
Vicki	P	2	B	II	27-Mar-2015
Justin	P	2	AD	I	10-Jan-2010
Joe	F	0	AD	I	11-Jan-2010
Sally	NR	NR	AD	I	11-Jan-2010

Ian was released from his competitive level in the first round of RIF. Ian does not qualify for any position encumbered by an employee with a lower retention standing than Paul, but formerly held the identical position currently occupied by Paul. Ian will retreat to the position held by Paul because Paul is lower in retention standing than Ian. RIF placement will then be sought for Paul.

Dated: July 23, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–16082 Filed 7–27–21; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Army Corps of Engineers

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Mississippi River Commission.

TIME AND DATE: 9:00 a.m., August 23, 2021.

PLACE: On board MISSISSIPPI V at Caruthersville City Front, Caruthersville, Missouri.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the

Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the St. Louis and Memphis Districts; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9:00 a.m., August 24, 2021.

PLACE: On board MISSISSIPPI V at Beale Street Landing, Memphis, Tennessee.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 1:00 p.m., August 25, 2021.

PLACE: On board MISSISSIPPI V at Greenville City Front, Greenville, Mississippi.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Vicksburg District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9:00 a.m., August 27, 2021.

PLACE: On board MISSISSIPPI V at Port Commission Dock, Morgan City, Louisiana.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Vicksburg District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles A. Camillo, telephone 601–634–7023.

Diana M. Holland,

Major General, USA, President, Mississippi River Commission.

[FR Doc. 2021–16144 Filed 7–26–21; 11:15 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Education Innovation and Research (EIR) Program—Early-Phase Grants

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2021 for the EIR program—Early-phase Grants, Assistance Listing Number 84.411C (Early-phase Grants). This notice relates to the approved information collection under OMB control number 1894–0006.

DATES:

Applications Available: July 30, 2021.

Deadline for Notice of Intent to Apply: August 17, 2021.

Deadline for Transmittal of Applications: August 27, 2021.

Deadline for Intergovernmental Review: October 26, 2021.

Pre-Application Information: The Department will post additional competition information for prospective applicants on the EIR program website: *https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/innovation-early-learning/education-innovation-and-research-eir/fy-2021-competition/.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768) and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Yvonne Crockett, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E344, Washington, DC 20202–5900. Telephone: (202) 453–7122. Email: *eir@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The EIR program, established under section 4611 of the Elementary and Secondary Education Act, as amended (ESEA), provides funding to create, develop, implement, replicate, or take to scale entrepreneurial, evidence-based (as defined in this notice), field-initiated innovations to improve student achievement and attainment for high-need students; and rigorously evaluate such innovations. The EIR program is designed to generate and validate solutions to persistent education challenges and to support the expansion of those solutions to serve substantially larger numbers of students.

The central design element of the EIR program is its multi-tier structure that links the amount of funding an applicant may receive to the quality of the evidence supporting the efficacy of the proposed project, with the expectation that projects that build this evidence will advance through EIR's grant tiers: ''Early-phase,'' ''Mid-phase,'' and ''Expansion.''

The Department awards three types of grants under this program: ''Early-phase'' grants, ''Mid-phase'' grants, and ''Expansion'' grants. These grants differ in terms of the level of prior evidence of effectiveness required for consideration for funding, the expectations regarding the kind of evidence and information funded projects should produce, the level of scale funded projects should reach, and, consequently, the amount of funding available to support each type of project.

Early-phase grants must demonstrate a rationale (as defined in this notice). The Department expects that Early-phase grants will be used to fund the development, implementation, and feasibility testing of a program, which prior research suggests has promise, for the purpose of determining whether the program can successfully improve student achievement and attainment for high need students. These Early-phase grants are not intended simply to implement established practices in additional locations or address needs that are unique to one particular

context. The goal is to determine whether and in what ways relatively newer practices can improve student achievement and attainment for high-need students.

This notice invites applications for Early-phase grants only. The notices inviting applications for Mid-Phase and Expansion grants were published in the **Federal Register** on June 7, 2021 (86 FR 30292 and 86 FR 30302, respectively).

Background:

While this notice is for the Early-phase tier only, the premise of the EIR program is that new and innovative programs and practices can help to solve the persistent problems in education that prevent students, particularly high-need students, from succeeding. These innovations need to be evaluated, and, if sufficient evidence of effectiveness can be demonstrated, the intent is for these innovations to be replicated and tested in new populations and settings. EIR is not intended to provide support for practices that are already commonly implemented by educators, unless significant adaptations of such practices warrant testing to determine if they can accelerate achievement, or greatly increase the efficiency and likelihood that they can be widely implemented in a variety of new populations and settings effectively.

As an EIR project is implemented, grantees are encouraged to learn more about how the practices improve student achievement and attainment; and to develop increasingly rigorous evidence of effectiveness and new strategies to efficiently and cost-effectively scale to new school districts, regions, and States. We encourage applicants to develop a logic model (as defined in this notice), theory of action, or another conceptual framework that includes the goals, objectives, outcomes, and key project components (as defined in this notice) of the project.

All EIR applicants and grantees should also consider how they need to develop their organizational capacity, project financing, or business plans to sustain their projects and continue implementation and adaptation after Federal funding ends. The Department intends to provide grantees with technical assistance in their dissemination, scaling, and sustainability efforts.

EIR is designed to offer opportunities for States, districts, schools, and educators to develop innovations and scale effective practices that address their most pressing challenges.

Early-phase grantees are encouraged to make continuous and iterative improvements in project design and implementation before conducting a full-scale evaluation of effectiveness. Grantees should consider how easily others could implement the proposed practice, and how its implementation could potentially be improved. Additionally, grantees should consider using data from early indicators to gauge initial impact and to consider possible changes in implementation that could increase student achievement and attainment.

Early-phase applicants should develop, implement, and test the feasibility of their projects. The evaluation of an Early-phase project should be an experimental or quasi-experimental design study (as defined in this notice) that can determine whether the program can successfully improve student achievement and attainment for high-need students. Early-phase grantees' evaluation designs are encouraged to have the potential to demonstrate a statistically significant effect on improving student outcomes or other relevant outcomes based on moderate evidence (as defined in this notice) from at least one well-designed and well-implemented experimental or quasi-experimental design study. The Department intends to provide grantees and their independent evaluators with evaluation technical assistance. This evaluation technical assistance could include grantees and their independent evaluators providing to the Department or its contractor updated comprehensive evaluation plans in a format as requested by the technical assistance provider and using such tools as the Department may request. Grantees will be encouraged to update this evaluation plan at least annually to reflect any changes to the evaluation, with updates consistent with the scope and objectives of the approved application.

The FY 2021 Early-phase competition includes four absolute priorities and three competitive preference priorities. All Early-phase applicants must address Absolute Priority 1. Early-phase applicants are also required to address one of the other three absolute priorities. Applicants addressing Absolute Priority 3 also have the option to address Competitive Preference Priority 1. Applicants have the option of addressing Competitive Preference Priority 2 and Competitive Preference Priority 3 and may opt to do so regardless of the absolute priority they select. Applicants may choose to address multiple competitive preference priorities.

''Absolute Priority 1—Demonstrates a Rationale'' establishes the evidence requirement for this tier of grants. All Early-phase applicants must submit prior evidence of effectiveness that meets the demonstrates a rationale evidence standard.

''Absolute Priority 2—Field-Initiated Innovations—General'' allows applicants to propose projects that align with the intent of the EIR program statute: To create and take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement and attainment.

''Absolute Priority 3—Field-Initiated Innovations—Science, Technology, Engineering, or Mathematics (STEM)'' is intended to support innovations to improve student achievement and attainment in the STEM field, consistent with efforts to ensure our Nation's economic competitiveness by improving and expanding STEM learning and engagement, including computer science (as defined in this notice).

In Absolute Priority 3, the Department recognizes the importance of funding Pre-Kindergarten (Pre-K) through grade 12 STEM education and anticipates that projects would expand opportunities for high-need students. Within this absolute priority, the Department includes Competitive Preference Priority 1 that focuses on expanding opportunities in computer science for underserved populations such as minorities, girls, and youth from rural communities and low-income families, to help reduce achievement and attainment gaps in a manner consistent with nondiscrimination requirements contained in the U.S. Constitution and Federal civil rights laws.

''Absolute Priority 4—Field-Initiated Innovations—Fostering Knowledge and Promoting the Development of Skills That Prepare Students To Be Informed, Thoughtful, and Productive Individuals and Citizens'' is intended to advance innovation, build evidence, and address the learning and achievement of high-need students beginning in Pre-K through grade 12. The priority promotes social and emotional learning (SEL) skills that prepare students to be informed, thoughtful, and productive individuals.

Competitive Preference Priorities 2 and 3 highlight the Administration's acknowledgment of the timely and urgent needs in Pre-K–12 education related to addressing the impact of the novel coronavirus 2019 (COVID–19) and promoting equity.

''Competitive Preference Priority 2—Innovative Approaches to Addressing the Impact of COVID–19 on Underserved Students and Educators'' is intended to encourage applicants to propose projects that focus on the needs of underserved students (as defined in this notice) most impacted by COVID–

19. The EIR program statute refers to ''high-needs students.'' In addressing the needs of underserved students, the statutory requirement for serving ''high-needs students'' can also be addressed.

The Department seeks innovative strategies under this priority that support students' success in the classroom; are delivered by qualified individuals (based on requirements established by the applicant) who receive adequate training and support; and are aligned with students' learning experiences in their classrooms. This includes incorporating any innovations and technology practices from the last year that have improved student's learning experiences to supplementally support and enhance the return to in-person learning.

''Competitive Preference Priority 3—Promoting Equity and Adequacy in Student Access to Educational Resources and Opportunities'' is intended to offer applicants the option of proposing projects that promote equity. Improving educational equity and adequacy is a priority for the Nation's education system, with particular emphasis on supporting underserved students.

The Department seeks projects that develop and evaluate evidence-based, field-initiated innovations to remedy the inequities in our country's education system. This type of innovation will better enable students the access to the educational opportunities they need to succeed in school and reach their future goals.

Through these priorities, the Department intends to advance innovation, build evidence, and address the learning and achievement of high-need students beginning in Pre-K through grade 12.

Priorities: This notice includes four absolute priorities and three competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(ii), Absolute Priority 1 is from the notice of final priorities published in the **Federal Register** on March 9, 2020 (85 FR 13640) (Administrative Priorities). In accordance with 34 CFR 75.105(b)(2)(iv), Absolute Priority 2 is from section 4611(a)(1)(A) of the ESEA. In accordance with 34 CFR 75.105(b)(2)(iv), Absolute Priorities 3 and 4 are from section 4611(a)(1)(A) of the ESEA and the Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on March 2, 2018 (83 FR 9096) (Supplemental Priorities). Competitive Preference Priority 1 is from the Supplemental Priorities. Competitive Preference Priorities 2 and 3 are from the Department's notice of final priorities and definitions published elsewhere in this issue of the **Federal Register** (NFP).

In the Early-phase grant competition, Absolute Priorities 2, 3, and 4 constitute their own funding categories. The Secretary intends to award grants under each of these absolute priorities provided that applications of sufficient quality are submitted. To ensure that applicants are considered for the correct type of grant, applicants must clearly identify the specific absolute priority that the proposed project addresses. If an entity is interested in proposing separate projects (*e.g.,* one that addresses Absolute Priority 2 and another that addresses Absolute Priority 3), separate applications must be submitted.

Absolute Priorities: For FY 2021 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet Absolute Priority 1 and one additional absolute priority (Absolute Priority 2, Absolute Priority 3, or Absolute Priority 4).

These priorities are:

Absolute Priority 1—Applications that Demonstrate a Rationale.

Under this priority, an applicant proposes a project that demonstrates a rationale.

Absolute Priority 2—Field-Initiated Innovations—General.

Projects that are designed to create, develop, implement, replicate, or take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement and attainment for high-need students.

Absolute Priority 3—Field-Initiated Innovations—Promoting STEM Education, With a Particular Focus on Computer Science.

Projects that are designed to—

(1) Create, develop, implement, replicate, or take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement and attainment for high-need students; and

(2) Improve student achievement or other educational outcomes in one or more of the following areas: Science, technology, engineering, math, or computer science.

Absolute Priority 4—Field-Initiated Innovations—Fostering Knowledge and Promoting the Development of Skills That Prepare Students To Be Informed, Thoughtful, and Productive Individuals and Citizens.

Projects that are designed to—

(1) Create, develop, implement, replicate, or take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement and attainment for high-need students; and

(2) Improve student academic performance and better prepare students for employment, responsible citizenship, and fulfilling lives, including by preparing children or students to do one or more of the following:

(a) Develop positive personal relationships with others.

(b) Develop determination, perseverance, and the ability to overcome obstacles.

(c) Develop self-esteem through perseverance and earned success.

(d) Develop problem-solving skills.

(e) Develop self-regulation in order to work toward long-term goals.

Competitive Preference Priorities: For FY 2021 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Within Absolute Priority 3, we give competitive preference to applications that address Competitive Preference Priority 1. Within Absolute Priorities 2, 3, and 4, we give competitive preference to applications that address Competitive Preference Priorities 2 or 3.

These priorities are:

Competitive Preference Priority 1—Computer Science (up to 5 points).

Projects designed to improve student achievement or other educational outcomes in computer science. These projects must address expanding access to and participation in rigorous computer science coursework for traditionally underrepresented students such as racial or ethnic minorities, women, students in communities served by rural local educational agencies (LEAs) (as defined in this notice), children or students with disabilities (as defined in this notice), or low-income individuals (as defined under section 312(g) of the Higher Education Act of 1965, as amended).

Competitive Preference Priority 2—Innovative Approaches to Addressing the Impact of COVID–19 on Underserved Students and Educators (up to 5 points).

Projects designed to address the needs of underserved students and educators most impacted by COVID–19 through—

(a) Engaging in two-way, mutually respectful collaboration with key stakeholders, such as families, caretakers, students, educators (including teachers, school leaders and other school staff), and community

leaders (including individuals from diverse cultural, linguistic, and socioeconomic backgrounds), to assess and understand students' social, emotional, physical and mental health, and academic needs, in light of historical educational inequities and the impact of the COVID–19 pandemic; and

(b) Developing and implementing strategies to address those needs through one or more of the following:

(1) Re-engaging students (and their families) and strengthening relationships between educators, students, and families.

(2) Supporting district- and school-wide use of personalized learning (as defined in this notice).

(3) Utilizing multi-tier system of supports (as defined in this notice) and universal design for learning (as defined in this notice).

(4) Providing educators with professional development (as defined in this notice) and resources to use trauma-informed practices.

(5) Creating or supporting equitable and inclusive learning environments in schools.

(6) Ensuring students have access to additional specialized instructional support personnel (as defined in this notice) during their school day, at their school site.

(7) Finding and supporting students experiencing homelessness, including those not attending school during the pandemic.

(8) Providing additional supports to educators to address their mental health and well-being and instructional practice needs.

(9) Providing evidence-based supports and educational opportunities to accelerate grade-level student learning (especially for underserved students) through in-class learning and additional instructional practice, including those supported by technology in ways that do not contribute to tracking or remediation, which may include one or both of the following:

(i) High-quality tutoring (as defined in this notice), summer learning and enrichment, or opportunities for high-quality expanded learning time (as defined in this notice) as well as implementation of embedded, high-quality formative assessment to support personalization.

(ii) Providing targeted supports for high school students to prepare for post-secondary education transition and success.

Competitive Preference Priority 3—Promoting Equity and Adequacy in Student Access to Educational Resources and Opportunities (up to 5 points).

Projects designed to promote equity in access to critical resources for underserved students in prekindergarten through grade 12 through one or more of the following:

(a) Addressing inequities in access to fully certified, experienced, and effective teachers through one or more of the following activities:

(1) Improving the preparation, recruitment, early career support, and development of teachers in high-need or hard-to-staff schools, including strategies that improve teacher diversity.

(2) Reforming hiring, compensation, and advancement systems.

(3) Improving the retention of fully certified (including teachers certified in the area they are assigned to teach), experienced, and effective teachers in districts, schools, and classrooms serving high concentrations of underserved students through one or more of the following activities:

(i) Providing comprehensive, high-retention pathways into the profession.

(ii) Creating or enhancing opportunities for teachers' professional growth and leadership opportunities.

(iii) Delivering collaborative, job-embedded, and sustained professional development.

(iv) Improving workplace conditions to create opportunities for successful teaching and learning, including through inclusive and culturally affirming working environments.

(b) Addressing inequities in access to and success in rigorous, engaging, and culturally and linguistically responsive teaching and learning environments that prepare students for college and career through one or both of the following activities:

(1) Increasing access to and success in middle school courses that are foundational to advanced coursework in high school; advanced courses and programs, including Advanced Placement, International Baccalaureate, high-quality dual or concurrent enrollment (as defined in this notice), and high-quality early college high school (as defined in this notice), programs; high-quality STEM programs; or high-quality career and technical education pathways that are integrated into the curriculum.

(2) Developing, and expanding access to, programs designed to provide a well-rounded education (as defined in this notice).

(c) Addressing bias (*e.g.,* implicit and explicit) and creating inclusive, supportive learning environments.

(d) Involving diverse stakeholders to include students, families, caretakers, educators (including teachers, school leaders, and other staff), and community leaders in State and local education decisions.

(e) Identifying and addressing, in collaboration with students, families, and educators, policies that result in the disproportionate use of exclusionary discipline through data collection and analysis (including school climate surveys) disaggregated by race, sex, English learner, disability status, gender-identity, and sexual orientation, in compliance with 20 U.S.C. 1232h and 34 CFR part 98, and other important variables.

(f) Identifying and addressing issues of equity in access to and the use of innovative tools, rigorous content, and effective teaching and learning practices, including by providing job-embedded professional development to educators on strategies for equitably integrating educational technology in ways that elevate student engagement beyond passive use and over-reliance on drill-and-practice to a more robust, creative, and playful medium.

(g) Addressing policies, practices, and procedures that contribute to significant disproportionality in special education or programs for English learners based on race or ethnicity.

(h) Improving the quality of educational programs in juvenile justice facilities (such as detention facilities and secure and non-secure placements) or supporting re-entry after release, by linking youth to education or job training programs.

Definitions: The definitions of ''baseline,'' ''demonstrates a rationale,'' ''experimental study,'' ''logic model,'' ''moderate evidence,'' ''nonprofit,'' ''performance measure,'' ''performance target,'' ''project component,'' ''quasi-experimental design study,'' ''relevant outcome,'' and ''What Works Clearinghouse Handbooks (WWC Handbooks)'' are from 34 CFR 77.1. The definitions of ''children or students with disabilities,'' ''computer science,'' and ''rural local educational agency'' are from the Supplemental Priorities. The definitions of ''dual or concurrent enrollment,'' ''early college high school,'' ''evidence-based,'' ''expanded learning time,'' ''local educational agency,'' ''multi-tier system of supports,'' ''professional development,'' ''specialized instructional support personnel,'' ''State educational agency,'' ''universal design for learning,'' and ''well-rounded education'' are from section 8101 of the ESEA. The definitions of ''high-quality tutoring,'' ''personalized learning,'' and ''underserved students'' are from the NFP.

Baseline means the starting point from which performance is measured and targets are set.

Children or students with disabilities means children with disabilities as defined in the Individuals with Disabilities Education Act (IDEA) or individuals defined as having a disability under Section 504 of the Rehabilitation Act of 1973 (Section 504) (or children or students who are eligible under both laws).

Computer science means the study of computers and algorithmic processes and includes the study of computing principles and theories, computational thinking, computer hardware, software design, coding, analytics, and computer applications.

Computer science often includes computer programming or coding as a tool to create software, including applications, games, websites, and tools to manage or manipulate data; or development and management of computer hardware and the other electronics related to sharing, securing, and using digital information.

In addition to coding, the expanding field of computer science emphasizes computational thinking and interdisciplinary problem-solving to equip students with the skills and abilities necessary to apply computation in our digital world.

Computer science does not include using a computer for everyday activities, such as browsing the internet; use of tools like word processing, spreadsheets, or presentation software; or using computers in the study and exploration of unrelated subjects.

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Dual or concurrent enrollment means a program offered by a partnership between at least one institution of higher education and at least one local educational agency through which a secondary school student who has not graduated from high school with a regular high school diploma is able to enroll in one or more postsecondary courses and earn postsecondary credit that—

(a) Is transferable to the institutions of higher education in the partnership; and

(b) Applies toward completion of a degree or recognized educational credential as described in the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*).

Early college high school means a partnership between at least one local educational agency and at least one institution of higher education that allows participants to simultaneously complete requirements toward earning a regular high school diploma and earn not less than 12 credits that are transferable to the institutions of higher education in the partnership as part of an organized course of study toward a postsecondary degree or credential at no cost to the participant or participant's family.

Evidence-based means an activity, strategy, or intervention that demonstrates a rationale based on high quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes.

Expanded learning time means using a longer school day, week, or year schedule to significantly increase the total number of school hours, in order to include additional time for—

(a) Activities and instruction for enrichment as part of a well-rounded education; and

(b) Instructional and support staff to collaborate, plan, and engage in professional development (including professional development on family and community engagement) within and across grades and subjects.

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.,* sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbooks:

(i) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(ii) A regression discontinuity design study assigns the project component being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(iii) A single-case design study uses observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

High-quality tutoring means tutoring that is based on evidence-based strategies to support students' success in the classroom (provided in addition to, and not as a replacement for, classroom teaching); is delivered in individualized or small-group settings; reflects differentiated support based on student need; is aligned with the district's curriculum and rigorous academic standards; has established standards of intensity and dosage based on level of need; is delivered by tutors who are well-trained, who are supported with resources and personnel (such as a tutor coordinator), and who work closely with the student's teacher of record; and includes instruments to examine instructional quality and quantity.

Local educational agency (LEA) means:

(a) In General. A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(b) Administrative Control and Direction. The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(c) Bureau of Indian Education Schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Education but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the ESEA with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency (SEA) (as defined in this notice) other than the Bureau of Indian Education.

(d) Educational Service Agencies. The term includes educational service agencies and consortia of those agencies.

(e) State Educational Agency. The term includes the SEA in a State in which the SEA is the sole educational agency for all public schools.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Moderate evidence means that there is evidence of effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations or settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study or quasi-experimental design study reviewed and reported by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks, or otherwise assessed by the Department using version 4.1 of the WWC Handbook, as appropriate, and that—

(A) Meets WWC standards with or without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks; and

(D) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy this requirement.

Multi-tier system of supports means a comprehensive continuum of evidence-based, systemic practices to support a rapid response to students' needs, with regular observation to facilitate data-based instructional decision-making.

Nonprofit, as applied to an agency, organization, or institution, means that it is owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity.

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance.

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project.

Personalized learning means instruction that is aligned with rigorous college- and career-ready standards so that the pace of learning and the instructional approach are tailored to the needs of individual learners. Learning objectives and content, as well as the pace, may all vary depending on a learner's needs. Personalized learning may also draw on a number of student-centered blended learning models (*e.g.,* competency-based education, project-based learning, universal design for learning). In addition, learning activities are aligned with specific interests of each learner. Data from a variety of sources (including formative assessments, student feedback, and progress in digital learning activities), along with teacher recommendations, are often used to personalize learning.

Professional development means activities that—

(i) Are an integral part of school and local educational agency strategies for providing educators (including teachers, principals, other school leaders, specialized instructional support personnel, paraprofessionals, and, as applicable, early childhood educators) with the knowledge and skills necessary to enable students to succeed in a well-rounded education and to meet the challenging State academic standards; and

(ii) Are sustained (not stand-alone, 1-day, or short term workshops), intensive, collaborative, job-embedded, data-driven, and classroom-focused, and may include activities that—

(A) Improve and increase teachers' knowledge of the academic subjects the teachers teach; understanding of how students learn; and ability to analyze student work and achievement from multiple sources, including how to adjust instructional strategies, assessments, and materials based on such analysis;

(B) Are an integral part of broad schoolwide and districtwide educational improvement plans;

(C) Allow personalized plans for each educator to address the educator's specific needs identified in observation or other feedback;

(D) Improve classroom management skills;

(E) Support the recruitment, hiring, and training of effective teachers, including teachers who became certified through State and local alternative routes to certification;

(F) Advance teacher understanding of effective instructional strategies that are evidence-based; and strategies for improving student academic achievement or substantially increasing the knowledge and teaching skills of teachers;

(G) Are aligned with, and directly related to, academic goals of the school or local educational agency;

(H) Are developed with extensive participation of teachers, principals, other school leaders, parents, representatives of Indian tribes (as applicable), and administrators of schools to be served under the ESEA;

(I) Are designed to give teachers of English learners, and other teachers and instructional staff, the knowledge and skills to provide instruction and appropriate language and academic support services to those children, including the appropriate use of curricula and assessments;

(J) To the extent appropriate, provide training for teachers, principals, and other school leaders in the use of technology (including education about the harms of copyright piracy), so that technology and technology applications are effectively used in the classroom to improve teaching and learning in the curricula and academic subjects in which the teachers teach;

(K) As a whole, are regularly evaluated for their impact on increased teacher effectiveness and improved student academic achievement, with the findings of the evaluations used to improve the quality of professional development;

(L) Are designed to give teachers of children with disabilities or children with developmental delays, and other teachers and instructional staff, the knowledge and skills to provide instruction and academic support services, to those children, including positive behavioral interventions and supports, multi-tier system of supports, and use of accommodations;

(M) Include instruction in the use of data and assessments to inform and instruct classroom practice;

(N) Include instruction in ways that teachers, principals, other school leaders, specialized instructional support personnel, and school administrators may work more effectively with parents and families;

(O) Involve the forming of partnerships with institutions of higher education, including, as applicable, Tribal Colleges and Universities as defined in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)), to establish school-based teacher, principal, and other school leader training programs that provide prospective teachers, novice teachers, principals, and other school leaders with an opportunity to work under the guidance of experienced teachers, principals, other school leaders, and faculty of such institutions;

(P) Create programs to enable paraprofessionals (assisting teachers employed by a local educational agency receiving assistance under part A of title I) to obtain the education necessary for those paraprofessionals to become certified and licensed teachers;

(Q) Provide follow-up training to teachers who have participated in activities described in this paragraph that are designed to ensure that the knowledge and skills learned by the teachers are implemented in the classroom; and

(R) Where practicable, provide jointly for school staff and other early childhood education program providers, to address the transition to elementary school, including regular issues related to school readiness.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Quasi-experimental design study means a study using a design that attempts to approximate an experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (*e.g.,* establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbooks.

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Rural local educational agency means a local educational agency that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under Title V, Part B of the ESEA. Eligible applicants may determine whether a particular district is eligible for these programs by referring to information on the Department's website at *https://oese.ed.gov/files/2021/05/FY2021_Master_Eligibility_Spreadsheet-public51221.xlsx.*

Specialized instructional support personnel means—

(a) School counselors, school social workers, and school psychologists; and

(b) Other qualified professional personnel, such as school nurses, speech language pathologists, and school librarians, involved in providing assessment, diagnosis, counseling, educational, therapeutic, and other necessary services (including related services as that term is defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401)) as part of a comprehensive program to meet student needs.

State educational agency (SEA) means the agency primarily responsible for the State supervision of public elementary schools and secondary schools.

Underserved students means high-need students as determined by the applicant, which may include one or more of the following:

(a) Students who are living in poverty, especially those students who are also served by schools with high concentrations of students living in poverty.

(b) Students of color.

(c) Students who are members of federally recognized Indian Tribes.

(d) English learners.

(e) Students with disabilities, including students served under the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973.

(f) Disconnected youth, including but not limited to (1) students who lost significant amounts of in-person instruction as a result of the COVID–19 pandemic, and (2) students who did not consistently participate in remote instruction when offered during school building closures.

(g) Migrant students.

(h) Students experiencing homelessness.

(i) Lesbian, gay, bisexual, transgender, and queer (LGBTQ+) students.

(j) Students in foster care.

(k) Students without documentation of immigration status.

(l) Pregnant, parenting, or caregiving students.

(m) Students impacted by the justice system including formerly incarcerated students.

(n) Students who are the first in their family to attend postsecondary education.

(o) Students enrolling in or seeking to enroll in postsecondary education for the first time at the age of 20 or older.

(p) Students who are working full-time while enrolling in postsecondary education.

(q) Students who are enrolling in or seeking to enroll in postsecondary education who are eligible for a Pell Grant.

(r) Adult students with low skills, including those with limited English proficiency.

Universal design for learning means a scientifically valid framework for guiding educational practice that—

(a) Provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and skills, and in the ways students are engaged; and

(b) Reduces barriers in instruction, provides appropriate accommodations, supports, and challenges, and maintains high achievement expectations for all students, including students with disabilities and students who are limited English proficient.

Well-rounded education means courses, activities, and programming in subjects such as English, reading or language arts, writing, science, technology, engineering, mathematics, foreign languages, civics and government, economics, arts, history, geography, computer science, music, career and technical education, health, physical education, and any other subject, as determined by the State or local educational agency, with the purpose of providing all students access to an enriched curriculum and educational experience.

What Works Clearinghouse Handbooks (WWC Handbooks) means the standards and procedures set forth in the WWC Standards Handbook, Versions 4.0 or 4.1, and WWC Procedures Handbook, Versions 4.0 or 4.1, or in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (all incorporated by reference, see § 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides

and intervention reports include findings from systematic reviews of evidence as described in the WWC Handbooks documentation.

Note: The What Works Clearinghouse Procedures and Standards Handbooks are available at *https://ies.ed.gov/ncee/wwc/Handbooks.*

Program Authority: 20 U.S.C. 7261.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The Administrative Priorities. (e) The Supplemental Priorities. (f) The NFP.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $180,000,000.

These estimated available funds are the total available for all three types of grants under the EIR program (Early-phase, Mid-phase, and Expansion grants).

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Average Size of Awards: Up to $4,000,000.

Maximum Award: We will not make an award exceeding $4,000,000 for a project period of 60 months. The Department intends to fund one or more projects under each of the EIR competitions, including Expansion (84.411A), Mid-phase (84.411B), and Early-phase (84.411C). Entities may submit applications for different projects for more than one competition (Early-phase, Mid-phase, and Expansion). The maximum award amount a grantee may receive under these three competitions, taken together, is $15,000,000. If an entity is within funding range for multiple applications, the Department will award the highest scoring applications up to $15,000,000.

Estimated Number of Awards: 12–23.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Note: Under section 4611(c) of the ESEA, the Department must use at least 25 percent of EIR funds for a fiscal year to make awards to applicants serving rural areas, contingent on receipt of a sufficient number of applications of sufficient quality. For purposes of this competition, we will consider an applicant as rural if the applicant meets the qualifications for rural applicants as described in the *Eligible Applicants* section and the applicant certifies that it meets those qualifications through the application.

In implementing this statutory provision and program requirement, the Department may fund high-quality applications from rural applicants out of rank order in the Early-phase competition.

In addition, for the FY 2021 Early-phase competition, the Department intends to award an estimated $35 million in funds for STEM projects and $35 million in funds for SEL projects, contingent on receipt of a sufficient number of applications of sufficient quality.

III. Eligibility Information

1. *Eligible Applicants:*

(a) An LEA;

(b) An SEA;

(c) The Bureau of Indian Education (BIE);

(d) A consortium of SEAs or LEAs;

(e) A nonprofit (as defined in this notice) organization; and

(f) An LEA, an SEA, the BIE, or a consortium described in clause (d), in partnership with—

(1) A nonprofit organization;

(2) A business;

(3) An educational service agency; or

(4) An IHE.

To qualify as a rural applicant under the EIR program, an applicant must meet both of the following requirements:

(a) The applicant is—

(1) An LEA with an urban-centric district locale code of 32, 33, 41, 42, or 43, as determined by the Secretary;

(2) A consortium of such LEAs;

(3) An educational service agency or a nonprofit organization in partnership with such an LEA; or

(4) A grantee described in clause (1) or (2) in partnership with an SEA; and

(b) A majority of the schools to be served by the program are designated with a locale code of 32, 33, 41, 42, or 43, or a combination of such codes, as determined by the Secretary.

Applicants are encouraged to retrieve locale codes from the National Center for Education Statistics School District search tool (*https://nces.ed.gov/ccd/districtsearch/*), where districts can be looked up individually to retrieve locale codes, and Public School search tool (*https://nces.ed.gov/ccd/schoolsearch/*), where individual schools can be looked up to retrieve locale codes. More information on rural applicant eligibility is in the application package.

Note: If you are a nonprofit organization, under 34 CFR 75.51, you may demonstrate your nonprofit status by providing: (1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code, (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual, (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant, or (4) any item described above if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

In addition, any IHE is eligible to be a partner in an application where an LEA, SEA, BIE, consortium of SEAs or LEAs, or a nonprofit organization is the lead applicant that submits the application. A private IHE that is a nonprofit organization can apply for an EIR grant. A nonprofit organization, such as a development foundation, that is affiliated with a public IHE can apply for a grant. A public IHE that has 501(c)(3) status would also qualify as a nonprofit organization and could be a lead applicant for an EIR grant. A public IHE without 501(c)(3) status (even if that entity is tax exempt under Section 115 of the Internal Revenue Code or any other State or Federal provision), or that could not provide any other documentation described in 34 CFR 75.51(b), however, would not qualify as a nonprofit organization, and therefore could not apply for and receive an EIR grant.

2. *Cost Sharing or Matching:* Under section 4611(d) of the ESEA, each grant recipient must provide, from Federal, State, local, or private sources, an amount equal to 10 percent of funds provided under the grant, which may be provided in cash or through in-kind contributions, to carry out activities supported by the grant. Grantees must include a budget showing their matching contributions to the budget amount of EIR grant funds and must

provide evidence of their matching contributions for the first year of the grant in their grant applications. Section 4611(d) of the ESEA also authorizes the Secretary to waive this matching requirement on a case-by-case basis, upon a showing of exceptional circumstances, such as:

(a) The difficulty of raising matching funds for a program to serve a rural area;

(b) The difficulty of raising matching funds in areas with a concentration of LEAs or schools with a high percentage of students aged 5 through 17—

(1) Who are in poverty, as counted in the most recent census data approved by the Secretary;

(2) Who are eligible for a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 *et seq.*);

(3) Whose families receive assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*); or

(4) Who are eligible to receive medical assistance under the Medicaid program; and

(c) The difficulty of raising funds on Tribal land.

Applicants that wish to apply for a waiver must include a request in their application that describes why the matching requirement would cause serious hardship or an inability to carry out project activities. Further information about applying for waivers can be found in the application package. However, given the importance of matching funds to the long-term success of the project, the Secretary expects eligible entities to identify appropriate matching funds.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Other:* a. *Funding Categories:* An applicant will be considered for an award only for the type of EIR grant for which it applies (*i.e.,* Early-phase: Absolute Priority 2, Early-phase: Absolute Priority 3, or Early-phase: Absolute Priority 4). An applicant may not submit an application for the same proposed project under more than one type of grant (*e.g.,* both an Early-phase grant and Mid-phase grant).

Note: Each application will be reviewed under the competition it was submitted under in the *Grants.gov* system, and only applications that are successfully submitted by the established deadline will be peer reviewed. Applicants should be careful that they download the intended EIR application package and that they submit their applications under the intended EIR competition.

b. *Evaluation:* The grantee must conduct an independent evaluation of the effectiveness of its project.

c. *High-need students:* The grantee must serve high-need students.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768) and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for Early-phase grants, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative for an Early-phase grant to no more than 25 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative.

6. *Notice of Intent to Apply:* The Department will be able to review grant applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, we strongly encourage each potential applicant to notify us of their intent to submit an application. Applicants may access this form using the link available on the Notice of Intent to Apply section of the competition website: *https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/innovation-early-learning/education-innovation-and-research-eir.* Applicants that do not submit a notice of intent to apply may still apply for funding; applicants that do submit a notice of intent to apply are not bound to apply or bound by the information provided.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for the Early-phase competition are from 34 CFR 75.210. The points assigned to each criterion are indicated in the parentheses next to the criterion. An applicant may earn up to a total of 100 points based on the selection criteria for the application.

A. *Significance (up to 20 points).*

The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(1) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies. (15 points)

(2) The extent to which the results of the proposed project are to be disseminated in ways that will enable others to use the information or strategies. (5 points)

B. *Quality of the Project Design (up to 30 points).*

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework. (15 points)

(2) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (5 points)

(3) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (10 points)

C. *Adequacy of Resources and Quality of the Management Plan (up to 25 points).*

The Secretary considers the adequacy of resources and the quality of the management plan for the proposed project. In determining the adequacy of resources and quality of the management plan, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (10 points)

(2) The qualifications, including relevant training and experience, of key project personnel. (5 points)

(3) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (5 points)

(4) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project. (5 points)

D. *Quality of the Project Evaluation (up to 25 points).*

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation will, if well implemented, produce evidence about the project's effectiveness that would meet the What Works Clearinghouse standards with or without reservations as described in the What Works Clearinghouse Handbook (as defined in this notice). (15 points)

(2) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (5 points)

(3) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies. (5 points)

Note: Applicants may wish to review the following technical assistance resources on evaluation: (1) WWC Procedures and Standards Handbooks: *https://ies.ed.gov/ncee/wwc/Handbooks;* (2) ''Technical Assistance Materials for Conducting Rigorous Impact Evaluations'': *http://ies.ed.gov/ncee/projects/evaluationTA.asp;* and (3) IES/NCEE Technical Methods papers: *http://ies.ed.gov/ncee/tech_methods/.* In addition, applicants may view an optional webinar recording that was hosted by the Institute of Education Sciences. The webinar focused on more rigorous evaluation designs, discussing strategies for designing and executing experimental studies that meet WWC evidence standards without reservations. This webinar is available at: *http://ies.ed.gov/ncee/wwc/Multimedia/18.*

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Before making awards, we will screen applications submitted in accordance with the requirements in this notice to determine whether applications have met eligibility and other requirements. This screening process may occur at various stages of the process; applicants that are determined to be ineligible will not receive a grant, regardless of peer reviewer scores or comments.

Peer reviewers will read, prepare a written evaluation of, and score the assigned applications, using the selection criteria provided in this notice.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2), we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded Early-phase grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

Note: The evaluation report is a specific deliverable under an Early-phase grant that grantees must make available to the public. Additionally, EIR grantees are encouraged to submit final studies resulting from research supported in whole or in part by EIR to the Educational Resources Information Center (*http://eric.ed.gov*).

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* The overall purpose of the EIR program is to expand the implementation of, and investment in, innovative practices that are demonstrated to have an impact on improving student achievement and attainment for high-need students. We have established, for the purpose of the Government Performance and Results Act of 1993 (GPRA), several performance measures (as defined in this notice) for the Early-phase grants.

Annual performance measures: (1) The percentage of grantees that reach their annual target number of students as specified in the application; (2) the percentage of grantees that reach their annual target number of high-need students as specified in the application; (3) the percentage of grantees with ongoing well-designed and independent evaluations that will provide evidence of their effectiveness at improving student outcomes in multiple contexts; (4) the percentage of grantees that implement an evaluation that provides information about the key practices and the approach of the project so as to facilitate replication; (5) the percentage of grantees that implement an evaluation that provides information on the cost-effectiveness of the key practices to identify potential obstacles and success factors to scaling; and (6) the cost per student served by the grant.

Cumulative performance measures: (1) The percentage of grantees that reach the targeted number of students specified in the application; (2) the percentage of grantees that reach the targeted number of high-need students specified in the application; (3) the percentage of grantees that implement a completed, well-designed, well-implemented and independent evaluation that provides evidence of their effectiveness at improving student outcomes at scale; (4) the percentage of grantees with a completed well-designed, well-implemented, and independent evaluation that provides information about the key elements and the approach of the project so as to facilitate replication or testing in other settings; (5) the percentage of grantees with a completed evaluation that provided information on the cost-effectiveness of the key practices to identify potential obstacles and success factors to scaling; and (6) the cost per student served by the grant.

Project-Specific Performance Measures: Applicants must propose project-specific performance measures and performance targets (as defined in this notice) consistent with the objectives of the proposed project. Applications must provide the following information as directed under 34 CFR 75.110(b) and (c):

(1) Performance measures. How each proposed performance measure would accurately measure the performance of the project and how the proposed performance measure would be consistent with the performance measures established for the program funding the competition.

(2) Baseline (as defined in this notice) data. (i) Why each proposed baseline is valid; or (ii) if the applicant has determined that there are no established baseline data for a particular performance measure, an explanation of why there is no established baseline and of how and when, during the project period, the applicant would establish a valid baseline for the performance measure.

(3) Performance targets. Why each proposed performance target is ambitious yet achievable compared to the baseline for the performance measure and when, during the project period, the applicant would meet the performance target(s).

(4) Data collection and reporting. (i) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data; and (ii) the applicant's capacity to collect and report reliable, valid, and meaningful

performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

All grantees must submit an annual performance report with information that is responsive to these performance measures.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Ian Rosenblum,

Deputy Assistant Secretary for Policy and Programs Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2021–16099 Filed 7–27–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Rehabilitation Short-Term Training: Client Assistance Program; Correction

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice; correction.

SUMMARY: On June 23, 2021, the Department of Education (Department) published in the **Federal Register** a notice inviting applications (NIA) for new awards for fiscal year (FY) 2021 for Rehabilitation Short-Term Training: Client Assistance Program, Assistance Listing Number 84.246K. We are correcting the deadline for intergovernmental review. All other information in the NIA, including the August 9, 2021, deadline for transmittal of applications, remains the same.

DATES: This correction is applicable July 28, 2021.

FOR FURTHER INFORMATION CONTACT: Felipe Lulli, U.S. Department of Education, 400 Maryland Avenue SW, room 5051, Potomac Center Plaza, Washington, DC 20212–2800. Telephone: (202) 245–7425. Email: *84.246K@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On June 23, 2021, we published the NIA in the **Federal Register** (86 FR 32909). The NIA stated that the deadline for intergovernmental review is October 6, 2021. This notice corrects the deadline for intergovernmental review, from October 6, 2021, to September 3, 2021. All other requirements and conditions in the NIA remain the same.

Correction:

In FR Doc. 2021–13190 appearing on pages 32910–32915 of the **Federal Register** of June 23, 2021, the following corrections are made:

1. On page 32910, in the first column, under the caption ''Dates'' and after the heading ''Deadline for Intergovernmental Review'', remove ''October 6, 2021'' and add in its place ''September 3, 2021''.

2. On page 32912, in the second column, in section IV, at the end of paragraph 3 entitled ''Intergovernmental Review'', add the following sentence:

Please note that, under 34 CFR 79.8(a), we have shortened the standard 60-day intergovernmental review period in order to make awards by the end of Federal FY 2021.

Program Authority: 29 U.S.C. 772(a)(1).

Accessible Format: On request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this notice, the NIA, and a copy of the application in an accessible format. The Department wll provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Katherine Neas,

Acting Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2021–16013 Filed 7–27–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2021–OESE–0044]

Final Priorities and Definitions—Education Innovation and Research—COVID–19 and Equity

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final priorities and definitions.

SUMMARY: The Department of Education (Department) announces priorities and definitions under the Education Innovation and Research (EIR) program, Assistance Listing Numbers 84.411A/B/C. The Department may use these priorities and definitions for competitions in fiscal year (FY) 2021 and in later years.

DATES: These priorities and definitions are effective August 27, 2021.

FOR FURTHER INFORMATION CONTACT: Ashley Brizzo. U.S. Department of Education, 400 Maryland Avenue SW, Room 3E325, Washington, DC 20202. Telephone: (202) 453–7122. Email: *EIR@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Department intends these priorities and definitions to support competitions under the EIR program for the purpose of developing, implementing, and evaluating projects designed to enhance instructional practice and improve achievement and attainment for high-need students in two key policy areas: (1) Innovative approaches to addressing the impact of the novel coronavirus 2019 (COVID–19) pandemic on students and educators (namely, the interruption of traditional patterns of education due to school closures and the disproportionate social, emotional, physical and mental health, and academic impacts on particular student groups), and (2) promoting equity in students' access to educational resources and opportunities. The Department believes that these priorities and definitions are essential to enable applicants to respond to the COVID–19 pandemic and address equity issues.

Purpose of Program: The EIR program, established under section 4611 of the Elementary and Secondary Education Act, as amended (ESEA), provides funding to create, develop, implement, replicate, or take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement and attainment for high-need students; and rigorously evaluate such innovations. The EIR program is designed to generate and validate solutions to persistent education challenges and to support the expansion of those solutions to serve substantially larger numbers of students.

Program Authority: Section 4611 of the ESEA, 20 U.S.C. 7261.

We published a notice of proposed priorities and definitions for this program in the **Federal Register** on May 3, 2021 (86 FR 23304) (the NPP). That document contained background information and our reasons for proposing the priorities and definitions.

Public Comment: In response to our invitation in the NPP, 32 parties submitted comments pertinent to the proposed priorities and definitions. We discuss substantive issues under each priority (and its subparts) or definition to which they pertain. Generally, we do not address technical and other minor changes or suggested changes the law does not authorize us to make. In addition, we do not address comments that are outside the scope of the proposed priorities and definitions.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priorities and definitions since publication of the NPP follows.

General Comments; Proposed Priority 1—Innovative Approaches to Addressing the Impact of COVID–19 on Underserved Students and Educators.

Comments: Among the 26 comments related to the COVID–19 priority, all expressed overall support for the importance of and need for the priority. One of those commenters, however, stated that there are too many avenues listed within the priority, which could result in too varied of a field for useful evaluation data.

Commenters noted a few areas that were not addressed in the NPP and offered the following ideas for potential additions. Four commenters stated the importance of universal design for learning (UDL) as a critical strategy for addressing the impact of COVID–19. Two commenters suggested the inclusion of culturally responsive teaching. One commenter requested the addition of competency-based education and another commenter provided an idea about multiple pathways to learning. One commenter emphasized the need to help adults to better understand students' learning. Two commenters suggested the addition of activities related to the use of assessments and other diagnostic tools; and another commenter suggested supporting evaluations focused on the specific impact of COVID–19.

Six commenters provided various suggestions about the ways teachers and leaders are essential in implementing the activities under the priority and that training and supporting those individuals (through activities such as in-service professional development, coaching, leader development, and peer-to-peer learning) is critical to a project's success. Specifically, one commenter suggested an additional priority for professional development for school leaders to support the implementation of activities. Five commenters suggested holistic and integrated approaches to achieve optimal impact.

Seven commenters offered various suggestions about elevating specific elements within this priority. For example, some commenters stated that specific priorities should be used as absolute or competitive priorities to elevate them above others. Three commenters offered suggested changes that would prioritize specific students listed in the definition of ''underserved students.''

Discussion: We appreciate the support for these proposed priorities and definitions. The Department intends to maintain the current list of options in the priority and definitions as a means to provide multiple potential project ideas for applicants to propose that address the impact of COVID–19. Although the Department acknowledges the comment on the variety of avenues, there remains interest in articulating specific options under the priority and allowing for flexibility in the innovations proposed within those options to illuminate a variety of projects that might meet the needs of underserved students and educators most impacted by COVID–19. Furthermore, the evaluations for each grantee funded under this priority have the potential to illuminate key findings about various responses to the pandemic that might inform strategies considered in response to a myriad of future crises. The Department acknowledges that COVID–19 has presented multi-faceted and unique challenges that necessitate a flexible set of responses.

The Department concurs with the importance of UDL and appreciates the multiple suggestions for its inclusion. The Department also agrees with the importance of culturally responsive teaching and learning environments and further recognizes a need for linguistically responsive teaching and learning environments; as such, culturally and linguistically responsive teaching and learning environments is included explicitly in Priority 2(b), and the Department welcomes the submission of those proposed plans in grant applications under that priority. Additionally, applicants may choose to propose a project under Priority 1 that includes an element of culturally and linguistically responsive teaching and learning (such as a personalized learning project that incorporates content from students' cultural background or a trauma-informed training project for teachers including a component on various cultural traditions of dealing with loss).

Although the other suggested additions are important educational objectives, the Department is interested in maintaining the current list to allow their prioritization and welcomes applicants to submit specific examples that are within the parameters of the final priority.

The Department appreciates the thoughtful ideas about potential ways to design projects that can support implementation, such as professional development for school leaders, and welcomes the submission of those proposed plans in grant applications. The Department will consider the input about potential ways to use these priorities in future grant competitions.

Changes: We have revised paragraph (b)(3) in Priority 1 by adding UDL, as defined in section 8101(51) of the ESEA.

Priority 1(a)—Collaborating with Stakeholders.

Comments: Several commenters confirmed the importance of stakeholder collaboration and family engagement. For example, one commenter specified collaboration as key to building capacity to overcome pre-pandemic inequities. Another noted the importance of two-way collaboration based on mutual trust and respect, while other commenters emphasized the need for collaboration to include diverse cultural, linguistic, and socioeconomic representation.

There were also requests by three commenters to add language about sustaining partnerships between schools and key institutions, such as community clinics and local government, to provide integrated support for students. Another commenter suggested specific inclusion of school leaders.

Discussion: The Department appreciates the comments in support of stakeholder collaboration. We agree that collaboration that reflects mutual respect is essential for authentic collaboration and that diverse representation is essential.

The Department acknowledges the importance of sustained partnerships and applicants are invited to outline their plans for such partnerships.

Regarding the suggested addition of school leaders, the Department opted for the term ''educators'' to be inclusive of teachers as well as school leaders.

Changes: The Department has added new language in paragraph (a) of Priority 1 to specify the respectful and mutual nature of collaboration as well as the need for it to include diverse representation. The Department also clarified in paragraph (a) that ''educators'' means teachers, school leaders, and other school staff.

Priority 1(b)(1)—Re-engaging Students.

Comments: Several commenters addressed the requirement in paragraph (b)(1) that project plans re-engage underserved students and strengthen relationships between educators and underserved students most impacted by COVID–19. One commenter recommended adding language regarding family engagement. Two commenters suggested the addition of strategies to support students' safety and sense of belonging by improving school climate. Another commenter noted the importance of re-engaging students experiencing homelessness and offered specific strategies to remove barriers to enrollment (such as updating enrollment materials to include information about rights under McKinney-Vento and leveraging the support of specialized instructional support personnel).

Discussion: The Department appreciates the suggestion and agrees with the importance of family members in re-engaging students in learning. The Department appreciates specific ideas about how to re-engage students and welcomes entities applying for an EIR grant to detail such project plans; maintaining the broad language in the priority, however, will also allow for other ideas.

The Department acknowledges the importance of re-engaging students experiencing homelessness and applicants are invited to outline their plans for such focus.

Changes: The Department has revised paragraph (b)(1) to provide that families, as well as students, must be re-engaged.

Priority 1(b)(5)—Equitable and Inclusive Learning Environments.

Comments: One commenter suggested revising paragraph (b)(5) of the priority to address students' exploration and affirmation of their identity.

Discussion: The Department appreciates specific ideas about how to create equitable and inclusive learning environments and welcomes entities applying for an EIR grant to detail such project plans if they so choose; maintaining the broad language in the priority, however, will also welcome other ideas from applicants.

Changes: None.

Priority 1(b)(6)—Specialized Instructional Support Personnel.

Comments: One commenter stated that specialized instructional support personnel should be highly trained. Another commenter suggested the addition of tutors and youth development practitioners.

Discussion: The definition of ''specialized instructional support personnel'' assumes the formal training required for school counselors, school social workers, school psychologists, or other qualified professional personnel. As such, we do not believe we need to specify that they must be highly trained; applicants can, however, include in their proposed projects plans for training project staff and participants.

In response to the proposed additional types of personnel, the Department intends to maintain the priority of ensuring access to specialized instructional support personnel to reinforce the specific role professionals, such as school counselors and school social workers, can have in addressing the needs of underserved students most impacted by COVID–19. Included in the definition of specialized instructional support personnel is ''other qualified professional personnel.'' Additionally, applicants are welcome to include in their proposed projects additional types of staff.

Changes: None.

Priority 1(b)(7)—Supporting Students Experiencing Homelessness.

Comments: One commenter suggested including ''creating strategies'' in paragraph (b)(7) of this priority.

Discussion: We believe that creating and implementing strategies to find and support students is already built into the required action.

Changes: None.

Priority 1(b)(9)—Accelerating Grade-level Learning.

Comments: A number of commenters suggested additions to paragraph (b)(9) on accelerated learning. Specifically, two commenters asked the Department to emphasize the importance of improving the core instruction that occurs within the classroom. Other commenters asked that we specify summer learning experiences and accelerated diploma pathways as strategies to accelerate learning. One commenter suggested we revise paragraph (b)(9)(ii) to include a focus on identifying and reconnecting with students approaching post-secondary transitions.

Discussion: The Department agrees with the suggestion to add an emphasis on improving in-classroom instruction.

In response to the recommendation to include summer learning and accelerated pathways as strategies to accelerate learning, those types of activities would already fall within the scope of the priority, so changes are not needed. Similarly, we think that identifying and reconnecting with students approaching post-secondary transitions could be one component of a project with a broader focus on providing targeted supports for students

in preparing for post-secondary education transitions under paragraph (b)(9)(ii), and that no changes are needed to permit this activity.

Changes: We have revised paragraph (b)(9) to specify the classroom as a setting for accelerated learning.

General Comments; Priority 2—Promoting Equity and Adequacy in Student Access to Educational Resources and Opportunities.

Comments: Many commenters strongly supported a priority that promotes equity; a few of those commenters offered specific reasons for their support. One commenter noted that there is a strong and critical need for exploring and evaluating innovative approaches to equity. Three commenters expressed their enthusiasm for a focus on chronically underserved students and communities, and three commenters expressed support for promoting equity through access to effective, high-quality teachers in high-need schools. Another commenter noted that the priority is aligned with current scientific learnings about teaching and learning. Two commenters applauded this priority as one that focuses on underserved students' individual needs through a whole-child approach.

Commenters noted a few areas that were not addressed in the proposed priority and recommended additions, including the following: A focus on strengthening and diversifying the teacher workforce; an expansion of equitable access to effective teachers to also include school leaders; a reference to alternative routes for educator credentialing; and a focus on National Board Certification.

Discussion: The Department appreciates the support for Priority 2. We agree on the importance of teacher diversity and think that incorporating this focus in paragraph (a)(1) is useful to support projects that improve teacher preparation, recruitment, early career support, and development, with teacher diversity as a focus. Strengthening the workforce is already included in the priority as stated. Although the Department agrees, in general, with the importance of equitable access to effective school leaders, we are interested in EIR projects that focus on equitable access to effective teachers. Projects proposed by applicants that focus on equitable access to effective teachers may include equitable access to effective school leaders as an additional project component; entities interested in this topic as their sole focus may explore other grant programs in the Department. Projects that support various routes to obtaining full or advanced certification, consistent with State certification requirements, would be welcome under paragraph (a)(3) of this priority.

Changes: In paragraph (a)(1) of Priority 2, the Department added strategies that improve teacher diversity.

Priority 2(a)(1)—Preparation, Recruitment, Early Career Support, and Development.

Comments: Two commenters suggested that additional text specifying that high-need areas, including special education be included as part of the activity.

Discussion: The Department includes students with disabilities within the definition of underserved students. We also call for applicants to address inequities in access to fully certified, experienced, and effective teachers, and therefore, welcome applicants to address shortages of special education educators.

Changes: None.

Priority 2(a)(2)—Hiring, Compensation, and Advancement Systems.

Comments: One commenter supported the focus in paragraph (a)(2) on compensation and career advancement. Another commenter proposed an emphasis on schools with the students who have the highest needs and students of color.

Discussion: The Department appreciates the idea of compensation and career advancement and notes that the priority, as stated, already explicitly notes these areas of focus. Regarding a focus on a specific set of schools, we maintain flexibility in the language of the priority in order to allow applicants to address the unique needs in their context; applicants are invited to describe the ways they intend to support underserved students and high-need students, which allows for emphasis on students attending specific types of schools.

Changes: None.

Priority 2(a)(3)(iii)—Professional Development.

Comments: One commenter recommended that we revise paragraph (a)(3)(iii) to include ongoing anti-bias training and practices. Another commenter suggested that we require the professional development to be high-quality, inclusive, and accessible, noting that such professional development can greatly benefit all students, especially those with disabilities.

Discussion: Regarding anti-bias training, the Department is interested in maintaining broad and flexible language in this priority to allow proposed projects to include activities most relevant to their specific context; we welcome applicants to propose projects that include anti-bias training under paragraph (a)(3)(iii) of Priority 2. The Department agrees with the need for professional development to be high quality and has clarified that we use the term ''professional development'' as it is defined in section 8101(42) of the ESEA, which specifies aspects of professional learning that are indicators of quality. We also agree that all projects under EIR should be inclusive and accessible; the existing requirement applicable to this program under section 427 of the General Education Provisions Act already requires applicants to ensure equitable access to, and participation in, federally assisted programs. However, the Department welcomes projects that include these specific ideas.

Changes: We have revised paragraph (a)(3)(iii) to clarify that we refer to ''professional development'' as it is defined in section 8101(42) of the ESEA.

Priority 2(a)(3)(iv)—Workplace Conditions.

Comments: One commenter suggested that, in paragraph (a)(3)(iv) of Priority 2, we emphasize creating inclusive and culturally affirming working environments for all teachers.

Discussion: The Department supports the betterment of workplace conditions for high-quality teaching and learning and appreciates the suggested improvement to further clarify the priority.

Changes: The Department has revised Priority 2 under paragraph (a)(3)(iv) by adding the creation of inclusive and culturally affirming working environments as a means to improve workplace conditions.

Priority 2(c)—Addressing Bias and Inclusive, Supportive Learning Environments.

Comments: Eight commenters expressed general support for addressing implicit bias. One commenter, however, expressed concern that while this activity is commendable, it could be difficult to evaluate.

Discussion: Although projects proposed under this subpart may have unique considerations for evaluation design, it will be up to applicants to propose rigorous evaluation approaches that are responsive to the relevant requirements and selection criteria in the notice inviting applications.

Changes: None.

Priority 2(d)—Including Diverse Stakeholders.

Comments: Eight commenters supported this priority subpart. However, one commenter suggested that we expand the list of diverse stakeholders to include families,

caretakers, educators, and community leaders.

Discussion: The Department agrees that State and local education decision-making processes should include meaningful engagement with a broad range of stakeholders, including families, caretakers, educators, and community leaders.

Changes: The Department has added new language in paragraph (d) of Priority 2 to expand the diverse representation of stakeholders to also include families, caretakers, educators, and community leaders and clarify that ''educators'' means teachers, school leaders, and other school staff.

Priority 2(e)—Exclusionary Discipline and Resource Equity.

Comments: One commenter expressed appreciation for this subpart, especially as it related to the disproportionate use of discipline on students with disabilities. Another commenter suggested we add a third activity to paragraph (e) related to studying the impact of additional funding to meet the needs of underserved students, and allow applicants to propose projects that address one or more of the three. Another commenter, while citing the importance of supporting resource equity, suggested adding language regarding measurability.

Discussion: The Department appreciates the need for clarity on the distinction between discipline and resource equity. Regarding the suggested additional activity, applicants would be welcome under paragraph (f) of this priority to outline their plans exploring the impact of additional funding levels. The Department appreciates the focus on measurability, which is already addressed by the program requirement that requires grantees to conduct an independent evaluation of the effectiveness of its project.

Changes: The Department has revised the priority by separating the topics of discipline and resource equity into two distinct activities in paragraph (e) and (f).

Definition—High-Quality Tutoring

Comments: Nine commenters proposed changes to improve the definition of ''high-quality tutoring'' and one commenter supported the definition as written.

Three commenters asked that we require the tutoring to be aligned with academic standards, and another suggested specifying that tutoring does not replace classroom teaching. Five commenters suggested that we include specific evidence tiers in the definition, and five others suggested specifying that small groups be no larger than four students per tutor. Two commenters stated that the definition should require that tutoring occur during the regular school day, while several others recommended specific requirements on its frequency and duration (*e.g.,* that tutoring should occur at least every other day and for the entire school year).

Three commenters also suggested we revise the definition to require equitable access to the tutoring or a specific focus on underserved students, and another recommended that we require tutors to be well-trained for the specific tutoring strategies implemented during the tutoring sessions.

Discussion: The Department agrees with the suggestions for refining the definition to clarify that tutoring does not replace classroom teaching and must be aligned with academic standards. Regarding comments about enhancing the evidence requirement within this definition, the EIR program already includes specific evidence requirements consistent with the program statute (for example, Early-phase grantees must meet the Demonstrates a Rationale level of evidence).

The Department declines to be prescriptive on specific ratios, dosage, frequency, duration, or time of day to allow applicants to propose plans appropriate to student need and contextual consideration. The Department agrees that equitable access to high-quality tutoring and focusing projects on underserved students is important. However, equitable access is already required under section 427 of the General Education Provisions Act. A focus on serving high-need students is already required under section 4611(a)(1)(A) of the ESEA.

Regarding the suggestion that a tutor's training be specific to the tutoring strategies being used, the Department has determined that such clarification is not necessary as tutors may employ a mix of existing strategies that do not necessitate training and new strategies for which specific training is necessary. Additionally, broad training (such as training on behavior management or content) may also be useful to tutors and the Department does not want training of this nature to be precluded.

Changes: The Department has revised the definition of ''high-quality tutoring'' by adding language to clarify that it should not be a replacement for classroom teaching and that it should be aligned to standards.

Definition—Personalized Learning

Comments: One commenter offered general support for the definition of ''personalized learning.'' Another expressed concern that varying objectives and content might result in lower standards.

One commenter suggested emphasizing the student's role in decision making, while another commenter offered an alternate definition with similar elements of tailoring learning to students needs and interests.

Discussion: The Department appreciates the support for the definition of ''personalized learning.'' Personalized learning inherently involves customizing content and pace to meet learner needs. Accordingly, the Department is maintaining the flexibility for projects to tailor the objectives and content of the instruction to learner needs, but notes, in recognition of the commenter's concerns about quality, that the definition requires the instruction to be aligned with rigorous standards. The Department agrees that student-centered decision-making is a key element of personalized learning; the definition notes that student feedback is one potential source of data that may be used to personalize learning. This definition draws on language used by the Department across programs, and we believe that maintaining consistent language is helpful for stakeholders and the Department in administering its programs. However, we note that the final definition shares its core elements with the proposed alternative definition.

Changes: None.

Definition—Underserved Students

Comments: Of the four comments related to the definition of ''underserved students,'' one generally supported the comprehensive detail in the proposed definition. Another commenter specifically supported the inclusion of ''intersex'' students in paragraph (i), which initially stated the following: ''Lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) students.'' Two commenters suggested that we revise paragraph (e) relating to students with disabilities, to clarify that it includes students served under the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973.

One commenter suggested additional examples of underserved students, including students first in their family to graduate high school and adults who previously dropped out.

Discussion: The Department appreciates the support for the definition as well as the suggested clarification to ensure broad inclusion of students with disabilities. The Department understands the importance

of inclusion and respecting the rights of intersex students. Every time the Department uses the term LGBTQ+, it is including intersex youth. The definition is non-exhaustive so entities applying for an EIR grant may include other examples of underserved students (such as the two proposed additions as well as intersex students) relevant to their proposed project.

Changes: The Department revised paragraph (e) to clarify that ''students with disabilities'' includes students served under IDEA and Section 504. The Department has also removed the explicit mention of intersex students in paragraph (i).

Other Definitions

Comments: A few commenters suggested other terms for the Department to define. One commenter suggested adding a definition for ''whole-learner approaches''; the proposed definition included comprehensive description with proposed approaches that support physical, social-emotional, creative, and cognitive development, among other specifics, with a suggestion to use that definition in both proposed priorities. Three commenters suggested we revise the definitions for ''specialized instructional support personnel'' and ''well-rounded education.'' Another commenter suggested we adopt the definition of ''professional development'' from section 8101 of the ESEA.

Discussion: The proposed definition of ''whole-learner approaches'' includes elements already supported in EIR or included in the NPP (such as social-emotional learning, well-rounded education, culturally and linguistically responsive teaching, and personalized learning). Accordingly, an applicant could propose those types of activities under the priorities as stated, so changes to the priorities and definitions are not needed. As this program is authorized under the ESEA, we will use the ESEA definitions of ''specialized instructional support personnel'' and ''well-rounded education'' for consistency across programs. We agree that the definition of ''professional development'' in section 8101(42) of the ESEA includes strong components of high-quality professional development.

Changes: We have clarified in each place where ''professional development'' is referenced in the priorities (including Priority 1 paragraph (b)(4), Priority 2 paragraph (a)(3)(iii), and Priority 2 paragraph (2)(f)) that we are using the term as defined in section 8101(42) of the ESEA.

Final Priorities

This document contains two final priorities.

Priority 1—Innovative Approaches to Addressing the Impact of COVID–19 on Underserved Students and Educators.

Projects designed to address the needs of underserved students and educators most impacted by COVID–19 through—

(a) Engaging in two-way, mutually respectful collaboration with key stakeholders, such as families, caretakers, students, educators (including teachers, school leaders, and other school staff), and community leaders (including individuals from diverse cultural, linguistic, and socioeconomic backgrounds), to assess and understand students' social, emotional, physical and mental health, and academic needs, in light of historical educational inequities and the impact of the COVID–19 pandemic; and

(b) Developing and implementing strategies to address those needs through one or more of the following:

(1) Re-engaging students (and their families) and strengthening relationships between educators, students, and families.

(2) Supporting district- and school-wide use of personalized learning (as defined in this notice).

(3) Utilizing multi-tier system of supports (as defined in section 8101(33) of the ESEA) and universal design for learning (as defined in section 8101(51) of the ESEA).

(4) Providing educators with professional development (as defined in section 8101(42) of the ESEA) and resources to use trauma-informed practices.

(5) Creating or supporting equitable and inclusive learning environments in schools.

(6) Ensuring students have access to additional specialized instructional support personnel (as defined in section 8101(47 of the ESEA) during their school day, at their school site.

(7) Finding and supporting students experiencing homelessness, including those not attending school during the pandemic.

(8) Providing additional supports to educators to address their mental health and well-being and instructional practice needs.

(9) Providing evidence-based supports and educational opportunities to accelerate grade-level student learning (especially for underserved students) through in-class learning and additional instructional practice, including those supported by technology in ways that do not contribute to tracking or remediation, which may include one or both of the following:

(i) High-quality tutoring (as defined in this notice), summer learning and enrichment, or opportunities for high-quality expanded learning time (as defined in section 8101(2) of the ESEA) as well as implementation of embedded, high-quality formative assessment to support personalization.

(ii) Providing targeted supports for high school students to prepare for post-secondary education transition and success.

Priority 2—Promoting Equity and Adequacy in Student Access to Educational Resources and Opportunities.

Projects designed to promote equity in access to critical resources for underserved students in prekindergarten through grade 12 through one or more of the following:

(a) Addressing inequities in access to fully certified, experienced, and effective teachers through one or more of the following activities:

(1) Improving the preparation, recruitment, early career support, and development of teachers in high-need or hard-to-staff schools, including strategies that improve teacher diversity.

(2) Reforming hiring, compensation, and advancement systems.

(3) Improving the retention of fully certified (including teachers certified in the area they are assigned to teach), experienced, and effective teachers in districts, schools, and classrooms serving high concentrations of underserved students through one or more of the following activities:

(i) Providing comprehensive, high-retention pathways into the profession.

(ii) Creating or enhancing opportunities for teachers' professional growth and leadership opportunities.

(iii) Delivering collaborative, job-embedded, and sustained professional development.

(iv) Improving workplace conditions to create opportunities for successful teaching and learning, including through inclusive and culturally affirming working environments.

(b) Addressing inequities in access to and success in rigorous, engaging, and culturally and linguistically responsive teaching and learning environments that prepare students for college and career through one or both of the following activities:

(1) Increasing access to and success in middle school courses that are foundational to advanced coursework in high school; advanced courses and programs, including Advanced Placement, International Baccalaureate, high-quality dual or concurrent enrollment (as defined in section 8101(15) of the ESEA), and high-quality

early college high school (as defined in section 8101(17) of the ESEA) programs; high-quality STEM programs; or high-quality career and technical education pathways that are integrated into the curriculum.

(2) Developing, and expanding access to, programs designed to provide a well-rounded education (as defined in section 8101(52) of the ESEA).

(c) Addressing bias (*e.g.,* implicit and explicit) and creating inclusive, supportive learning environments.

(d) Involving diverse stakeholders to include students, families, caretakers, educators (including teachers, school leaders, and other staff), and community leaders in State and local education decisions.

(e) Identifying and addressing, in collaboration with students, families, and educators, policies that result in the disproportionate use of exclusionary discipline through data collection and analysis (including school climate surveys) disaggregated by race, sex, English learner, disability status, gender-identity, and sexual orientation, in compliance with 20 U.S.C. 1232h and 34 CFR part 98, and other important variables.

(f) Identifying and addressing issues of equity in access to and the use of innovative tools, rigorous content, and effective teaching and learning practices, including by providing job-embedded professional development to educators on strategies for equitably integrating educational technology in ways that elevate student engagement beyond passive use and over-reliance on drill-and-practice to a more robust, creative, and playful medium.

(g) Addressing policies, practices, and procedures that contribute to significant disproportionality in special education or programs for English learners based on race or ethnicity.

(h) Improving the quality of educational programs in juvenile justice facilities (such as detention facilities and secure and non-secure placements) or supporting re-entry after release, by linking youth to education or job training programs.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use one or more of these priorities, we invite applications through a notice in the **Federal Register**.

Final Definitions

This document includes three final definitions. We may apply these definitions in any year in which this program is in effect. We also intend to use the definitions from section 8101 of the ESEA that we included for informational purposes in the NPP, as well as the definition of universal design for learning and professional development, as discussed above.

High-quality tutoring means tutoring that is based on evidence-based strategies to support students' success in the classroom (provided in addition to, and not as a replacement for, classroom teaching); is delivered in individualized or small-group settings; reflects differentiated support based on student need; is aligned with the district's curriculum and rigorous academic standards; has established standards of intensity and dosage based on level of need; is delivered by tutors who are well-trained, who are supported with resources and personnel (such as a tutor coordinator), and who work closely with the student's teacher of record; and includes instruments to examine instructional quality and quantity.

Personalized learning means instruction that is aligned with rigorous college- and career-ready standards so that the pace of learning and the instructional approach are tailored to the needs of individual learners. Learning objectives and content, as well as the pace, may all vary depending on a learner's needs. Personalized learning may also draw on a number of student-centered blended learning models (*e.g.,* competency-based education, project-based learning, universal design for learning). In addition, learning activities are aligned with specific interests of each learner. Data from a variety of sources (including formative assessments, student feedback, and progress in digital learning activities), along with teacher recommendations, are often used to personalize learning.

Underserved students means high-need students as determined by the applicant, which may include one or more of the following:

(a) Students who are living in poverty, especially those students who are also served by schools with high concentrations of students living in poverty.

(b) Students of color.

(c) Students who are members of federally recognized Indian Tribes.

(d) English learners.

(e) Students with disabilities, including students served under the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973.

(f) Disconnected youth, including but not limited to (1) students who lost significant amounts of in-person instruction as a result of the COVID–19 pandemic, and (2) students who did not consistently participate in remote instruction when offered during school building closures.

(g) Migrant students.

(h) Students experiencing homelessness.

(i) Lesbian, gay, bisexual, transgender, and queer (LGBTQ+) students.

(j) Students in foster care.

(k) Students without documentation of immigration status.

(l) Pregnant, parenting, or caregiving students.

(m) Students impacted by the justice system including formerly incarcerated students.

(n) Students who are the first in their family to attend postsecondary education.

(o) Students enrolling in or seeking to enroll in postsecondary education for the first time at the age of 20 or older.

(p) Students who are working full-time while enrolling in postsecondary education.

(q) Students who are enrolling in or seeking to enroll in postsecondary education who are eligible for a Pell Grant.

(r) Adult students with low skills, including those with limited English proficiency.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these final priorities and definitions only on a reasoned determination that the benefits justify the costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Summary of Costs and Benefits: The Department believes that these final priorities and definitions will not impose significant costs on the entities eligible to apply for EIR. We also believe that the benefits of implementing the final priorities justify any associated costs.

The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Priority 1 gives the Department the opportunity to offer applicants a wide array of potential projects that help them respond to the impact of COVID–19 on students. Additionally, by offering ideas and options for projects, we believe that this priority could result in a number of changes including enhancing stakeholder engagement and implementing innovative strategies to both respond to student needs that were exacerbated by COVID–19 and allow for the evaluation of such impact. The innovation and research activities supported under this priority have the potential to change instructional practices in ways that will improve student outcomes and enable the field to have a more refined set of strategies to respond to other global crises should such need arise in the future.

Priority 2 gives the Department the opportunity to offer applicants a wide array of potential projects that promote equity and reinforce EIR's statutory requirements to serve high-need students. Additionally, by offering ideas and options for projects, we believe that this priority could result in a number of changes including enhancing innovative approaches to equity and allow for the evaluation of such impact.

Because these final priorities and definitions would neither expand nor restrict the universe of eligible entities for any Department grant program, and since application submission and participation in our discretionary grant programs is voluntary, there are no costs associated with these priorities and definitions.

Regulatory Flexibility Act Certification: The Secretary certifies that this final regulatory action will not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

The small entities that this regulatory action will affect are public or private nonprofit agencies and organizations, including institutions of higher education, that may apply. We believe that the costs imposed on an applicant by the final priorities and definitions will be limited to paperwork burden related to preparing an application and that the benefits of implementing these final priorities and definitions will outweigh any costs incurred by the applicant. Therefore, we do not believe that the final priorities and definitions will significantly impact entities beyond the potential for receiving additional support should the entity receive a competitive grant from the Department.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

The final priorities and definitions contain information collection requirements that are approved by OMB under OMB control numbers 1894–0006. The Department will request OMB approval under 1894–0006 for the Early-phase grants program (84.411C) around the same time this document publishes.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: On request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format, a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Ian Rosenblum,

Deputy Assistant Secretary for Policy and Programs Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office for Elementary and Secondary Education.

[FR Doc. 2021–16097 Filed 7–27–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[EERE–2021–BT–DET–0010]

Analysis Regarding Energy Efficiency Improvements in the 2021 International Energy Conservation Code (IECC)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of determination.

SUMMARY: The U.S. Department of Energy (DOE) has reviewed the 2021 International Energy Conservation Code (IECC) and determined the updated edition would improve energy efficiency in buildings subject to the code. DOE analysis indicates that buildings meeting the 2021 IECC, as compared with buildings meeting the 2018 IECC, would result in national site energy savings of 9.38 percent, source energy savings of 8.79 percent, and energy cost savings of approximately 8.66 percent of residential building energy consumption. Upon publication of this affirmative determination, each State must certify that it has reviewed the energy efficiency provisions of its residential building code and made a determination whether it is appropriate to revise the code to meet or exceed the updated edition of the IECC. Additionally, this notice provides guidance on State code review processes and associated certifications.

DATES: Certification statements provided by States shall be submitted by July 28, 2023.

ADDRESSES: A copy of the supporting analysis, as well as links to the Federal docket and public comments received, are available at: *https://www.energycodes.gov/development/determinations.*

Certification Statements must be addressed to the Building Technologies Office—Building Energy Codes Program Manager, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW, EE–5B, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Jeremiah Williams; U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW, EE–5B, Washington, DC 20585; (202) 441–1288; *Jeremiah.Williams@ee.doe.gov.*

For legal issues, please contact Matthew Ring; U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue SW, GC–33, Washington, DC 20585; (202) 586–2555; *Matthew.Ring@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Title III of the Energy Conservation and Production Act (ECPA), as amended, establishes requirements for building energy conservation standards, which are administered by the DOE Building Energy Codes Program. (42 U.S.C. 6831 *et seq.*) Section 304(a), as amended, of ECPA provides that whenever the 1992 Council of American Building Officials (CABO) Model Energy Code, or any successor to that code, is revised, the Secretary of Energy (Secretary) must make a determination, no later than 12 months after such revision, whether the revised code would improve energy efficiency in residential buildings, and must publish notice of such determination in the **Federal Register**. (42 U.S.C. 6833(a)(5)(A)) If the Secretary determines that the revision of the CABO Model Energy Code, or any successor thereof, improves the level of energy efficiency in residential buildings then, not later than two years after the date of the publication of such affirmative determination, each State is required to certify that it has reviewed its residential building code regarding energy efficiency, and made a determination as to whether it is appropriate to revise its code to meet or exceed the provisions of the successor code. (42 U.S.C. 6833(a)(5)(B)).

The International Energy Conservation Code (IECC) is the contemporary successor to the CABO Model Energy Code specified in ECPA. The IECC is revised every three years through an established code development and consensus process administered by the International Code Council (ICC). As part of the ICC process, any interested party may submit proposals, as well as written comments or suggested changes to any

proposal, and make arguments before a committee of experts assembled by the ICC, with the collection of accepted proposals forming the revised edition of the IECC. More information on the ICC code development process is available at *https://www.iccsafe.org/codes-tech-support/codes/code-development-process/code-development-2/.*

In addition, on January 20, 2021, the President issued Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.'' 86 FR 7037 (Jan. 25, 2021). The Executive Order directed DOE to consider publishing for notice and comment a proposed rule suspending, revising, or rescinding the final technical determination regarding the 2018 IECC by May 2021. *Id.* at 86 FR 7038. In response, DOE has reviewed the current 2021 IECC so that DOE's determination under Section 304(b) of ECPA reflects the most recent version of IECC, and to facilitate State and local adoption of the 2021 IECC, which will improve energy efficiency in the nation's residential buildings.

To meet the statutory requirement, and to satisfy the directive issued under Executive Order 13990, DOE issued a preliminary determination and published supporting analysis to quantify the expected energy savings associated with the 2021 IECC relative to the previous 2018 IECC version. Notice of this preliminary analysis was published in the **Federal Register** on May 16, 2021 (86 FR 26710), and is available at: *https://www.regulations.gov/document/EERE-2021-BT-DET-0010-0001.*

II. Public Participation

In a May 16, 2021 **Federal Register** notice, DOE requested public comments on its preliminary analysis of the 2021 IECC. (86 FR 26710) DOE received four public comments, all of which DOE considered in arriving at its final determination. DOE has now issued the final analysis of the expected energy savings associated with the 2021 IECC as compared to the 2018 IECC. A summary of public comments received, and DOE responses, is included in Appendix A of this Notice. The final analysis is available at: *https://www.energycodes.gov/development/determinations.*

III. Determination Statement

Residential buildings meeting the 2021 IECC (compared to the previous 2018 edition) are expected to incur the following savings on a weighted national average basis:

- 9.38 percent *site* energy savings
- 8.79 percent *source* energy savings
- 8.66 percent energy *cost* savings

DOE has rendered the conclusion that the 2021 IECC will improve energy efficiency in residential buildings, and, therefore, receives an affirmative determination under Section 304(a) of ECPA. States can experience significant benefits by updating their codes to reflect current construction standards, a total estimated $74.61 billion in energy cost savings and 424.20 MMT of avoided CO_2 emissions in residential buildings (cumulative 2010 through 2040), or $3.24 billion in annual energy cost savings and 18.50 MMT in annual avoided CO_2 emissions (annually by 2030). These benefits, including emissions reductions, are estimated in a revised 2021 interim report addressing building code impacts.[1] Though not quantified in the interim report, there may also be costs to regulated entities as a result of updated residential building codes.

IV. State Certification

Upon publication of this affirmative determination, each State is required to review the provisions of its residential building code regarding energy efficiency, and determine whether it is appropriate for such State to revise its building code to meet or exceed the energy efficiency provisions of the 2021 IECC. (42 U.S.C. 6833(a)(5)(B)) This action must be made not later than two years from the date of publication of a Notice of Determination, unless an extension is provided.

State Review and Update

The State determination must be: (1) Made after public notice and hearing; (2) in writing; (3) based upon findings and upon the evidence presented at the hearing; and (4) made available to the public. (42 U.S.C. 6833(a)(2)) States have discretion with regard to the hearing procedures they use, subject to providing an adequate opportunity for members of the public to be heard and to present relevant information. The Department recommends publication of any notice of public hearing through appropriate and prominent media outlets, such as in a newspaper of general circulation. States should also be aware that this determination does not apply to IECC chapters specific to nonresidential buildings, as defined in the IECC. Therefore, States must certify their evaluations of their State building codes for residential buildings with respect to all provisions of the IECC, except for those chapters not affecting residential buildings. DOE determinations regarding earlier editions of the IECC are available on the DOE Building Energy Codes Program website.[2] Further national and State analysis is also available.[3]

State Certification Statements

State certifications are to be sent to the address provided in the **ADDRESSES** section, or may be submitted to *BuildingEnergyCodes@ee.doe.gov,* and must be submitted in accordance with the deadline identified in the **DATES** section. If a State makes a determination that it is not appropriate to revise the energy efficiency provisions of its residential building code, the State must submit to the Secretary, in writing, the reasons for this determination, which shall be made available to the public. (42 U.S.C. 6833(a)(4))

The DOE Building Energy Codes Program tracks and reports State code adoption and certifications.[4] Once a State has adopted an updated residential code, DOE typically provides software, training, and support for the new code, as long as the new code is based on the national model code (*i.e.,* the 2021 IECC). DOE has issued previous guidance on how it intends to respond to technical assistance requests related to implementation resources, such as building energy code compliance software. (79 FR 15112) DOE is directed to provide incentive funding to States to implement the requirements of Section 304, and to improve and implement State residential and commercial building energy efficiency codes, including increasing and verifying compliance with such codes. (*See* 42 U.S.C. 6833(e)) Some States develop their own codes that are only loosely related to the national model codes, and DOE does not typically provide technical support for those codes. DOE does not prescribe how each State adopts and enforces its energy codes.

Requests for Extensions

Section 304(c) of ECPA requires that the Secretary permit an extension of the deadline for complying with the certification requirements described previously, if a State can demonstrate that it has made a good faith effort to

[1] See *https://www.pnnl.gov/main/publications/external/technical_reports/PNNL-31437.pdf* for the 2021 interim code impact report. Financial benefits are calculated by applying historical and future fuel prices to site energy savings and by discounting future savings to 2020 dollars. Historical and future real fuel prices are obtained through EIA's AEO 2015 report (EIA 2015).

[2] Available at *https://www.energycodes.gov/regulations/determinations/previous.*

[3] Available at *https://www.energycodes.gov/development/residential/iecc_analysis.*

[4] Available at *https://www.energycodes.gov/adoption/states.*

comply with such requirements, and that it has made significant progress toward meeting its certification obligations. (42 U.S.C. 6833(c)) Such demonstrations could include one or both of the following: (1) A substantive plan for response to the requirements stated in Section 304; or (2) a statement that the State has appropriated or requested funds (within State funding procedures) to implement a plan that would respond to the requirements of Section 304 of ECPA. This list is not exhaustive. Requests are to be sent to the address provided in the **ADDRESSES** section, or may be submitted to *BuildingEnergyCodes@ee.doe.gov.*

Appendix A

DOE accepted public comments on the Notice of Preliminary Determination for the 2021 IECC until June 16, 2021, and received submissions from a total of 4 commenters. Responsive public comments and associated DOE answers are described as follows. DOE received comments on its preliminary determination and supporting analysis of the 2021 IECC from the following stakeholders:

- North American Insulation Manufacturers Association (NAIMA)
- Responsible Energy Code Alliance (RECA)
- Edison Electric Institute (EEI)
- Air-Conditioning, Heating and Refrigeration Institute (AHRI)

The comments are summarized as follows and are available at *https://www.regulations.gov/document/EERE-2021-BT-DET-0010-0001/comment.* DOE responded to all comments received. Several issues raised by commenters are distinct from the energy efficiency analysis DOE has undertaken pursuant to its statutory obligations. These include the social cost of carbon, life-cycle cost, and cost effectiveness; among these issues, social cost of carbon garnered the most attention from commenters and is therefore emphasized in the responses below.

North American Insulation Manufacturers Association (NAIMA)

Comment: NAIMA requested that DOE use the updated climate zone designations in the 2021 IECC and not 2018 IECC. DOE's preliminary analysis appears to leave out impact of the 2021 IECC climate zone designations in numerous counties across the United States. This shortfall could lead to an overestimation of the energy savings associated with the 2021 IECC.

DOE Response: DOE acknowledges that the residential provisions of the 2021 IECC incorporate several administrative changes introduced by the 2013 edition of ASHRAE Standard 169, *Climatic Data for Building Design Standards* (ASHRAE 2013a). ASHRAE 169–2013 redefined climate zones and moisture regimes based on recent weather data. As a result, a number of U.S. counties were reassigned to different zones/regimes, and a new, *extremely hot* Climate Zone 0 was added. (The addition of Climate Zone 0 has no impact on DOE's analysis, since it does not occur in the U.S.) Approximately 400 U.S. counties out of more than 3,000 were reassigned, most to warmer climate zones. However, the reassignment of localities is considered an administrative action, based on long-established definitions of heating degree days and cooling degree days, and is handled consistently with how similar climate zone updates have been handled by previous DOE model energy code determinations. DOE also notes that the reassignment of climate zones is expected to occur in the future, based on updated weather and climate data, and associated updates to ASHRAE Standard 169.

Comment: NAIMA requested that DOE produce the equivalent cost-effectiveness document for the 2021 IECC as rapidly as possible after the publication of the final 2021 IECC determination. Additionally, NAIMA requested that DOE perform this analysis with a variety of down payment amounts to show cost-effectiveness with typical range of loans—a 0% down loan, a 10% down loan, and a 20% down loan.

DOE Response: In making its determination, DOE's directive under ECPA is to assess whether updated editions of the 2021 IECC would improve *energy efficiency* in residential buildings. Concepts such as life-cycle cost and cost effectiveness represent economic analysis and are therefore unique from energy efficiency analysis. However, DOE recognizes the value of such analysis in informing State and local decisions surrounding code review and update processes, as well as design decisions associated with specific buildings and systems. Distinct from its determination directive under ECPA, DOE provides a variety of additional analysis, including cost-effectiveness analysis. The established DOE methodology is currently designed around a single typical home mortgage scenario, and not multiple down payment scenarios, as requested by NAIMA. However, DOE will consider expanding its analysis in the future to further study a range of financing scenarios, including those experienced by low and moderate income (LMI) households.

Responsible Energy Codes Alliance (RECA)

Comment: RECA's first comment recommended that the DOE take actions to encourage, and provide additional support for, States and cities to adopt and implement the 2021 IECC in the months and years ahead.

DOE response: DOE is directed under ECPA to provide technical assistance supporting the implementation of building energy codes. Consistent with this directive, DOE intends to continue providing robust technical assistance supporting State and local implementation of buildings energy codes. DOE recognizes the importance of supporting the States and local governments who ultimately adopt and implement codes, as well as the wide range of industry stakeholders who rely upon energy codes and strive to achieve compliance in practice.

Comment: RECA's second comment stated that RECA agrees with and supports the methodology and conclusion in the preliminary analysis.

DOE response: DOE appreciates the support.

Comment: RECA's third comment recommended that DOE should implement the 2021 IECC into REScheck.

DOE response: DOE intends to support the implementation of the 2021 IECC into REScheck in the future.

Comment: RECA's fourth comment recommended that DOE remove pre-2015 IECC versions from REScheck.

DOE response: In maintaining its compliance resources, such as the REScheck software [5], DOE typically supports the three most recent editions of the model codes. (79 FR 15112) Following the current determination, this is anticipated to include the 2021, 2018 and 2015 editions of the IECC. DOE intends to maintain consistency with this approach.

Comment: RECA's fifth comment recommended that DOE provide cost-effectiveness analysis.

DOE response: As outlined in previous responses, DOE notes that the current determination is focused on whether the 2021 IECC would improve *energy efficiency* in residential buildings. However, DOE recognizes the value of additional forms of technical analysis supporting building energy codes, and intends to continue to provide both national and State-level cost-effectiveness analysis of the 2021 IECC in the future.

Comment: RECA's sixth comment recommended that DOE provide *State-level* energy and cost analyses.

DOE response: Consistent with the previous comment response, DOE intends to provide State-level energy and cost analyses in the future.

Comment: RECA's seventh comment recommended that DOE provide implementation support for the 2021 IECC.

DOE response: Consistent with previous comment responses, DOE intends to continue providing robust support for States and local governments implementing building energy codes. DOE intends to provide additional resources supporting the 2021 IECC implementation in the future.

Edison Electric Institute (EEI)

Comment: EEI's first comment stated that the EPA greenhouse gas equivalencies calculator overstates the emissions impact.

DOE response: As outlined in previous responses, DOE notes that the current determination is focused solely on whether the revised Standard would improve energy efficiency in residential buildings, and CO_2 savings were not considered as part of DOE's ultimate determination of whether the revised Standard will improve energy efficiency. DOE is reporting estimated CO_2 savings only because it recognizes the value of additional forms of technical analysis supporting State implementation of building energy codes, including emissions analyses. DOE relies on greenhouse gas emission coefficients established by the Environmental Protection Agency (EPA) in estimating current year CO_2 savings. EPA's emission coefficients are designed to reflect marginal

[5] REScheck is a software tool developed and maintained by DOE for the purpose of verifying compliance in residential buildings. *See https://www.energycodes.gov/rescheck.*

CO_2 savings from electricity savings occurring on the building site, which DOE considers appropriate for estimating and communicating the carbon savings stemming from an improved energy code. This approach is consistent with how DOE has performed similar calculations in previous determinations.

Comment: EEI's second comment recommended that DOE's determination should take into account the commitments utilities have made to reduce carbon emissions.

DOE response: As outlined in previous responses, DOE notes that the current determination is focused solely on whether the revised Standard would improve energy efficiency in residential buildings, and CO_2 savings were not considered as part of DOE's ultimate determination of whether the revised Standard will improve energy efficiency. DOE is reporting estimated CO_2 savings only because it recognizes the value of additional forms of technical analysis supporting State implementation of building energy codes, including emissions analyses. DOE's analysis is based on several metrics; energy cost, site energy, and source energy. In addition, DOE reports carbon emissions on a first-year basis. DOE recognizes the progress being made by utilities in decarbonizing the electric grid, and emphasizes that estimates provided in the supporting technical analysis are based on current emission levels and are subject to change in the future.

Air-Conditioning, Heating, and Refrigeration Institute (AHRI)

Comment: AHRI, p. 2–5. AHRI commented that historically DOE did not estimate emission reductions or apply a value to emission reductions as part of the results and basis for the determination. They further stated that including emission reductions or their value, including the SC–CO_2, as part of the basis for determination was outside DOE's authority to consider (42 U.S.C. 6833(a)(5)), because EPCA is an energy conservation statute and excludes environmental objectives (see 42 U.S.C. 6312 which excludes environmental objectives), and that DOE does not have the statutory authority to consider greenhouse gas estimates in determination of residential building codes. AHRI opined that the SC–CO_2 should only be included for rulemakings where DOE has clear statutory authority to do so and stated that it lacks such statutory authority as to building energy codes.

DOE response: In making its determination, DOE's directive under ECPA is to assess whether updated editions of the IECC would improve *energy efficiency* in residential buildings. 42 U.S.C. 6833(b)(2)(A) DOE emphasizes that the estimates pertaining to CO_2 are provided as supplemental information only and were not considered as part of DOE's final determination, which is based on energy efficiency as required under 42 U.S.C. 6833(5)(A). Climate benefits associated with the expected CO_2 emissions reductions are monetized using estimates of the social cost of carbon presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990* (IWG 2021). DOE is reporting estimates related to CO_2 only because information on the carbon emissions associated with buildings are valued by many stakeholders, including States and local governments who ultimately implement building codes, and who have expressed a need for this information. These estimates are not considered as part of DOE's ultimate determination of whether the updated IECC will improve energy efficiency.

Comment: AHRI, p. 2, 5. AHRI stated that DOE is ignoring clear congressional intent in including emissions in the narrowly scoped building energy code review defined in the statutory text (42 U.S.C. 6833(b)(1)). AHRI further stated that congress could have added global climate change into a variable to weigh in the determination, but did not do so and so DOE should not include this in the determination.

DOE Response: See response to previous AHRI comment.

Comment: AHRI, p. 2. AHRI requested that DOE remove carbon emissions from the determination for building energy codes, including the 2021 IECC.

DOE Response: See response to previous AHRI comment.

Comment: AHRI p. 2. Irrespective of the authority consideration, AHRI requested that DOE must act to remedy inaccurate assumptions and conclusions on the social cost of carbon benefits analysis. AHRI opined that the benefits claimed from full fuel cycle and global impact of emissions and SC–CO_2 are speculative and tangential and that these are calculated over a time period (100 years) that greatly exceeds that used to measure economic costs.

DOE Response: In making its determination, DOE's directive under ECPA is to assess whether updated editions of the IECC would improve *energy efficiency* in residential buildings. 42 U.S.C. 6833(b)(2)(A) DOE emphasizes that the estimates pertaining to CO_2 are provided only as supplemental information and are not considered as part of the final determination, which is based on energy efficiency as required under 42 U.S.C. 6833(b)(2)(A).

In calculating related CO_2 impacts, DOE used the estimates for the SC–CO_2 from the most recent update of the Interagency Working Group on Social Cost of Greenhouse Gases, United States Government (IWG), from ''Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990.'' (February 2021 TSD). DOE has determined that the estimates from the February 2021 TSD, as described more below, are based upon sound analysis and provide well founded estimates for DOE's analysis of the impacts of CO_2 related to the reductions of emissions from updating the IECC to the 2021 edition.

These SC–CO_2 estimates are interim values developed under Executive Order (E.O.) 13990 for use until an improved estimate of the impacts of climate change can be developed based on the best available science and economics. The SC–CO_2 estimates used in this analysis were developed over many years, using a transparent process, peer-reviewed methodologies, the best science available at the time of that process, and with input from the public. Specifically, an interagency working group (IWG) that included the EPA and other executive branch agencies and offices used three integrated assessment models (IAMs) to develop the SC–CO_2 estimates and recommended four global values for use in regulatory analyses. The SC–CO_2 estimates were first released in February 2010 and updated in 2013 using new versions of each IAM. In 2015, as part of the response to public comments received to a 2013 solicitation for comments on the SC–CO_2 estimates, the IWG announced a National Academies of Sciences, Engineering, and Medicine review of the SC–CO_2 estimates to offer advice on how to approach future updates to ensure that the estimates continue to reflect the best available science and methodologies. In January 2017, the National Academies released their final report, Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide, and recommended specific criteria for future updates to the SC–CO_2 estimates, a modeling framework to satisfy the specified criteria, and both near-term updates and longer term research needs pertaining to various components of the estimation process (National Academies 2017). On January 20, 2021, President Biden issued Executive Order 13990, which directed the IWG to ensure that the U.S. Government's (USG) estimates of the social cost of carbon and other greenhouse gases reflect the best available science and the recommendations of the National Academies (2017). The IWG was tasked with first reviewing the estimates currently used by the USG and publishing interim estimates within 30 days of E.O. 13990 that reflect the full impact of GHG emissions, including taking global damages into account.[6] The interim SC–CO_2 estimates published in February 2021 are used here to estimate the climate benefits associated with this determination.

DOE acknowledges that there are a number of challenges in attempting to assess the incremental economic impacts of CO_2 emissions. The science and economic understanding of climate change and its impacts is improving over time; research focused on the assessment of climate damages and socioeconomic emissions projections is particularly important for reducing uncertainty in the calculation of the social cost of greenhouse gases (SC–GHG),[7]

[6] The E.O. instructs the IWG to undertake a fuller update of the SC–GHG estimates by January 2022.

[7] The social cost of greenhouse gases (SC–GHG) is the monetary value of the net harm to society associated with adding a small amount of that GHG to the atmosphere in a given year and, therefore, should reflect the societal value of reducing emissions of the gas in question by one metric ton. The marginal estimate of social costs will differ by the type of greenhouse gas (such as carbon dioxide, methane, and nitrous oxide) and by the year in which the emissions change occurs. The estimates of the social cost of carbon (SC–CO_2), social cost of methane (SC–CH_4), and social cost of nitrous oxide (SC–N_2O) published in the February 2021 TSD allow agencies to understand the social benefits of reducing emissions of each of these greenhouse gases, or the social costs of increasing such emissions, in the policy making process.

is quantifying and being transparent about where key uncertainties in the models remain. But contrary to AHRI's suggestion that uncertainty should cause DOE to discount or abandon monetization of the social benefits of reducing CO_2 emissions, as IWG has stated, due to a number of sources of uncertainty, there is a likelihood that the SC–CO_2 is an underestimate of the true social cost of emissions.[8] Despite the limits of both quantification and monetization, SC–CO_2 estimates can be useful in estimating the social benefits of reducing CO_2 emissions. As a result, DOE has used the IWG's SC–CO_2 estimates in monetizing the social benefits of reducing CO_2 emissions. However, as discussed in previous comments, DOE's SC–CO_2 analysis using these estimates was not considered in DOE's ultimate determination of whether the 2021 IECC Standard will improve energy efficiency.

Comment: AHRI p. 2,3. As part of the rationale for not including SC–CO_2, AHRI further commented that DOE has acknowledged the uncertainty of SC–CO_2 estimates and stated that these are both provisional and revisable. Further, they noted that the interagency working group developing the SC–CO_2 noted that the underlying models were imperfect and incomplete and notes that the intergovernmental panel on climate change (IPCC) which the IWG relied on also stated in 2013 that no best estimate for equilibrium climate sensitivity could then be given because of the lack of agreement on values across assessed lines of evidence and studies.

DOE Response: In making its determination, DOE's directive under ECPA is to assess whether updated editions of the IECC would improve *energy efficiency* in residential buildings. 42 U.S.C. 6833(b)(2)(A) DOE emphasizes that the estimates pertaining to CO_2 are provided only as supplemental information and are not considered as part of the final determination, which is based on energy efficiency as required under 42 U.S.C. 6833(b)(2)(A).

As noted above, DOE determined that the estimates from the February 2021 TSD are based upon sound analysis and provide well founded estimates for DOE's analysis of the impacts of CO_2 related to the reductions of emissions from updating the 90.1 Standard to the 2019 edition. As explained in the February 2021 TSD and while the IWG works to assess how best to incorporate the latest, peer reviewed science to develop an updated set of SC–GHG estimates, the IWG has determined that it is appropriate for agencies to revert to the same set of four values drawn from the SC–GHG distributions based on three discount rates as were used in regulatory analyses between 2010 and 2016 and subject to public comment. For each discount rate, the IWG combined the distributions across models and socioeconomic emissions scenarios (applying equal weight to each) and then selected a set of four values for use in benefit-cost analyses: An average value resulting from the model runs for each of three discount rates (2.5%, 3%, and 5%), plus a fourth value, selected as the 95th percentile of estimates based on a 3 percent discount rate. The fourth value was included to provide information on potentially higher-than-expected economic impacts from climate change, conditional on the 3% estimate of the discount rate. As explained in the February 2021 TSD, this update reflects the immediate need to have an operational SC–GHG for use in regulatory benefit-cost analyses and other applications that was developed using a transparent process, peer-reviewed methodologies, and the science available at the time of that process. Those estimates were subject to public comment in the context of dozens of proposed rulemakings as well as in a dedicated public comment period in 2013. However, as discussed in previous comments, DOE's SC–CO_2 analysis using these estimates was not considered in DOE's ultimate determination of whether the 2021 IECC Standard will improve energy efficiency.

Comment: AHRI, p. 3,5. AHRI commented that EPCA's focus is on benefits accruing with this nation, hence incorporation of SC–CO_2 at the global level is beyond the scope and authority of DOE. See 42 U.S.C. 6833(a)(1–5). They further noted that EPCA originally arose out of the 1970's oil embargo and that nothing in the subsequent amendments suggests a different statutory focus other than improving the energy economic within the United States. AHRI notes that DOE analyzes expected national [domestic] energy savings, but does not scale back reported SC–CO_2 calculations to reflect domestic impacts only.

DOE Response: In making its determination, DOE's directive under ECPA is to assess whether updated editions of the IECC would improve *energy efficiency* in residential buildings. 42 U.S.C. 6833(b)(2)(A) DOE emphasizes that the estimates pertaining to CO_2 are provided only as supplemental information and are not considered as part of the final determination, which is based on energy efficiency as required under 42 U.S.C. 6833(b)(2)(A).

As to the use of a SC–CO_2 value that includes impacts outside the boundaries of the United States, the February 2021 TSD provides a complete discussion of the IWG's initial review conducted under E.O. 13990. In particular, the IWG found that a global perspective is essential for SC–GHG estimates because climate impacts occurring outside U.S. borders can directly (and indirectly affect the welfare of U.S. citizens and residents. Thus, U.S. interests are affected by the climate impacts that occur outside U.S. borders. Examples of affected interests include: Direct effects on U.S. citizens and assets located abroad, international trade, and tourism, and spillover pathways such as economic and political destabilization and global migration. In addition, assessing the benefits of U.S. GHG mitigation activities requires consideration of how those actions may affect mitigation activities by other countries, as those international mitigation actions will provide a benefit to U.S. citizens and residents by mitigating climate impacts that affect U.S. citizens and residents. Therefore, in this analysis DOE centers attention on a global measure of SC–GHG.

As noted above, DOE determined that the estimates from the February 2021 TSD are based upon sound analysis, and therefore, in analyzing the impacts of CO_2 related to the reductions of emissions from updating the 90.1 Standard to the 2019 edition, DOE has focused on a global measure of SC–CO_2. As noted in the February 2021 TSD, the IWG will continue to review developments in the literature, including more robust methodologies for estimating SC–GHG values based on purely domestic damages, and explore ways to better inform the public of the full range of carbon impacts, both global and domestic. As a member of the IWG, DOE will likewise continue to follow developments in the literature pertaining to this issue. However, as discussed in previous comments, DOE's SC–CO_2 analysis using these estimates was not considered in DOE's ultimate determination of whether the 2021 IECC Standard will improve energy efficiency.

Comment: AHRI, p.3,4. AHRI stated that DOE wrongly assumes that SC–CO2 values increase over time in real dollars and states that this is contrary to ''historical experience and to economic development science'' and that the more economic development that occurs, the more adaptation and mitigation efforts a population living in a growing economy can afford to undertake (AHRI cites the IWG indicating that developed countries can eliminate 90% of the economic impacts and developing countries could eventually eliminate 50% of the economic impacts of climate change). They comment that they see no indication that DOE considered this separately.

DOE Response: In making its determination, DOE's directive under ECPA is to assess whether updated editions of Standard 90.1 would improve *energy efficiency* in commercial buildings. 42 U.S.C. 6833(b)(2)(A) DOE emphasizes that the estimates pertaining to CO_2 are provided only as supplemental information and are not considered as part of the final determination, which is based on energy efficiency as required under 42 U.S.C. 6833(b)(2)(A).

The model scenarios reported by the IWG demonstrate that the damage assessments and corresponding valuation (SC–CO_2), adjusted for inflation, increase through time. As explained in the February 2021 TSD, ''[t]he SC-[CO_2] estimates increase over time within the models—*i.e.,* the societal harm from one metric ton emitted in 2030 is higher than the harm caused by one metric ton emitted in 2025—because future emissions produce larger incremental damages as physical and economic systems become more stressed in response to greater climatic change, and because GDP is growing over time and many damage categories are modeled as proportional to GDP. As noted above, DOE determined that the estimates from the February 2021 TSD are based upon sound analysis and provide well founded estimates for DOE's analysis of the impacts of CO_2 related to the reductions of emissions

Collectively, these values are referenced as the ''social cost of greenhouse gases'' (SC–GHG).

[8] See Interagency Working Group on Social Cost of Greenhouse Gases, *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide. Interim Estimates Under Executive Order 13990,* Washington, DC, February 2021.

from updating the 90.1 Standard to the 2019 edition in its building codes impact analysis. Accordingly, DOE incorporated the IWG's consideration in its analysis. However, as discussed in previous comments, DOE's SC–CO_2 analysis using these estimates was not considered in DOE's ultimate determination of whether the 2021 IECC Standard will improve energy efficiency.

Comment: AHRI, p. 4. AHRI argued that it is arbitrary and capricious to use different timeframes and assumptions for costs and benefits and notes that DOE must clarify precisely why and how it believes it has statutory authority under 42 U.S.C. 6833(a) to consider SC–CO_2 issues and cites why such action is legally arbitrary without sufficient documented reason for treating similar situations differently. AHRI notes that DOE, in clarifying why it believes it has such authority, can establish how it is acting consistently in terms of the analysis of benefits.

DOE Response: See previous response to AHRI comment on the issue of authority. On the issue of costs and benefits, DOE reemphasizes that its determination analysis is not assessing the costs and benefits associated with the updated 2021 IECC, that the determination is solely based on energy efficiency, and that the reported carbon emissions are reported only as supplemental information for the benefit of interested parties and in support of the directives of Executive Order 12866. To clarify the issue of timeframe, the emission estimates are based on one year (*i.e.,* the annual energy consumption estimated via the energy efficiency analysis). However, the step of projecting the associated CO_2 impacts captures the longer-term impact of those single-year emissions, as they persist in the atmosphere (and drive the damage impacts over the time they persist), which is then discounted to present value for the year when the emissions occur. DOE does not find an economic inconsistency in this approach to reporting emission benefits. Such a calculation is similar to life-cycle analysis, for instance, which is performed in a similar fashion, where a single year event occurs (*e.g.,* a purchase of more efficient equipment), but the energy savings are calculated over the time they exist (*e.g.,* the life of the equipment), and discounted back to the present value to reflect an overall life-cycle cost. DOE's reporting here of discounted damage impacts is consistent with that general approach.

Signing Authority

This document of the Department of Energy was signed on July 19, 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 July 22, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2021–15969 Filed 7–27–21; 8:45 am]

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DEPARTMENT OF ENERGY

[Case Number 2021–001; EERE–2021–BT–WAV–0001]

Energy Conservation Program: Notification of Petition for Waiver of Goodman Manufacturing Company, L.P. From the Department of Energy Central Air Conditioners and Heat Pumps Test Procedure and Notification of Grant of Interim Waiver

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notification of petition for waiver and grant of an interim waiver; request for comments.

SUMMARY: This notification announces receipt of and publishes a petition for waiver and interim waiver from Goodman Manufacturing Company, L.P. (''Goodman'') which seeks a waiver from the U.S. Department of Energy (''DOE'') test procedure used for determining the efficiency of specified central air conditioner (''CAC'') and heat pump (''HP'') basic models. DOE also gives notification of an Interim Waiver Order that requires Goodman to test and rate specified CAC and HP basic models in accordance with the alternate test procedure set forth in the Interim Waiver Order. DOE solicits comments, data, and information concerning Goodman's petition and its suggested alternate test procedure to inform DOE's final decision on Goodman's waiver request.

DATES: The Interim Waiver Order is effective on July 28, 2021. Written comments and information are requested and will be accepted on or before August 27, 2021.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments by email to the following address: *Goodman2021WAV0001@ee.doe.gov.* Include case number ''2021–001'' and Docket number ''EERE–2021–BT–WAV–0001'' 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 telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on this process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: The docket, 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 *https://www.regulations.gov/docket?D=EERE-2021-BT-WAV-0001.* 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 *https://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. Pete Cochran, 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) 586–9496. Email: *Peter.Cochran@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE is publishing Goodman's petition for waiver in its entirety, pursuant to 10 CFR 430.27(b)(1)(iv),[1] absent any information for which petitioner requested treatment as confidential business information. DOE invites all interested parties to submit in writing by August 27, 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 Rusty Tharp, *Russell.Tharp@goodmanmfg.com,* Goodman Manufacturing Company, L.P. 19001 Kermier Road, Waller, TX 77484.

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 will also 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 on 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 facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, 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. 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).

Case Number 2021–001

Interim Waiver Order

I. Background and Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[2] among other things, authorizes the U.S. Department of Energy (''DOE'') to regulate the energy efficiency of a number of consumer products and industrial equipment. Title III, Part B [3] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency for certain types of consumer products. These products include central air conditioners and central air conditioning heat pumps (''CACs'' and ''HPs''), the subject of this Interim Waiver Order. (42 U.S.C. 6292(a)(3))

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

[1] On December 11, 2020, DOE published an amendment to the waiver petition regulation at 10 CFR 430.27, which became effective beginning January 11, 2021. The Goodman petition was received prior to the effective date of that amendment and therefore is being processed pursuant to the regulation in effect at the time of receipt. References to 10 CFR 430.27 in this notification refer to the 10 CFR 430.27 in the 10 CFR parts 200 to 499 edition revised as of January 1, 2021.

[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.

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)) The current test procedure for CACs and HPs is contained in the Code of Federal Regulations (''CFR'') at 10 CFR part 430, subpart B, appendix M, *Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps* (''Appendix M''). Beginning January 1, 2023, any representations made with respect to the energy use, power, or efficiency of CACs and HPs must be based on the results of testing pursuant to 10 CFR part 430, subpart B, appendix M1, *Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps* (''Appendix M1'').

Under 10 CFR 430.27,[4] 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 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. *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)(1). 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)(2).

II. Goodman's Petition for Waiver and Interim Waiver

On January 8, 2021, Goodman filed a petition for waiver and interim waiver from the test procedure for CACs and HPs set forth in Appendix M and Appendix M1.[5] Goodman stated that Appendix M and Appendix M1[6] do not include provisions for determining cooling intermediate air volume rate, cooling minimum air volume rate, and heating intermediate air volume rate for the variable-speed coil-only single-split systems specified in its petition. Goodman asserts that although the CAC and HP test procedures at Appendix M and Appendix M1 generally provide for testing of variable-speed systems, they do not provide for testing of variable-speed coil-only single-split systems. Coil-only indoor units are distributed in commerce without an indoor blower or separate designated air mover. Such systems would be installed either with an existing air mover (*e.g.,* a furnace) or with a new air mover which is not designed by the manufacturer. The DOE test procedure provides instructions for setting airflow during testing to represent such indoor blowers or air movers. For example, the DOE test procedure provides instructions for setting minimum cooling air volume rate for ducted two-capacity coil-only systems in section 3.1.4.2(c) of Appendix M and Appendix M1. However, such instructions are not provided for testing variable-speed outdoor units paired with coil-only indoor units. Goodman seeks to use an alternate test procedure that provides instructions for setting air volume rates for all required tests to rate and test the basic models[7] listed in its petition.

Goodman also requests an interim waiver from the existing DOE test procedure. 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 the assertions in the petition, absent an interim waiver, the specified variable-speed coil-only single-split models that are subject of the waiver cannot be tested under the existing test procedure because

[4] On December 11, 2020, DOE published an amendment to the waiver petition regulation at 10 CFR 430.27, which became effective beginning January 11, 2021. The Goodman petition was received prior to the effective date of the amendment and therefore is being processed pursuant to the regulation in effect at the time of receipt. References to 10 CFR 430.27 in this notification refer to the 10 CFR 430.27 in the 10 CFR parts 200 to 499 edition revised as of January 1, 2021.

[5] The specific basic models for which the petition applies are 28 Daikin basic models: DX17VSS181AA, DX17VSS181BA, DX17VSS241AA, DX17VSS241BA, DX17VSS301AA, DX17VSS301BA, DX17VSS361AA, DX17VSS361BA, DX17VSS421AA, DX17VSS421BA, DX17VSS481AA, DX17VSS481BA, DX17VSS601AA, DX17VSS601BA, DZ17VSA181AA, DZ17VSA181BA, DZ17VSA241AA, DZ17VSA241BA, DZ17VSA301AA, DZ17VSA301BA DZ17VSA361AA, DZ17VSA361BA, DZ17VSA421AA, DZ17VSA421BA, DZ17VSA481AA, DZ17VSA481BA, DZ17VSA601AA, and DZ17VSA601BA. These basic model names were provided by Goodman in its revised petition on March 30, 2021.

[6] As noted, Appendix M1 is not required until January 1, 2023. However, manufacturers may determine it necessary to conduct testing under Appendix M1 in advance of that date to ensure compliance beginning on that future date.

[7] In Goodman's initial petition (EERE–2021–BT–WAV–0001–0001), three basic model numbers were identified. In an email received January 19, 2021 (EERE–2021–BT–WAV–0001–0002), Goodman clarified that one basic model number was listed in error, and that only two basic models are the subject of their petition. In an email received January 27, 2021 (EERE–2021–BT–WAV–0001–0003), Goodman clarified that they had made an error in listing the basic model numbers subject to their petition, and that there are 14 basic model numbers to which their petition applies. In an email received on March 30, 2021 (EERE–2021–BT–WAV–0001–0004), Goodman clarified another error in their 14 basic model numbers, which included wildcard characters. Goodman corrected their petition to list 28 basic model numbers without any wildcards.

Appendix M (and Appendix M1) does not include provisions for determining certain air volume rates for variable-speed coil-only single-split systems.

III. Requested Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures when making representations about the energy consumption and energy consumption costs of covered products. (42 U.S.C. 6293(c)). Consistency is important when making representations about the energy efficiency of products, including when demonstrating compliance with applicable DOE energy conservation standards. Pursuant to 10 CFR 430.27, and after consideration of public comments on the petition, DOE may establish in a subsequent Decision and Order an alternate test procedure for the basic models addressed by the Interim Waiver Order.

In its petition, Goodman notes that DOE has granted waivers to GD Midea Heating & Ventilating Equipment Co., Ltd. (''GD Midea'') and TCL air conditioner (zhongshan) Co. Ltd. (''TCL AC'') for variable-speed coil-only single-split systems. 83 FR 56065 (Nov. 9, 2018) and 84 FR 11941 (Mar. 29, 2019), respectively. The Midea and TCL waivers require use of an alternate test procedure that specifies the same air volume rate for all tests, consistent with the controls of the systems addressed in those waivers, which do not have the provision for control signals to vary indoor fan speed. In contrast, Goodman states that its systems do have provisions for installing control components that can select lower indoor fan speed when the outdoor unit compressor is not running at full speed. As described by Goodman, the control takes advantage of the fact that nearly all central air-conditioning and heating system indoor fans have multiple speeds. The alternate test procedure requested by Goodman would specify lower airflow rates for certain tests. This parallels the test procedure approach for ducted two-stage coil-only systems.[8]

In its petition, Goodman requests that it be allowed to use a similar alternate test procedure as that granted to GD Midea and TCL AC, but Goodman's alternate test procedure would be different in that it would utilize the procedures for ducted two-stage coil-only systems and use the cooling minimum air volume rate as determined in section 3.1.4.2.c of Appendix M and Appendix M1 for the cooling minimum, heating minimum, cooling intermediate, and heating intermediate test conditions. In the alternate test procedure requested by Goodman, the cooling minimum air volume rate is the higher of either the rate specified by the instructions included with the unit or 75% of the cooling full-load air volume rate. All other requirements of Appendix M (and Appendix M1) remain identical.

IV. Interim Waiver Order

DOE has reviewed Goodman's application for an interim waiver, the alternate test procedure requested by Goodman, publicly available specification sheets and installation manuals, and the additional materials Goodman provided in support of its petition. Goodman's alternate test procedure proposes for its variable-speed coil-only systems to be tested using a minimum air volume rate that is determined using the same procedures as for ducted two-capacity coil-only units. DOE does not expect that there would be any differences in the typical installation scenarios for two-capacity or variable-speed coil-only systems, *i.e.,* the typical control wiring for a furnace fan paired with a coil-only indoor unit would enable two stages of fan control, regardless of the number of compressor stages. Therefore, DOE agrees with aligning the minimum air volume rate between two-capacity and variable-speed coil-only indoor units and believes that the proposed alternate test procedure is appropriate for use with the models listed in Goodman's petition. Based on DOE's review, the alternate test procedure appears to allow for the accurate measurement of the energy efficiency of the products specified in Goodman's petition, while alleviating the testing problems associated with Goodman's testing for these basic models. Consequently, it appears likely that Goodman's petition for waiver will be granted. Furthermore, DOE has determined that it is desirable for public policy reasons to grant Goodman immediate relief pending a determination of the petition for waiver.

For the reasons stated, it is *ordered* that:

(1) Goodman must test and rate the following Daikin brand single-split central air conditioner and heat pump (''CAC and HP'') basic models, which are comprised of the individual combinations listed below,[9] using the alternate test procedure set forth in paragraph (2).

Basic model No.	Brand	Outdoor unit	Indoor unit
DX17VSS181AA	Daikin	DX17VSS181AA	CAPEA1818*4*
	Daikin	DX17VSS181AA	CHPE2430B4*
DX17VSS181BA	Daikin	DX17VSS181BA	CAPEA1818*4*
	Daikin	DX17VSS181BA	CHPE2430B4*
DX17VSS241AA	Daikin	DX17VSS241AA	CAPEA1818*4*
	Daikin	DX17VSS241AA	CAPEA2422*4*
	Daikin	DX17VSS241AA	CHPE3636B4*
	Daikin	DX17VSS241AA	CHPE3642C4*
DX17VSS241BA	Daikin	DX17VSS241BA	CAPEA1818*4*
	Daikin	DX17VSS241BA	CAPEA2422*4*
	Daikin	DX17VSS241BA	CHPE3636B4*
	Daikin	DX17VSS241BA	CHPE3642C4*
DX17VSS301AA	Daikin	DX17VSS301AA	CAPEA2422*4*
	Daikin	DX17VSS301AA	CHPE3636B4*
	Daikin	DX17VSS301AA	CHPE3642C4*
DX17VSS301BA	Daikin	DX17VSS301BA	CAPEA2422*4*
	Daikin	DX17VSS301BA	CHPE3636B4*
	Daikin	DX17VSS301BA	CHPE3642C4*
DX17VSS361AA	Daikin	DX17VSS361AA	CAPEA3026*4*
	Daikin	DX17VSS361AA	CHPE3636B4*

[8] Section 3.1.4.2.c of Appendix M, and section 3.1.4.2.c of Appendix M1, which becomes the appropriate test procedure on or after January 1, 2023.

[9] The specified basic models contain individual combinations, which do not specify a particular air mover, and that each consist of an outdoor unit that uses a variable speed compressor matched with a coil-only indoor unit.

Basic model No.	Brand	Outdoor unit	Indoor unit
	Daikin	DX17VSS361AA	CHPE3743C4*
	Daikin	DX17VSS361AA	CHPE3743D4*
DX17VSS361BA	Daikin	DX17VSS361BA	CAPEA3026*4*
	Daikin	DX17VSS361BA	CHPE3636B4*
	Daikin	DX17VSS361BA	CHPE3743C4*
	Daikin	DX17VSS361BA	CHPE3743D4*
DX17VSS421AA	Daikin	DX17VSS421AA	CAPE4860*4*
	Daikin	DX17VSS421AA	CHPE3743C4*
	Daikin	DX17VSS421AA	CHPE3743D4*
DX17VSS421BA	Daikin	DX17VSS421BA	CAPE4860*4*
	Daikin	DX17VSS421BA	CHPE3743C4*
	Daikin	DX17VSS421BA	CHPE3743D4*
DX17VS481AA	Daikin	DX17VSS481AA	CAPE4860*4*
	Daikin	DX17VSS481AA	CAPE4961*4*
	Daikin	DX17VSS481AA	CHPE3743C4*
	Daikin	DX17VSS481AA	CHPE4860D4*
DX17VSS481BA	Daikin	DX17VSS481BA	CAPE4860*4*
	Daikin	DX17VSS481BA	CAPE4961*4*
	Daikin	DX17VSS481BA	CHPE3743C4*
	Daikin	DX17VSS481BA	CHPE4860D4*
DX17VSS601AA	Daikin	DX17VSS601AA	CAPE4961*4*
	Daikin	DX17VSS601AA	CHPE4860D4*
DX17VSS601BA	Daikin	DX17VSS601BA	CAPE4961*4*
	Daikin	DX17VSS601BA	CHPE4860D4*
DZ17VSA181AA	Daikin	DZ17VSA181AA	CAPEA1818*4*
	Daikin	DZ17VSA181AA	CHPEA2430B4*
DZ17VSA181BA	Daikin	DZ17VSA181BA	CAPEA1818*4*
	Daikin	DZ17VSA181BA	CHPEA2430B4*
DZ17VSA241AA	Daikin	DZ17VSA241AA	CAPEA1818*4*
	Daikin	DZ17VSA241AA	CAPEA2422*4*
	Daikin	DZ17VSA241AA	CHPEA3636B4*
	Daikin	DZ17VSA241AA	CHPEA3642C4*
DZ17VSA241BA	Daikin	DZ17VSA241BA	CAPEA1818*4*
	Daikin	DZ17VSA241BA	CAPEA2422*4*
	Daikin	DZ17VSA241BA	CHPEA3636B4*
	Daikin	DZ17VSA241BA	CHPEA3642C4*
DZ17VSA301AA	Daikin	DZ17VSA301AA	CAPEA2422*4*
	Daikin	DZ17VSA301AA	CHPEA3636B4*
	Daikin	DZ17VSA301AA	CHPEA3642C4*
DZ17VSA301BA	Daikin	DZ17VSA301BA	CAPEA2422*4*
	Daikin	DZ17VSA301BA	CHPEA3636B4*
	Daikin	DZ17VSA301BA	CHPEA3642C4*
DZ17VSA361AA	Daikin	DZ17VSA361AA	CAPEA3026*4*
	Daikin	DZ17VSA361AA	CHPEA3636B4*
	Daikin	DZ17VSA361AA	CHPEA3743C4*
	Daikin	DZ17VSA361AA	CHPEA3743D4*
DZ17VSA361BA	Daikin	DZ17VSA361BA	CAPEA3026*4*
	Daikin	DZ17VSA361BA	CHPEA3636B4*
	Daikin	DZ17VSA361BA	CHPEA3743C4*
	Daikin	DZ17VSA361BA	CHPEA3743D4*
DZ17VSA421AA	Daikin	DZ17VSA421AA	CAPEA4860*4*
	Daikin	DZ17VSA421AA	CHPEA3743C4*
	Daikin	DZ17VSA421AA	CHPEA3743D4*
DZ17VSA421BA	Daikin	DZ17VSA421BA	CAPEA4860*4*
	Daikin	DZ17VSA421BA	CHPEA3743C4*
	Daikin	DZ17VSA421BA	CHPEA3743D4*
DZ17VSA481AA	Daikin	DZ17VSA481AA	CAPEA4860*4*
	Daikin	DZ17VSA481AA	CAPEA4961*4*
	Daikin	DZ17VSA481AA	CHPEA3743C4*
	Daikin	DZ17VSA481AA	CHPEA4860D4*
DZ17VSA481BA	Daikin	DZ17VSA481BA	CAPEA4860*4*
	Daikin	DZ17VSA481BA	CAPEA4961*4*
	Daikin	DZ17VSA481BA	CHPEA3743C4*
	Daikin	DZ17VSA481BA	CHPEA4860D4*
DZ17VSA601AA	Daikin	DZ17VSA601AA	CAPEA4961*4*
	Daikin	DZ17VSA601AA	CHPEA4860D4*
DZ17VSA601BA	Daikin	DZ17VSA601BA	CAPEA4961*4*
	Daikin	DZ17VSA601BA	CHPEA4860D4*

(2) The alternate test procedure for the Goodman basic models identified in paragraph (1) of this Interim Waiver Order is the test procedure for CACs and HPs prescribed by DOE at 10 CFR part 430, subpart B, appendix M (''Appendix

M'') and, for representations made on and after January 1, 2023, at 10 CFR part 430, subpart B, appendix M1 (''Appendix M1''), except that for coil-only combinations:

In 3.1.4.2., *Cooling Minimum Air Volume Rate,* include:

f. For ducted variable-speed compressor systems tested with a coil-only indoor unit, the cooling minimum air volume rate is the higher of (1) the rate specified by the installation instructions included with the unit by the manufacturer or (2) 75 percent of the cooling full-load air volume rate. During the laboratory tests on a coil-only (fanless) system, obtain this cooling minimum air volume rate regardless of the pressure drop across the indoor coil assembly.

In 3.1.4.3., *Cooling Intermediate Air Volume Rate,* include:

d. For ducted variable-speed compressor systems tested with a coil-only indoor unit, the cooling intermediate air volume rate is the same as the cooling minimum air volume rate determined in section 3.1.4.2.f, without regard to the pressure drop across the indoor coil assembly.

In 3.1.4.6., *Heating Intermediate Air Volume Rate* (limited to ducted coil-only variable-speed heat pumps), include:

d. For ducted variable-speed compressor systems tested with a coil-only indoor unit, use the heating minimum air volume rate as determined in section 3.1.4.5.1.a.(3), without regard to the pressure drop across the indoor coil assembly.

The cooling minimum, cooling intermediate, heating minimum, and heating intermediate air volume rates are all identical under these provisions. All other requirements of Appendix M and Appendix M1 remain applicable.

(3) *Representations.* Goodman may not make representations about efficiency of the basic models listed in paragraph (1) for compliance, marketing, or other purposes unless that basic model has been tested in accordance with the provisions set forth in this alternate test procedure and such representations fairly disclose the results of such testing.

(4) This Interim Waiver Order shall remain in effect according to the provisions of 10 CFR 430.27.

(5) This Interim Waiver Order is issued on the condition that the statements, representations, and documentary materials provided by Goodman are valid. If Goodman makes any modifications to the controls or configurations of a basic model subject to this Interim Waiver Order, such modifications will render the waiver invalid with respect to that basic model, and Goodman will either be required to use the current Federal test method or submit a new application for a test procedure waiver. DOE may rescind or modify this Interim Waiver Order at any time if it determines the factual basis underlying the petition for Interim Waiver Order is incorrect, or the results from the alternate test procedure are unrepresentative of a basic models' true energy consumption characteristics. 10 CFR 430.27(k)(1). Likewise, Goodman may request that DOE rescind or modify the Interim Waiver Order if Goodman discovers an error in the information provided to DOE as part of its petition, determines that the Interim Waiver Order is no longer needed, or for other appropriate reasons. 10 CFR 430.27(k)(2).

(6) Issuance of this Interim Waiver Order does not release Goodman from the applicable requirements set forth at 10 CFR part 429.

DOE makes decisions on waivers and interim waivers for only those basic models specifically set out in the petition, not future models that may be manufactured by the petitioner. Goodman may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional basic models of CACs and HPs. Alternatively, if appropriate, Goodman may request that DOE extend the scope of a waiver or an interim waiver to include additional basic models employing the same technology as the basic model(s) set forth in the original petition consistent with 10 CFR 430.27(g).

Signing Authority

This document of the Department of Energy was signed on July 22, 2021, by Kelly J. 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 July 23, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

***** Public Version *****

SUBMITTED VIA EMAIL to *AS_Waiver_Requests@ee.doe.gov*

January 7, 2021

U.S. Department of Energy
Building Technologies Program
Test Procedure Waiver
1000 Independence Avenue SW,
Mailstop EE–5B
Washington, DC 20585–0121

Re: Petition for Waiver and Interim Waiver on Test Procedure for Certain Variable-Speed Central Air Conditioners

Dear Sir/Ms.: Goodman Manufacturing Company, L.P. (''Goodman'') respectfully submits petitions for waiver and interim waiver to the Department of Energy (''DOE'') from certain provisions in the current federal test procedure for central air conditioners and heat pumps in Appendix M to Subpart B of 10 CFR part 430 (''Appendix M'') applicable until January 1, 2023, and the future test procedure set forth in Appendix M1 to Subpart B of 10 CFR part 430 (''Appendix M1'') and applicable on or after January 1, 2023, specifically for ducted coil-only variable-speed single-split system central air conditioners (''VSAC'') and variable-speed single-split system heat pumps (''VSHP'').

Goodman is a member of Daikin Group, one of the largest heating, ventilation and air conditioning (''HVAC'') manufacturers in the world. Goodman is headquartered in Houston, Texas, and employs thousands of workers across the United States. The company manufactures residential and light commercial heating and cooling equipment, and its products are sold and installed by contractors in every American state.

I. Introduction

While the federal test procedures in Appendix M and Appendix M1 specify tests for variable- speed systems, provisions specific to testing ducted coil-only VSACs and VSHPs do not exist in the test procedure. As explained further below, Goodman is seeking a waiver and an interim waiver from the federal test procedure to allow for testing and representations of performance metrics for certain ducted coil-only VSACs and VSHPs. Goodman's petition is consistent with previous DOE Decisions and Orders that granted waivers to other manufacturers

from specified portions of the DOE test procedure for determining the energy efficiency of central air conditioners and heat pumps.[1]

Goodman is asking the DOE to approve a proposed alternate test procedure that differs only slightly from the alternate test procedure DOE previously approved for other manufacturers. The difference is rather than using the full-load air volume rate for all tests, Goodman proposes to use the minimum air volume rate for intermediate and minimum speed tests, which aligns with the process in Appendix M and Appendix M1 for ducted two-stage coil-only systems.[2] Our request would utilize the cooling minimum air volume rate for cooling intermediate and cooling minimum tests. Further, in lieu of using the heating full-load air volume rate for the heating intermediate air volume rate, Goodman proposes to use the heating minimum air volume rate for ducted two-stage coil-only systems determined in section 3.1.4.5.1.a.(3). of the current federal test procedure. Additional details about Goodman's proposed alternate test procedure are provided in Section V of this petition.

Some information provided is confidential business information (''CBI''), therefore in accordance with 10 CFR 1004.11, we are submitting one copy of this petition with CBI information redacted. CBI information is indicated by being enclosed in square brackets, ''[''and'']''.

II. Particular Basic Models for Which Goodman Requests a Waiver and Interim Waiver

As required by 10 CFR 430.27(b)(i), Goodman is providing, in Appendix I of this petition, a list of the basic models for which Goodman requests a waiver from the test procedure. Each indoor unit is equipped with an electronic expansion valve. As a result, both the outdoor unit and indoor coil will communicate with each other to control superheat and subcooling. Our system control has an output that allows for a standard single-pole double-throw relay (''SPDT'') to be field installed to control indoor fan speed.[3] For conditions other than full-load, lowering the air volume rate from full-load to a lesser quantity provides benefits to the consumer by helping to maintain humidity control, providing more comfortable discharge air temperatures and reducing indoor fan energy consumption. Therefore, allowing differing airflows during the test will result in a better representation of the unit's actual performance for consumers and further DOE's goal under EPCA of more accurate testing.

III. List of Manufacturers

As required by 10 CFR 430.27(b)(ii), Goodman is providing, in Appendix II of this petition, a list of manufacturers of all other basic models distributed in commerce in the United States and known to Goodman to incorporate design characteristic(s) similar to those found in the basic models that are the subject of the petition.

IV. Grounds for Petition of Waiver

Goodman notes that the federal test procedures in Appendix M and Appendix M1 do not include provisions to determine the following cooling air volume rates for ducted coil-only VSACs and VSHPs: Cooling minimum, cooling intermediate, and heating intermediate (limited to ducted coil-only VSHPs). Specifically, sections 3.1.4.2 on cooling minimum air volume rate, 3.1.4.3 on cooling intermediate air volume rate, and 3.1.4.6 on heating intermediate air volume rate in Appendix M and Appendix M1 do not include adequate procedures for testing ducted coil-only VSACs/VSHPs. However, determination of these cooling/heating air volume rates is essential to establishing performance metrics, determining and certifying compliance in accordance with DOE's current requirements.[4] Although a coil-only represented value is not prohibited for ducted coil-only VSACs and VSHPs under 10 CFR 429.16(a) and the scopes of both Appendix M and Appendix M1 include such systems, the lack of coverage within the current test procedure to determine the cooling and heating air volume rates for such systems makes it impossible to make appropriate representations of performance metrics for these systems.[5]

As described generally above, our VSACs and VSHPs, if used in a coil-only application, have design characteristics for which the Appendix M and Appendix M1 test procedures cannot accurately represent their true energy consumption. Therefore, using the current test procedures without a waiver would result in materially inaccurate comparative data. 10 CFR 429.27(a)(1) and 10 CFR 429.27(f)(2). The remainder of this section describes in detail the design characteristics that form the basis for our request for waiver and interim waiver.

The basic models for which we request a test procedure waiver and interim waiver will require the use of *[REDACTED]*

For these reasons, specifying Cooling Minimum Airflow Rate or Heating Minimum Airflow Rate, as appropriate for the cooling or heating intermediate and minimum tests, will ensure that the test procedure matches the true operation, and therefore the true energy consumption, of our systems when installed in a consumer's home.

$$\text{Cooling intermediate speed} = \text{Cooling minimum speed} + \frac{\text{Cooling full speed} - \text{Cooling minimum speed}}{3}$$

Figure 2. DOE Formula for Intermediate Compressor Speed

[1] See *e.g.,* TCL AC (Case No. 2018–009, Docket EERE–2018–BT–WAV–0013, granted 3/29/19, published 84FR11941) and GD Midea (Case No. 2017–013, Docket EERE–2017–BT–WAV–0060, granted 11/09/18, published 83FR56065).

[2] Section 3.1.4.2.c. of Appendix M prior to January 1, 2023, and Section 3.1.4.2.c. of Appendix M1 on or after January 1, 2023.

[3] The installer would supply a SPDT relay to control the fan speed of the existing furnace. This is the same scheme used to change fan speed for two-stage systems today that is covered in today's DOE test procedure for those products. For two-stage systems, the installer will use a 24-volt signal from the room thermostat (either Y1 or Y2) to apply to the coil of the SPDT relay, which switches the fan speed as needed. For Goodman's variable speed applications, the installer will use the 24-volt signal from the electronic expansion valves in both the outdoor and indoor units.

[4] Energy conservation standards in 10 CFR part 430.32(c) and certification and compliance in accordance with 10 CFR part 429.

[5] Table 8 in Appendix M to Subpart B of 10 CFR part 430 specifies cooling mode test conditions for units having a variable-speed compressor, and these tests cannot be appropriately conducted without clear provisions pertaining to the three separate cooling air volume rates. Table 14 in Appendix M to Subpart B of 10 CFR part 430 specifies heating mode test conditions for units having a variable-speed compressor, and these tests cannot be appropriately conducted without clear provisions pertaining to the three separate heating air volume rates.

[Redacted]

Just as with any new air conditioner or heat pump installation using an existing furnace [8] the contractor who installs one of our VSAC or VSHP will need to determine the appropriate speed tap(s) of the existing furnace blower to connect to the furnace control. The airflow rates at which our systems will have certified performance will be published in both our technical literature and on the AHRI Directory of Certified Product Performance.[9]

Many existing furnaces with permanent split capacitor (''PSC'') motors, which is presently most of the installation base, typically have four or five speed taps for the motors. Many furnaces Goodman manufactured for years [10] had PSC motors with speed taps for ''hi,'' ''med,'' ''med-low'' and ''low'' airflow rates. For ''high stage'' cooling/heating operation, most field applications of single-stage or two-stage air conditioners or heat pumps would use one of the higher speed taps (such as ''hi'' or ''med''). For application of our variable speed air conditioners or heat pumps, we would recommend using the same speed tap for the higher airflow as would be used for ''high stage'' of a two-stage unit or for single-stage.

For ''low stage'' cooling/heating operation, most field applications of two-stage units would use the lowest or second lowest of the speed taps (such as ''low'' or ''med-low''). For application of our variable speed air conditioners or heat pumps, we would recommend using the same speed tap for the lower airflow as would be used for ''low stage'' of a two-stage unit.

This concludes the description of the design characteristics of our VSACs and VSHPs which render the current Appendix M and Appendix M1 test procedures incapable of providing accurate and representative measures of their true energy consumption. The next section provides our suggested modifications to Appendix M and Appendix M1 that will provide accurate and representative test data for our VSAC and VSHP.

V. Proposed Alternate Test Procedures

As required by 10 CFR 430.27(b)(iii), Goodman is providing the proposed revisions below to Appendix M and Appendix M1 as the alternative to evaluate the performance of the basic models listed in Appendix I of this petition.

The alternate test procedures for the Goodman basic models identified in Appendix I of this petition are identical to the test procedures prescribed in Appendix M and Appendix M1. The exception is as described below, for coil-only combinations, the cooling minimum air volume rate as determined in section 3.1.4.2.c. of Appendix M and Appendix M1 shall be used as the cooling intermediate and cooling minimum air volume rates. The heating minimum air volume rate as determined in section 3.1.4.5.1.a.(3). of both Appendix M and Appendix M1 shall also be used as the heating intermediate air volume rate.[11] All other requirements of Appendix M and Appendix M1 remain identical.

In 3.1.4.2, Cooling Minimum Air Volume Rate, include the following:

f. For ducted variable-speed compressor systems tested with a coil-only indoor unit, the cooling minimum air volume rate is the higher of (1) the rate specified by the installation instructions included with the unit by the manufacturer or (2) 75 percent of the cooling full-load air volume rate. During the laboratory tests on a coil-only (fanless) system, obtain this cooling minimum air volume rate regardless of the pressure drop across the indoor coil assembly.

In 3.1.4.3, Cooling Intermediate Air Volume Rate, include the following:

d. For ducted variable-speed compressor systems tested with a coil-only indoor unit, use the cooling minimum air volume rate as determined in 3.1.4.2(f), without regard to the pressure drop across the indoor coil assembly.

In 3.1.4.6, Heating Intermediate Air Volume Rate (limited to ducted coil-only VSHPs), include the following:

d. For ducted variable-speed compressor systems tested with a coil-only indoor unit, use the heating minimum air volume rate as determined in 3.1.4.5.1.a.(3), without regard to the pressure drop across the indoor coil assembly.

No alternate test procedure is being proposed for Cooling Full-load Air Volume Rate, Heating Minimum Air Volume Rate (limited to ducted coil-only VSHPs), and Heating Full-Load Air Volume Rate (limited to ducted coil-only VSHPs). Cooling Full-load Air Volume Rate will be determined using section 3.1.4.1.1.c. of the federal test procedures set forth in Appendix M and M1. Heating Minimum Air Volume Rate will be determined using section 3.1.4.5.1.a.(3) of the federal test procedures set forth in Appendix M and M1. Heating Full-load Air Volume Rate will be determined using section 3.1.4.4.1.a.(3) of the federal test procedures set forth in Appendix M and M1.

VI. Petition for Interim Waiver

Pursuant to 10 CFR part 430.27(b)(2), Goodman also hereby applies for an interim waiver of the applicable test procedure requirements for the basic models listed in Appendix I of this petition.

Goodman believes the petition for waiver is likely to be granted, as evidenced in Section I and Section IV of this document. Without waiver relief, Goodman would be subject to requirements under the current federal test procedure that would render it impossible for Goodman to make appropriate representations of performance metrics for the basic models listed in Appendix I of this petition, thereby precluding Goodman from distributing these basic models into commerce and limiting consumer choice and competition. Goodman respectfully requests DOE to consider this public policy aspect and grant immediate relief pending a determination on the petition for waiver, while also accounting for any similar decisions made in the past for other manufacturers on the same matter.

Additionally, Goodman is likely to suffer economic hardship and a competitive disadvantage if DOE does not grant its interim waiver request. Absent an interim waiver, the basic models listed in Appendix I of this petition will continue to remain disadvantaged in the marketplace relative to other products. If Goodman must wait for completion of the waiver consideration and issuance process, it may well be forced to delay the opportunity to offer high efficiency, energy saving VSAC and VSHP models to U.S. consumers, as well as delay recouping production and marketing costs associated with introducing the basic models via product sales into the U.S. market.

VII. Concluding Remarks

Goodman respectfully requests that DOE grant its petitions for waiver and interim waiver of the applicable test procedure for the specified basic models. Goodman requests expedited treatment of both the petitions and is willing to provide promptly any additional information DOE requires to

[8] Regardless of whether the new air conditioner or heat pump is single-stage or two-stage.

[9] *https://www.ahridirectory.org/Search/SearchHome.*

[10] Prior to Fan Energy Rating (''FER'') rule that went into effect 7/3/2019.

[11] Note that provisions in section 3.1.4.5.2.d. specific to ducted two-stage coil-only system northern heat pumps and ducted two-stage heating-only coil-only system heat pumps do not apply to the basic models addressed in this petition.

act expeditiously, as receipt of the waivers will facilitate Goodman's timely production of the applicable models for the upcoming cooling season. If you have any questions regarding Goodman's petitions for waiver and interim waiver, please do not hesitate to contact myself or Rusty Tharp, Senior Director of Regulatory Affairs (713/263–5906 or *rusty.tharp@goodmanmfg.com*).

Sincerely,
/s/
Sukru Erisgen
Vice President of Engineering, Tel: 713/861–2500,
Email: *sukru.erisgen@goodmanmfg.com*

Appendix I

The waiver and interim waiver requests apply to the following basic models. Note that for all coil-only systems, there is no indoor unit with fan.

Manufacturer (outdoor unit or package unit)	Manufacturer (indoor unit)	Brand name(s)	Basic model No. (No. unique to the basic model)	Individual model No. covered by basic model (outdoor unit or package unit)	Individual model No. (indoor unit), if applicable
Daikin	Daikin	Daikin	DX17VSS181*	DX17VSS181*	CAPEA1818*4*
Daikin	Daikin	Daikin		DX17VSS181*	CHPE2430B4*
Daikin	Daikin	Daikin	DX17VSS241*	DX17VSS241*	CAPEA1818*4*
Daikin	Daikin	Daikin		DX17VSS241*	CAPEA2422*4*
Daikin	Daikin	Daikin		DX17VSS241*	CHPE3636B4*
Daikin	Daikin	Daikin		DX17VSS241*	CHPE3642C4*
Daikin	Daikin	Daikin	DX17VSS301*	DX17VSS301*	CAPEA2422*4*
Daikin	Daikin	Daikin		DX17VSS301*	CHPE3636B4*
Daikin	Daikin	Daikin		DX17VSS301*	CHPE3642C4*
Daikin	Daikin	Daikin	DX17VSS361*	DX17VSS361*	CAPEA3026*4*
Daikin	Daikin	Daikin		DX17VSS361*	CHPE3636B4*
Daikin	Daikin	Daikin		DX17VSS361*	CHPE3743C4*
Daikin	Daikin	Daikin		DX17VSS361*	CHPE3743D4*
Daikin	Daikin	Daikin	DX17VSS421*	DX17VSS421*	CAPE4860*4*
Daikin	Daikin	Daikin		DX17VSS421*	CHPE3743C4*
Daikin	Daikin	Daikin		DX17VSS421*	CHPE3743D4*
Daikin	Daikin	Daikin	DX17VSS481*	DX17VSS481*	CAPE4860*4*
Daikin	Daikin	Daikin		DX17VSS481*	CAPE4961*4*
Daikin	Daikin	Daikin		DX17VSS481*	CHPE3743C4*
Daikin	Daikin	Daikin		DX17VSS481*	CHPE4860D4*
Daikin	Daikin	Daikin	DX17VSS601*	DX17VSS601*	CAPE4961*4*
Daikin	Daikin	Daikin		DX17VSS601*	CHPE4860D4*
Daikin	Daikin	Daikin	DZ17VSA181*	DZ17VSA181*	CAPEA1818*4*
Daikin	Daikin	Daikin		DZ17VSA181*	CHPEA2430B4*
Daikin	Daikin	Daikin	DZ17VSA241*	DZ17VSA241*	CAPEA1818*4*
Daikin	Daikin	Daikin		DZ17VSA241*	CAPEA2422*4*
Daikin	Daikin	Daikin		DZ17VSA241*	CHPEA3636B4*
Daikin	Daikin	Daikin		DZ17VSA241*	CHPEA3642C4*
Daikin	Daikin	Daikin	DZ17VSA301*	DZ17VSA301*	CAPEA2422*4*
Daikin	Daikin	Daikin		DZ17VSA301*	CHPEA3636B4*
Daikin	Daikin	Daikin		DZ17VSA301*	CHPEA3642C4*
Daikin	Daikin	Daikin	DZ17VSA361*	DZ17VSA361*	CAPEA3026*4*
Daikin	Daikin	Daikin		DZ17VSA361*	CHPEA3636B4*
Daikin	Daikin	Daikin		DZ17VSA361*	CHPEA3743C4*
Daikin	Daikin	Daikin		DZ17VSA361*	CHPEA3743D4*
Daikin	Daikin	Daikin	DZ17VSA421*	DZ17VSA421*	CAPEA4860*4*
Daikin	Daikin	Daikin		DZ17VSA421*	CHPEA3743C4*
Daikin	Daikin	Daikin		DZ17VSA421*	CHPEA3743D4*
Daikin	Daikin	Daikin	DZ17VSA481*	DZ17VSA481*	CAPEA4860*4*
Daikin	Daikin	Daikin		DZ17VSA481*	CAPEA4961*4*
Daikin	Daikin	Daikin		DZ17VSA481*	CHPEA3743C4*
Daikin	Daikin	Daikin		DZ17VSA481*	CHPEA4860D4*
Daikin	Daikin	Daikin	DZ17VSA601*	DZ17VSA601*	CAPEA4961*4*
Daikin	Daikin	Daikin		DZ17VSA601*	CHPEA4860D4*

Appendix II

The following are manufacturers of all other basic models distributed in commerce in the United States and known to Goodman to incorporate design characteristics similar to those found in the basic models that are the subject of the petition for waiver and interim waiver:

- Aaon, Inc.
- Advanced Distributor Products, LLC
- Allied Air Enterprises, LLC
- Allstyle Coil Company, LP
- Aspen Manufacturing, LLC
- Bosch Thermotechnology Corp
- Carrier Corporation
- ECR International
- Fujitsu General America, Inc.
- GD Midea Heating & Ventilating Equipment Co., Ltd.
- Johnson Controls, Inc.
- Lennox International Inc.
- LG Electronics U.S.A., Inc.
- Mitsubishi Electric Cooling & Heating
- Mortex Products, Inc.
- National Comfort Products
- Nortek Global HVAC, LLC
- Rheem Manufacturing Company
- Samsung Electronics Co. Ltd.
- Trane Technologies
- TCL air conditioner (zhongshan) Co., Ltd.
- Unico, Inc.

[FR Doc. 2021–16021 Filed 7–27–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[EERE–2020–BT–DET–0017]

Final Determination Regarding Energy Efficiency Improvements in ANSI/ASHRAE/IES Standard 90.1–2019

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notification of determination.

SUMMARY: The U.S. Department of Energy (DOE) has reviewed ANSI/ASHRAE/IES Standard 90.1–2019: *Energy Standard for Buildings, Except Low-Rise Residential Buildings* and determined the updated edition would improve energy efficiency in commercial buildings subject to the code. DOE analysis indicates that buildings meeting Standard 90.1–2019, as compared with buildings meeting the 2016 edition, would result in national site energy savings of 4.7 percent, source energy savings of 4.3 percent, and energy cost savings of approximately 4.3 percent of commercial building energy consumption. Upon publication of this affirmative determination, each State is required to review the provisions of their commercial building code regarding energy efficiency, and, as necessary, update their codes to meet or exceed Standard 90.1–2019. Additionally, this notice provides guidance on state code review processes and associated certifications.

DATES: Certification statements provided by States shall be submitted by July 28, 2023.

ADDRESSES: A copy of the supporting analysis, as well as links to the Federal docket and public comments received, are available at: *https://www.energycodes.gov/development/determinations.*

Certification Statements must be addressed to the Building Technologies Office—Building Energy Codes Program Manager, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW, EE–5B, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

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For legal issues, please contact Matthew Ring; U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue SW, GC–33, Washington, DC 20585; (202) 586–2555; *Matthew.Ring@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Title III of the Energy Conservation and Production Act, as amended (ECPA), establishes requirements for DOE to review consensus-based building energy conservation standards. (42 U.S.C. 6831 *et seq.*) Section 304(b), as amended, of ECPA provides that whenever the ANSI/ASHRAE/IESNA [1] Standard 90.1–1989 (Standard 90.1–1989 or 1989 edition), or any successor to that code, is revised, the Secretary of Energy (Secretary) must make a determination, not later than 12 months after such revision, whether the revised code would improve energy efficiency in commercial buildings, and must publish notice of such determination in the **Federal Register**. (42 U.S.C. 6833(b)(2)(A)) If the Secretary makes an affirmative determination, within two years of the publication of the determination, each State is required to certify that it has reviewed and updated the provisions of its commercial building code regarding energy efficiency with respect to the revised or successor code and include in its certification a demonstration that the provisions of its commercial building code, regarding energy efficiency, meet or exceed the revised Standard. (42 U.S.C. 6833(b)(2)(B)(i)) Standard 90.1–2019, the most recent edition, was published in October 2019, triggering the statutorily required DOE review process. The Standard is developed under ANSI-approved consensus procedures,[2] and is under continuous maintenance under the purview of an ASHRAE Standing Standard Project Committee (commonly referenced as SSPC 90.1). ASHRAE has an established program for regular publication of addenda, or revisions, including procedures for timely, documented, consensus action on requested changes to the Standard. More information on the consensus process and ANSI/ASHRAE/IES Standard 90.1–2019 is available at *https://www.ashrae.org/technical-resources/bookstore/standard-90-1.*

In addition, on January 20, 2021, the President issued Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.'' 86 FR 7037 (Jan. 25, 2021). The Executive Order directed DOE to consider publishing for notice and comment a proposed rule suspending, revising, or rescinding the final technical determination regarding the ASHRAE Standard 90.1–2016 by May 2021. *Id.* at 86 FR 7038. In response, DOE has reviewed the current Standard 90.1–2019 so that DOE's determination under section 304(b) of ECPA reflects the most recent version of Standard 90.1, and to facilitate State and local adoption of the Standard, which will improve energy efficiency in the nation's commercial buildings.

To meet the statutory requirement, and to satisfy the directive issued under Executive Order 13990, DOE issued a preliminary determination and published supporting analysis to quantify the expected energy savings associated with Standard 90.1–2019 relative to the previous 2016 version. The preliminary determination and analysis are available at: *https://www.regulations.gov/document/EERE-2020-BT-DET-0017-0001.*

II. Public Participation

In an April 21, 2021 **Federal Register** notice, DOE requested public comments on its preliminary analysis of Standard 90.1–2019. (82 FR 34513) DOE received eight public comments, all of which DOE considered in arriving at its final determination. DOE has now issued the final analysis of the expected energy savings associated with Standard 90.1–2019 as compared to Standard 90.1–2016. A summary of public comments received, and DOE responses, is included in Appendix A of this Notice. The final analysis is available at: *https://www.energycodes.gov/development/determinations.*

III. Determination Statement

Commercial buildings meeting Standard 90.1–2019 (compared to the previous 2016 edition) are expected to result in the following savings on a weighted national average basis:

- 4.7 percent *site* energy savings
- 4.3 percent *source* energy savings
- 4.3 percent energy *cost* savings

DOE has rendered the conclusion that Standard 90.1–2019 will improve energy efficiency in commercial buildings, and, therefore, receives an affirmative determination under Section 304(a) of ECPA. States can experience significant benefits by updating their codes to reflect current construction

[1] ANSI—American National Standards Institute; ASHRAE—American Society of Heating, Refrigerating, and Air-Conditioning Engineers; IES—Illuminating Engineering Society.

[2] See *https://www.ansi.org/american-national-standards/info-for-standards-developers/standards-developers.*

standards, a total estimated $63.80 billion in energy cost savings and 476.77 MMT of avoided CO_2 emissions in commercial buildings (cumulative 2010 through 2040), or $2.80 billion in annual energy cost savings and 21.16 MMT in annual avoided CO_2 emissions (annually by 2030). These benefits, including emissions reductions, are estimated in a revised 2021 interim report addressing building code impacts.[3] Though not quantified in the interim report, there may also be costs to regulated entities as a result of updated commercial building codes.

IV. State Certification

Upon publication of this affirmative determination, each State is required to review and update, as necessary, the provisions of its commercial building energy code to meet or exceed the provisions of the 2019 edition of Standard 90.1. (42 U.S.C. 6833(b)(2)(B)(i)) This action is required not later than 2 years from the date the final Notice of Determination is published in the **Federal Register**, unless an extension is provided.

State Review & Update

DOE recognizes that some States do not have a State commercial building energy code, or have a State code that does not apply to all commercial buildings. States may base their certifications on reasonable actions by units of general-purpose local government. Each such State must review the information obtained from the local governments, and gather any additional data and testimony in preparing its own certification.

The applicability of any State revisions to new or existing buildings would be governed by the State building codes. States should be aware that the scope of Standard 90.1 includes high-rise (greater than three stories) multi-family residential buildings, and hotels, motels, and other transient residential building types of any height, as commercial buildings for energy code purposes. Consequently, commercial buildings, for the purposes of certification to DOE, would include high-rise multi-family residential buildings, hotels, motels, and other transient residential building types of any height.

State Certification Statements

Section 304(b) of ECPA, as amended, requires each State to certify to the Secretary of Energy that it has reviewed and updated the provisions of its commercial building energy code regarding energy efficiency to meet or exceed the Standard 90.1–2019. (42 U.S.C. 6833(b)) The certification must include a demonstration that the provisions of the State's commercial building energy code regarding energy efficiency meets or exceeds Standard 90.1–2019. If a State intends to certify that its commercial building energy code already meets or exceeds the requirements of Standard 90.1–2019, the State should provide an explanation of the basis for this certification (*e.g.,* Standard 90.1–2019 is incorporated by reference in the State's building code regulations). The chief executive of the State (*e.g.,* the governor), or a designated State official (*e.g.,* director of the State energy office, State code commission, utility commission, or equivalent State agency having primary responsibility for commercial building energy codes), would provide the certification to the Secretary. Such a designated State official would also provide the certifications regarding the codes of units of general purpose local government based on information provided by responsible local officials.

The DOE Building Energy Codes Program tracks and reports State code adoption and certification.[4] Once a State has adopted a new commercial energy code, DOE typically provides software, training, and support for the new code as long as the new code is based on the national model code (*i.e.,* ASHRAE Standard 90.1–2019). DOE has issued previous guidance on how it intends to respond to technical assistance requests related to implementation resources, such as building energy code compliance software. (79 FR 15112) DOE Secretary is required to provide incentive funding to States to implement the requirements of section 304, and to improve and implement State residential and commercial building energy efficiency codes, including increasing and verifying compliance with such codes. (*See* 42 U.S.C. 6833(e)) Some States develop their own codes that are only loosely related to the national model codes, and DOE may not be able to provide technical support for those codes. DOE does not prescribe how each State adopts and enforces its energy codes.

Requests for Extensions

Section 304(c) of ECPA requires that the Secretary permit an extension of the deadline for complying with the certification requirements described previously, if a State can demonstrate that it has made a good faith effort to comply with such requirements and that it has made significant progress toward meeting its certification obligations. (42 U.S.C. 6833(c)) Such demonstrations could include one or both of the following: (1) A plan for response to the requirements stated in Section 304; or (2) a statement that the State has appropriated or requested funds (within State funding procedures) to implement a plan that would respond to the requirements of Section 304 of ECPA. This list is not exhaustive. Requests are to be sent to the address provided in the **ADDRESSES** section, or may be submitted to *BuildingEnergyCodes@ee.doe.gov.*

Appendix A

DOE received comments on its preliminary determination and supporting analysis of Standard 90.1–2019 from the following stakeholders:

- U.S. Army
- U.S. Air Force
- Responsible Energy Codes Alliance (RECA)
- Edison Electric Institute (EEI)
- Air-Conditioning, Heating, and Refrigeration Institute (AHRI)
- Three individual commenters

The comments are summarized below and are available at: *https://www.regulations.gov/document/EERE-2020-BT-DET-0017-0001/comment.* DOE responded to all comments received. Several issues raised by commenters are distinct from the energy efficiency analysis DOE has undertaken pursuant to its statutory obligations. These include the social cost of carbon, life-cycle cost, and cost effectiveness; among these issues, social cost of carbon garnered the most attention from commenters and is therefore emphasized in the responses below.

Comment: The anonymous submitter of comment ID EERE–2020–BT–DET–0017–0002 stated that the reduction in emissions is low for a five-year code cycle and the standards should be stricter.

DOE response: DOE notes that the reported savings estimates represent a 3-year code cycle—Standard 90.1–2019 compared to the 2016 edition—and not 5 years as stated by the commenter. The stringency of each version of 90.1 is determined by the ANSI consensus process used to revise Standard 90.1, as administered by ASHRAE. While DOE is directed to participate in the ASHRAE consensus process, the Department holds no special status. DOE's role in code review and consensus processes for commercial energy codes, including Standard 90.1, is further described at *https://www.energycodes.gov/development/commercial/codes.*

Comment: The U.S. Army stated that some of the requirements are not ''reasonable'' or ''practicable'' and that requirements should

[3] See *https://www.pnnl.gov/main/publications/external/technical_reports/PNNL-31437.pdf* for the 2021 interim code impact report. Financial benefits are calculated by applying historical and future fuel prices to site energy savings and by discounting future savings to 2020 dollars. Historical and future real fuel prices are obtained through EIA's AEO 2015 report (EIA 2015).

[4] Available at *https://www.energycodes.gov/adoption/states.*

be operable and maintainable with typical maintenance staff and budgets.

DOE response: DOE notes that, in making its determination, its directive under ECPA is to assess whether updated editions of Standard 90.1 would improve *energy efficiency* in commercial buildings. DOE believes that the issue of whether code provisions are ''reasonable'' and ''practicable'' is complex and most appropriately addressed directly by the established code development process, as administered by ASHRAE, used for Standard 90.1. That process is inclusive of a wide range and variety of stakeholders, and features a robust public comment process to ensure that the concepts evaluated for inclusion in new versions of Standard 90.1 are indeed reasonable, practicable, feasible and cost effective, among many other considerations.

Comment: The anonymous submitter of comment ID EERE–2020–BT–DET–0017–0004 asked, for buildings that are already using 100% renewable energy, whether the source energy and CO_2 savings are going to be zero.

DOE response: DOE's determination is focused on a typical new building meeting the minimum requirements of ASHRAE Standard 90.1–2019. A building that is using 100% renewable energy was not contemplated in DOE's analysis.

Comment: The anonymous submitter of comment ID EERE–2020–BT–DET–0017–0005 asked why DOE shows building-only savings for natural gas and building plus upstream savings for electricity. The commenter suggested DOE should account for regional variations in gas and electricity production.

DOE response: Both gas and electricity savings are expressed as both site energy and source energy. The source energy factors for natural gas and electricity are shown on pages 16 and 17 of the technical support document referenced in the preliminary determination notice. The source energy emissions for electricity include both the losses in terms of generation as well as losses in transmission and distribution. For natural gas, the source energy factor of 1.088 includes losses due to both pipeline leakage and transmission energy (compression) and the derivations are documented in the technical support document. Regarding regional variation in production, DOE considers use of national assumptions for gas and electricity production the most appropriate way to estimate the national energy impact of one edition of a model standard compared to the previous edition, which is consistent with DOE's directive under ECPA.

Comment: The U.S. Air Force's first comment stated that the determination does not address institutional, industrial, or campus buildings that often have mass walls and reduced window area.

DOE response: The suite of prototype building models relied upon by the Standard 90.1 development committee and applied in DOE's analysis of ASHRAE Standard 90.1–2019 represents approximately 76% of U.S. new non-residential construction volume and includes mass walls, steel framed, metal building, and wood frame construction. Window-to-wall ratio varies in these models from 1% to 40%, as is commonly the case in the commercial building stock, as represented by the prototype models. While the prototypes cannot address every possible combination of building type and building construction types in the analysis, they do include a representative range of building construction types, and are relied upon by established decision-making processes, including the Standard 90.1 development process.

Comment: The U.S. Air Force also recommended that the life-cycle cost analysis (LCCA) should not use U.S. average utility rates.

DOE response: In making its determination, DOE's directive under ECPA is to assess whether updated editions of Standard 90.1 would improve *energy efficiency* in commercial buildings. 42 U.S.C. 6833(b)(2)(A) With respect to the energy cost savings calculation, DOE considers use of a national average utility rate the most appropriate way to estimate the national energy cost savings of one edition of a model energy standard compared to the previous edition, which is consistent with DOE's directive under ECPA. The range of utility tariffs available in the U.S. numbers in the thousands, and DOE is ultimately charged with issuing a national determination. DOE notes that it does apply more specific rates in other analyses, where appropriate, such as in estimating energy code impacts at the state level.

Comment: The U.S. Air Force's final comment stated it does not appear that maintenance tail expenses for mechanical requirements such as enthalpy wheels were incorporated into the LCCA.

DOE response: In making its determination, DOE's directive under ECPA is to assess whether updated editions of Standard 90.1 would improve *energy efficiency* in commercial buildings. 42 U.S.C. 6833(b)(2)(A) Concepts such as life-cycle cost and cost effectiveness represent economic analysis and are distinct from the energy efficiency analysis that DOE is directed to assess through its determination. However, DOE recognizes the value of such analysis in informing state and local decisions surrounding code review and update processes, as well as design decisions associated with specific buildings and systems. DOE provides a variety of additional analysis, including cost-effectiveness analysis, outside the scope of DOE's determination, and in response to the Department's separate directive to provide technical assistance to support state code implementation. When conducting analysis such as cost-effectiveness analysis, DOE does indeed rely upon a life-cycle perspective and accounts for costs associated with the maintenance and replacement of building systems and components.

Comment: RECA's first comment recommended that DOE provide technical support for Standard 90.1.

DOE response: DOE is directed under ECPA to provide technical assistance supporting the implementation of building energy codes. Consistent with this directive, DOE intends to continue providing robust technical assistance supporting state and local implementation of buildings energy codes. DOE recognizes the importance of supporting the states and local governments who ultimately adopt and implement codes, as well as the wide range of industry stakeholders who rely upon energy codes and strive to achieve compliance in practice.

Comment: RECA's second comment recommended that DOE provide cost-effectiveness analysis.

DOE response: As outlined in previous responses, DOE notes that the current determination is focused solely on whether the revised Standard would improve energy efficiency in commercial buildings. However, DOE recognizes the value of additional forms of technical analysis supporting building energy codes to support the implementation of state building energy codes (42 U.S.C. 6833(d)), and intends to continue to provide both national and state-level cost-effectiveness analysis of Standard 90.1–2019 in the future.

Comment: RECA's third comment recommended that DOE provide state-level energy and cost analyses.

DOE response: Consistent with the previous comment response, DOE intends to provide state-level energy and cost analyses in the future.

Comment: RECA's fourth comment recommended that DOE compare 90.1–2019 to the 2021 IECC.

DOE response: DOE recognizes that adopting states and local governments often review the commercial provisions of the International Energy Conservation Code (IECC), and can benefit from knowing how the IECC compares to Standard 90.1 (*i.e.,* the model energy code established under ECPA). DOE has provided such analysis in the past and intends to prepare similar analysis in the future.

Comment: RECA's fifth comment recommended that DOE remove old versions of Standard 90.1 from COMcheck.

DOE response: In maintaining its compliance resources, such as the COMcheck software [5], DOE typically supports the three most recent editions of the model codes. (79 FR 15112) Following the current determination, and in accordance with established DOE policy, this will include the 2019, 2016 and 2013 editions of Standard 90.1, which represents the range of recent code editions, and helps ensure limited federal resources remain focused on the latest model codes. DOE intends to maintain consistency with this approach.

Comment: RECA's sixth comment recommended that DOE provide implementation support for 90.1–2019.

DOE response: Consistent with previous comment responses, DOE intends to continue providing robust support for states and local governments implementing building energy codes. DOE notes that several resources, including training on Standard 90.1–2019, are already available via the DOE Building

[5] COMcheck is a software tool developed and maintained by DOE for the purpose of verifying compliance in commercial buildings. Learn more at *https://www.energycodes.gov/comcheck.*

Energy Codes Program technical assistance website, *https://www.energycodes.gov.* DOE intends to provide additional resources supporting Standard 90.1 implementation in the future.

Comment: RECA's seventh comment recommended that DOE find new opportunities to support model code adoption, compliance, and enforcement.

DOE response: DOE appreciates RECA's support in seeking new opportunities to support code adoption and implementation. DOE intends to continue to explore new and innovative means of supporting code implementation and welcomes additional suggestions in this area.

Comment: RECA's eighth comment stated that RECA agrees with and supports DOE's positive determination.

DOE response: DOE appreciates the support.

Comment: EEI's first comment stated that the EPA greenhouse gas equivalencies calculator overstates the emissions impact.

DOE response: As outlined in previous responses, DOE notes that the current determination is focused solely on whether the revised Standard would improve energy efficiency in commercial buildings. However, DOE recognizes the value of additional forms of technical analysis supporting state implementation of building energy codes, including emissions analyses. DOE relies on greenhouse gas emission coefficients established by the Environmental Protection Agency (EPA) in estimating current year CO_2 savings. EPA's emission coefficients are designed to reflect marginal CO_2 savings from electricity savings occurring on the building site, which DOE considers appropriate for evaluating the carbon savings stemming from an improved energy standard. This approach is consistent with how DOE has performed similar calculations in previous determinations.

Comment: EEI's second comment recommended that DOE's determination should take into account the commitments utilities have made to reduce carbon emissions.

DOE response: As outlined in previous responses, DOE notes that the current determination is focused solely on whether the revised Standard would improve energy efficiency in commercial buildings. However, DOE recognizes the value of additional forms of technical analysis supporting state implementation of building energy codes, including emissions analyses. DOE's analysis is based on several metrics—energy cost, site energy, source energy—and in addition reports the corresponding carbon emissions on a first-year basis. DOE recognizes the progress being made by utilities in decarbonizing the electric grid, and emphasizes that estimates provided in the supporting technical analysis are based on current emission levels and are subject to change in the future.

Comment: AHRI, p. 2–5. AHRI commented that historically DOE did not estimate emission reductions or apply a value to emission reductions as part of the results and basis for the determination. They further stated that including emission reductions or their value, including the SCC, as part of the basis for determination was outside DOE's authority to consider (42 U.S.C. 6833(b)(2)(A)), because EPCA is an energy conservation statute and excludes environmental objectives (see 42 U.S.C. 6312 which excludes environmental objectives), and that DOE does not have the statutory authority to consider greenhouse gas estimates in determinations regarding commercial building codes. AHRI opined that the SCC should only be included for rulemakings where DOE has clear statutory authority to do so and stated that it lacks such statutory authority as to building energy codes.

DOE response: In making its determination, DOE's directive under ECPA is to assess whether updated editions of Standard 90.1 would improve *energy efficiency* in commercial buildings. 42 U.S.C. 6833(b)(2)(A) DOE emphasizes that the estimates pertaining to CO_2 are provided only as supplemental information and are not considered as part of the final determination, which is based on energy efficiency as required under 42 U.S.C. 6833(b)(2)(A). DOE's analysis includes an estimate of a one-year reduction in CO_2 emissions on a normalized per square foot basis for buildings constructed to 90.1–2019 versus those constructed to 90.1–2016. Climate benefits associated with the expected CO_2 emissions reductions are monetized using estimates of the social cost of carbon (SC–CO_2) presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990* (''February 2021 TSD'').[6]

DOE has determined that the estimates from the February 2021 TSD are based upon sound analysis and provide well founded estimates for DOE's analysis of the impacts of CO_2 related to the reductions of emissions from updating the 90.1 Standard to the 2019 edition. However, DOE emphasizes that DOE is reporting estimates related to CO_2 only because information on the carbon emissions associated with buildings are valued by many stakeholders, including states and local governments who ultimately implement building codes, and who have expressed a need for this information. These estimates are not considered as part of DOE's ultimate determination of whether Standard 90.1–2019 will improve energy efficiency.

Comment: AHRI, p. 2, 5. AHRI stated that DOE is ignoring clear Congressional intent in including emissions in the narrowly scoped building energy code review defined in the statutory text (42 U.S.C. 6833(b)(1). It further stated that Congress could have added global climate change as a variable to weigh in the determination, but did not do so and so DOE should not include this in the determination.

DOE response: See response to previous AHRI comment.

Comment: AHRI, p. 2. AHRI requested that DOE remove carbon emissions from the determination for building energy codes, including ASHRAE 90.1–2019.

DOE response: See previous response to AHRI comment.

Comment: AHRI p. 2. Irrespective of the authority consideration, AHRI requested that DOE must act to remedy inaccurate assumptions and conclusions on the SC–CO_2 benefits analysis. AHRI opined that the benefits claimed from full fuel cycle and global impact of emissions and SCC are speculative and tangential and that these are calculated over a time period (100 years) that greatly exceeds that used to measure economic costs.

DOE response: In making its determination, DOE's directive under ECPA is to assess whether updated editions of Standard 90.1 would improve *energy efficiency* in commercial buildings. 42 U.S.C. 6833(b)(2)(A). DOE emphasizes that the estimates pertaining to CO_2 are provided only as supplemental information and are not considered as part of the final determination, which is based on energy efficiency as required under 42 U.S.C. 6833(b)(2)(A).

In calculating related CO_2 impacts, DOE used the estimates for the SC–CO_2 from February 2021 TSD. DOE has determined that the estimates from the February 2021 TSD, as described more below, are based upon sound analysis and provide well founded estimates for DOE's analysis of the impacts of CO_2 related to the reductions of emissions from updating the 90.1 Standard to the 2019 edition. The SC–CO_2 estimates in the February 2021 TSD are interim values developed under Executive Order (E.O.) 13990 for use until an improved estimate of the impacts of climate change can be developed based on the best available science and economics. The SC–CO_2 estimates used in this analysis were developed over many years, using a transparent process, peer-reviewed methodologies, the best science available at the time of that process, and with input from the public. Specifically, an interagency working group (IWG) that included DOE, the EPA and other executive branch agencies and offices used three integrated assessment models (IAMs) to develop the SC–CO_2 estimates and recommended four global values for use in regulatory analyses. Those estimates were subject to public comment in the context of dozens of proposed rulemakings as well as in a dedicated public comment period in 2013.

The SC–CO_2 estimates were first released in February 2010 and updated in 2013 using new versions of each IAM. In 2015, as part of the response to public comments received to a 2013 solicitation for comments on the SC–CO_2 estimates, the IWG announced a National Academies of Sciences, Engineering, and Medicine review of the SC–CO_2 estimates to offer advice on how to approach future updates to ensure that the estimates continue to reflect the best available science and methodologies. In January 2017, the National Academies released their final report, Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide, and recommended specific criteria for future updates to the SC–CO_2 estimates, a modeling framework to satisfy the specified criteria, and both near-term updates and longer-term research needs pertaining to various components of the estimation process (National Academies 2017). On January 20, 2021, President Biden

[6] For more information on DOE's use of the estimates from this document, please section 4.2 and 5 of the TSD for the final determination.

issued Executive Order 13990, which directed the IWG to ensure that the U.S. Government's (USG) estimates of the SC–CO_2 and other greenhouse gases reflect the best available science and the recommendations of the National Academies (2017). The IWG was tasked with first reviewing the estimates currently used by the USG and publishing interim estimates within 30 days of E.O. 13990 that reflect the full impact of GHG emissions, including taking global damages into account.[7] The interim SC–CO_2 estimates published in February 2021 are used here to estimate the climate benefits associated with this determination and related model building energy code updates.

DOE acknowledges that there are a number of challenges in attempting to assess the incremental economic impacts of CO_2 emissions. The science and economic understanding of climate change and its impacts is improving over time; research focused on the assessment of climate damages and socioeconomic emissions projections is particularly important for reducing uncertainty in the calculation of the social cost of greenhouse gases (SC–GHG),[8] as is quantifying and being transparent about where key uncertainties in the models remain.[9] But contrary to AHRI's suggestion that uncertainty should cause DOE to discount or abandon monetization of the social benefits of reducing CO_2 emissions, as stated by the interagency working group (''IWG'') that performed the review described in the February 2021 TSD, due to a number of sources of uncertainty, there is a likelihood that the social cost of greenhouse gases (SC–GHG) is an underestimate of the true social cost of emissions.[10] Despite the limits of both quantification and monetization, SC–CO_2 estimates can be useful in estimating the social benefits of reducing CO_2 emissions. As a result, DOE has used the IWG's SC–CO_2 estimates in monetizing the social benefits of reducing CO_2 emissions. However, as discussed in previous comments, DOE's SC–CO_2 analysis using these estimates was not considered in DOE's ultimate determination of whether Standard 90.1–2019 will improve energy efficiency.

Comment: AHRI p. 2, 3. As part of the rationale for not including SCC, AHRI further commented that DOE has acknowledged the uncertainty of SCC estimates and stated that these are both provisional and revisable. Further, they noted that the interagency working group developing the SCC noted that the underlying models were imperfect and incomplete and notes that the intergovernmental panel on climate change (IPCC) which the IWG relied on also stated in 2013 that no best estimate for equilibrium climate sensitivity could then be given because of the lack of agreement on values across assessed lines of evidence and studies.

DOE response: In making its determination, DOE's directive under ECPA is to assess whether updated editions of Standard 90.1 would improve *energy efficiency* in commercial buildings. 42 U.S.C. 6833(b)(2)(A) DOE emphasizes that the estimates pertaining to CO_2 are provided only as supplemental information and are not considered as part of the final determination, which is based on energy efficiency as required under 42 U.S.C. 6833(b)(2)(A).

As noted previously, DOE determined that the estimates from the February 2021 TSD are based upon sound analysis and provide well founded estimates for DOE's analysis of the impacts of CO_2 related to the reductions of emissions from updating the 90.1 Standard to the 2019 edition. As explained in the February 2021 TSD and while the IWG works to assess how best to incorporate the latest, peer reviewed science to develop an updated set of SC–GHG estimates, the IWG has determined that it is appropriate for agencies to revert to the same set of four values drawn from the SC–GHG distributions based on three discount rates as were used in regulatory analyses between 2010 and 2016 and subject to public comment. For each discount rate, the IWG combined the distributions across models and socioeconomic emissions scenarios (applying equal weight to each) and then selected a set of four values for use in benefit-cost analyses: An average value resulting from the model runs for each of three discount rates (2.5%, 3%, and 5%), plus a fourth value, selected as the 95th percentile of estimates based on a 3 percent discount rate. The fourth value was included to provide information on potentially higher-than-expected economic impacts from climate change, conditional on the 3% estimate of the discount rate. As explained in the February 2021 TSD, this update reflects the immediate need to have an operational SC–GHG for use in regulatory benefit-cost analyses and other applications that was developed using a transparent process, peer-reviewed methodologies, and the science available at the time of that process. Those estimates were subject to public comment in the context of dozens of proposed rulemakings as well as in a dedicated public comment period in 2013. However, as discussed in previous comments, DOE's SC–CO_2 analysis using these estimates was not considered in DOE's ultimate determination of whether Standard 90.1–2019 will improve energy efficiency.

Comment: AHRI, p. 3,5. AHRI commented that EPCA's focus is on benefits accruing with this nation, hence incorporation of SCC at the global level is beyond the scope and authority of DOE. See 42 U.S.C. 6833(b)(2)(B)(I). They further noted that EPCA originally arose out of the 1970's oil embargo and that nothing in the subsequent amendments suggests a different statutory focus other than improving the energy economics within the United States. AHRI notes that DOE analyzes expected national [domestic] energy savings, but does not scale back reported SCC calculations to reflect domestic impacts only.

DOE response: In making its determination, DOE's directive under ECPA is to assess whether updated editions of Standard 90.1 would improve *energy efficiency* in commercial buildings. 42 U.S.C. 6833(b)(2)(A) DOE emphasizes that the estimates pertaining to CO_2 are provided only as supplemental information and are not considered as part of the final determination, which is based on energy efficiency as required under 42 U.S.C. 6833(b)(2)(A). As to the use of a SC–CO_2 value that includes impacts outside the boundaries of the United States, the February 2021 TSD provides a complete discussion of the IWG's initial review conducted under E.O. 13990. In particular, the IWG found that a global perspective is essential for SC–GHG estimates because climate impacts occurring outside U.S. borders can directly and indirectly affect the welfare of U.S. citizens and residents. Thus, U.S. interests are affected by the climate impacts that occur outside U.S. borders. Examples of affected interests include: Direct effects on U.S. citizens and assets located abroad, international trade, and tourism, and spillover pathways such as economic and political destabilization and global migration. In addition, assessing the benefits of U.S. GHG mitigation activities requires consideration of how those actions may affect mitigation activities by other countries, as those international mitigation actions will provide a benefit to U.S. citizens and residents by mitigating climate impacts that affect U.S. citizens and residents.

As noted previously, DOE determined that the estimates from the February 2021 TSD are based upon sound analysis, and therefore, in analyzing the impacts of CO_2 related to the reductions of emissions from updating the 90.1 Standard to the 2019 edition, DOE has focused on a global measure of SC–GHG. As noted in the February 2021 TSD, the IWG will continue to review developments in the literature, including more robust methodologies for estimating SC–GHG values based on purely domestic damages, and explore ways to better inform the public of the full range of carbon impacts, both global and domestic. As a member of the IWG, DOE will likewise continue to follow developments in the literature pertaining to this issue. However, as discussed in previous comments, DOE's SC–CO_2 analysis using these estimates was not considered in DOE's ultimate determination of whether Standard 90.1–2019 will improve energy efficiency.

Comment: AHRI, p.3,4. AHRI stated that DOE wrongly assumes that SCC values

[7] The E.O. instructs the IWG to undertake a fuller update of the SC–GHG estimates by January 2022.

[8] The social cost of greenhouse gases (SC–GHG) is the monetary value of the net harm to society associated with adding a small amount of that GHG to the atmosphere in a given year and, therefore, should reflect the societal value of reducing emissions of the gas in question by one metric ton. The marginal estimate of social costs will differ by the type of greenhouse gas (such as carbon dioxide, methane, and nitrous oxide) and by the year in which the emissions change occurs. The estimates of the social cost of carbon (SC–CO_2), social cost of methane (SC–CH_4), and social cost of nitrous oxide (SC–N_2O) published in the February 2021 TSD allow agencies to understand the social benefits of reducing emissions of each of these greenhouse gases, or the social costs of increasing such emissions, in the policy making process. Collectively, these values are referenced as the ''social cost of greenhouse gases'' (SC–GHG).

[9] National Academy of Sciences, Engineering, and Medicine, *Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide,* National Academies Press: Washington, DC, 2017.

[10] See Interagency Working Group on Social Cost of Greenhouse Gases, *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide. Interim Estimates Under Executive Order 13990,* Washington, DC, February 2021.

increase over time in real dollars and states that this is contrary to ''historical experience and to economic development science'' and that the more economic development that occurs, the more adaptation and mitigation efforts a population living in a growing economy can afford to undertake (AHRI cites the IWG indicating that developed countries can eliminate 90% of the economic impacts and developing countries could eventually eliminate 50% of the economic impacts of climate change). They comment that they see no indication that DOE considered this separately.

DOE response: In making its determination, DOE's directive under ECPA is to assess whether updated editions of Standard 90.1 would improve *energy efficiency* in commercial buildings. 42 U.S.C. 6833(b)(2)(A) DOE emphasizes that the estimates pertaining to CO_2 are provided only as supplemental information and are not considered as part of the final determination, which is based on energy efficiency as required under 42 U.S.C. 6833(b)(2)(A).

The model scenarios reported by the IWG demonstrate that the damage assessments and corresponding valuation ($SC–CO_2$), adjusted for inflation, increase through time. As explained in the February 2021 TSD, ''[the SC–GHG estimates increase over time within the models—*i.e.,* the societal harm from one metric ton emitted in 2030 is higher than the harm caused by one metric ton emitted in 2025—because future emissions produce larger incremental damages as physical and economic systems become more stressed in response to greater climatic change, and because GDP is growing over time and many damage categories are modeled as proportional to GDP.'' As noted previously, DOE determined that the estimates from the February 2021 TSD are based upon sound analysis and provide well founded estimates for DOE's analysis of the impacts of CO_2 related to the reductions of emissions from updating the 90.1 Standard to the 2019 edition in its building codes impact analysis. Accordingly, DOE incorporated the IWG's considerations in its analysis. However, as discussed in previous comments, DOE's $SC–CO_2$ analysis using these estimates was not considered in DOE's ultimate determination of whether Standard 90.1–2019 will improve energy efficiency.

Comment: AHRI, p. 4. AHRI argued that it is arbitrary and capricious to use different timeframes and assumptions for costs and benefits and notes that DOE must clarify precisely why and how it believes it has statutory authority under 42 U.S.C. 6833(b) to consider SCC issues and cites why such action is legally arbitrary without sufficient documented reason for treating similar situations differently. AHRI notes that DOE, in clarifying why it believes it has such authority, can establish how it is acting consistently in terms of the analysis of benefits.

DOE response: See previous response to AHRI comment on the issue of authority. On the issue of costs and benefits, DOE reemphasizes that its determination analysis is not assessing the costs and benefits associated with the updated Standard 90.1, that the determination is solely based on energy efficiency, and that the reported carbon emissions are reported only as supplemental information for the benefit of interested parties and in support of the directives of Executive Order 12866. To clarify the issue of timeframe, the emission estimates are based on a one-year time period (*i.e.,* the annual energy consumption estimated via the energy efficiency analysis). However, the step of projecting the associated CO_2 impacts captures the longer-term impact of those single-year emissions, as they persist in the atmosphere (and drive the damage impacts over the time they persist), which is then discounted to present value for the year when the emissions occur. DOE does not find an economic inconsistency in this approach to reporting emission benefits. Such a calculation is similar to life-cycle analysis, for instance, which is performed in a similar fashion, where a single year event occurs (*e.g.,* a purchase of more efficient equipment), but the energy savings are calculated over the time they exist (*e.g.,* the life of the equipment), and discounted back to the present value to reflect an overall life-cycle cost. DOE's reporting here of discounted damage impacts is consistent with that general approach.

Signing Authority

This document of the Department of Energy was signed on July 19, 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 July 22, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2021–15971 Filed 7–27–21; 8:45 am]

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DEPARTMENT OF ENERGY

[Case Number 2020–003; EERE–2020–BT–WAV–0020]

Energy Conservation Program: Notification of Petition for Waiver of Hussmann Corporation From the Department of Energy Commercial Refrigerators, Freezers and Refrigerator-Freezers Test Procedure and Notification of Grant of Interim Waiver

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notification of petition for waiver and grant of an interim waiver; request for comments.

SUMMARY: This notification announces receipt of and publishes a petition for waiver and interim waiver from Hussmann Corporation (''Hussmann''), which seeks a waiver for specified Commercial Refrigerator, Freezer, and Refrigerator-Freezer (''CRE'') basic models from the U.S. Department of Energy (''DOE'') test procedure used for determining the energy consumption of CRE. DOE also gives notification of an Interim Waiver Order that requires Hussmann to test and rate the specified CRE basic models in accordance with the alternate test procedure set forth in the Interim Waiver Order. DOE solicits comments, data, and information concerning Hussmann's petition, its suggested alternate test procedure, and the alternate test procedure required under the Interim Waiver Order so as to inform DOE's final decision on Hussmann's waiver request.

DATES: Written comments and information are requested and will be accepted on or before August 27, 2021.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *https://www.regulations.gov.* Alternatively, interested persons may submit comments, identified by docket number EERE–2020–BT–WAV–0020, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email:* to *HussmannCRE2020WAV0020@ee.doe.gov.* Include docket number EERE–2020–BT–WAV–0020 in the subject line of the message.

No telefacsimilies (''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 *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://www.regulations.gov/docket?D=EERE-2020-BT-WAV-0020.* 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 *https://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. Pete Cochran, 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) 586–9496. Email: *Peter.Cochran@Hq.Doe.Gov.*

SUPPLEMENTARY INFORMATION:

DOE is publishing Hussmann's petition for waiver, pursuant to 10 CFR 431.401(b)(1)(iv).[1] [2] DOE invites all interested parties to submit in writing by August 27, 2021, comments and information on all aspects of the petition, including the alternate test procedure. Pursuant to 10 CFR 431.401(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 Daniel C. Conrad, Ph.D., 314–291–200, 12999 St. Charles Rock Road, Bridgeton, MO 63044.

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. If this instruction is followed, 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 on 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. 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. DOE will make its own determination about the confidential status of the information

[1] The petition did not identify any of the information contained therein as confidential business information.

[2] On December 11, 2020, DOE published an amendment to 10 CFR 431.401 regarding the processing of petitions for an interim waiver, which became effective beginning January 11, 2021. The subject petition was received prior to the effective date of that amendment and therefore is being processed pursuant to the regulation in effect at the time of receipt. References to 10 CFR 430.27 in this notification refer to the 10 CFR 431.401 in the 10 CFR parts 200 to 499 edition revised as of January 1, 2021.

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).

Case Number 2020–003

Interim Waiver Order

I. Background and Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[3] 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 C[4] of EPCA established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency for certain types of industrial equipment. This equipment includes Commercial Refrigerators, Freezers and Refrigerator-Freezers (''commercial refrigeration equipment'' or ''CRE''), the focus of this document. (42 U.S.C. 6311(1)(E))

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. 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; 42 U.S.C. 6296).

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(a); 42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to determine whether the covered equipment complies with relevant standards promulgated under EPCA. (42 U.S.C. 6316(a); 42 U.S.C. 6295(s))

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered equipment. 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 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)) The test procedure for CRE is contained in the Code of Federal Regulations (''CFR'') at 10 CFR part 431, subpart C, appendix B (''Appendix B''), ''Amended Uniform Test Method for the Measurement of Energy Consumption of Commercial Refrigerators, Freezers, and Refrigerator-freezers.''

Under 10 CFR 431.401,[5] 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 models for which the waiver was requested contains a design characteristic that prevents testing of the basic models according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic models in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 431.401(f)(2). A petitioner must include in its petition any alternate test procedures known to the petitioner to evaluate the performance of the equipment type in a manner representative of the energy consumption characteristics of the basic models. 10 CFR 431.401(b)(1)(iii). DOE may grant the waiver subject to conditions, which may include adherence to alternate test procedures specified by DOE. 10 CFR 431.401(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 431.401(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 431.401(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 431.401(h)(1).

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 431.401(h)(2).

II. Hussmann's Petition for Waiver and Interim Waiver

On May 12, 2020, Hussmann filed a petition for waiver and interim waiver from the test procedure for CRE set forth at Appendix B. Hussmann described the basic models for which it is requesting a waiver[6] as ''Smart Exchange Lockers'' that are intended for short-term storage of temperature-controlled products as part of an e-commerce fulfillment solution, which operate at low temperatures. Hussmann claimed that the refrigerated compartments in the specified basic models are designed for loading and retrieving product a limited number of times per day and are not designed or used as a traditional merchandiser where stored product may be exposed to constant door openings throughout the day.

Hussmann noted that Appendix B requires door openings to be conducted per section 7.2 of American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 72–2005, *Method of Testing Commercial Refrigerators and Freezers* (''ASHRAE Standard 72–2005''). Specifically, ASHRAE 72–2005 section 7.2 requires that each door be in the fully open position for six seconds, six times per hour for eight consecutive hours, and that each door be opened sequentially, one at a time. Hussmann noted that the required number of door openings in the current procedure does not anticipate

[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 as Part A–1.

[5] On December 11, 2020, DOE published an amendment to 10 CFR 431.401 regarding the processing of petitions for an interim waiver. The subject petition was received prior to the effective date of that amendment and therefore is being processed pursuant to the regulation in effect at the time of receipt. References to 10 CFR 430.27 in this notification refer to the 10 CFR 431.401 in the 10 CFR parts 200 to 499 edition revised as of January 1, 2021.

[6] The specific basic models of commercial refrigerators, freezers and refrigerator-freezers for which Hussmann petitioned for a waiver and interim waiver are Hussmann branded low-temperature basic models SLOL6, SLOL8, SLOL10, SLIL6, SLIL8, and SLIL10. These basic model names were provided by Hussmann in its May 12, 2020 petition.

the usage profile and application of the basic models for which Hussmann is requesting a waiver and thus overstates the energy consumption. Hussmann added that ASHRAE72–2005 is intended for traditional refrigerated merchandisers and the consumer behavior at a grocery store or convenience store. Hussmann stated that their Smart Exchange Lockers are designed for short-term storage and that their usage profile is limited by the time delay from the consumer schedule and retail delivery of product and the consumer arrival to collect the order. Hussmann further stated that the unit doors require use of a code or personal mobile device to unlock the compartment(s) containing the consumer's products.

Hussmann also requests an interim waiver from the existing DOE test procedure. 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 431.401(e)(2).

Hussmann asserts that absent an interim waiver, the stated CRE basic models cannot be tested and rated for daily energy consumption on a basis representative of their actual daily energy consumption characteristics. Hussmann claimed that the current door opening procedure, as is required by DOE test procedure, is not a representative test of the specified basic models due to their less-frequent door openings during typical use.

III. Requested Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures when making representations about the energy consumption and energy consumption costs of covered equipment. (42 U.S.C. 6314(d)) Consistency is important when making representations about the energy efficiency of covered equipment, including when demonstrating compliance with applicable DOE energy conservation standards. Pursuant to 10 CFR 431.401, and after consideration of public comments on the petition, DOE may establish in a subsequent Decision and Order an alternate test procedure for the basic models addressed by the Interim Waiver Order.

Hussmann seeks to use an alternate test procedure to test and rate specific CRE basic models. Hussmann specifically requests to test the specified basic models with the following alternate door opening requirements:

Open each door for 8 seconds, every 2 hours, for 10 consecutive hours. (6 door cycles) (3 ''load'' and ''unload'' cycles) > Stock (load) + Retrieve (unload) ~ Cycle (turn).[7]

Hussmann noted that the requested alternate procedure consists of the door opening duration, frequency, and period requirements in the Decision and Order granted to ITW Food Equipment Group, LCC, on September 12, 2018 for CRE intended for use in similar applications. *See* 83 FR 46148. Additionally, Hussmann stated that it conducted beta testing from which it concluded that the requested alternate approach is an accurate representation of how the specified basic models are being used in the field.

IV. Interim Waiver Order

DOE has reviewed Hussmann's application for an interim waiver and the alternate test procedure requested by Hussmann. Based on this review, the alternate test procedure, with the minor changes discussed in this section, appears to allow for the accurate measurement of the energy consumption of the specified basic models, while alleviating the testing problems associated with Hussmann's implementation of CRE testing for these basic models. DOE has determined that the alternate test procedure requested by Hussmann is appropriate because the identified basic models are designed for limited access short-term storage of pre-purchased items for consumer pickup and have a different usage pattern when compared to a commercial refrigerator or freezer. Consequently, DOE has determined that Hussmann's petition for waiver likely will be granted. Furthermore, DOE has determined that it is desirable for public policy reasons to grant Hussmann immediate relief pending a determination of the petition for waiver.

DOE has modified the requested test approach to more clearly state the door opening requirements and to explicitly include the existing test procedure requirement to open each door sequentially, one at a time.

For the reasons stated, it is *ordered* that:

(1) Hussmann must test and rate the following CRE basic models with the alternate test procedure set forth in paragraph (2).

Brand	Basic model No.
Hussmann	SLOL6
Hussmann	SLOL8
Hussmann	SLOL10
Hussmann	SLIL6
Hussmann	SLIL8
Hussmann	SLIL10

(2) The alternate test procedure for the Hussmann basic models identified in paragraph (1) of this Interim Waiver Order is the test procedure for CRE prescribed by DOE at 10 CFR part 431, subpart C, appendix B, except that in section 7.2 of ASHRAE Standard 72–2005, the door openings shall be as specified. All other requirements of Appendix B and DOE's regulations, including the requirement that the door opening period start 3 hours after the start of a defrost period, remain applicable.

Open each door to the fully open position for 8 seconds, once every 2 hours, for 6 door-opening cycles. Each door shall be opened sequentially, one at a time.

(3) *Representations.* Hussmann may not make representations about the energy use of a basic model listed in paragraph (1) for compliance, marketing, or other purposes unless that basic model has been tested in accordance with the provisions set forth in this alternate test procedure and such representations fairly disclose the results of such testing.

(4) This Interim Waiver Order shall remain in effect according to the provisions of 10 CFR 431.401.

(5) This Interim Waiver Order is issued on the condition that the statements, representations, test data, and documents provided by Hussmann are valid. If Hussmann makes any modifications to the controls or configurations of a basic model subject to this Interim Waiver Order, such modifications will render the waiver invalid with respect to that basic model, and Hussmann will either be required to use the current Federal test method or submit a new application for a test procedure waiver. DOE may rescind or modify this waiver at any time if it determines the factual basis underlying the petition for the Interim Waiver Order is incorrect, or the results from the alternate test procedure are unrepresentative of the basic model's true energy consumption characteristics. 10 CFR 431.401(k)(1). Likewise, Hussmann may request that DOE rescind or modify the Interim Waiver Order if Hussmann discovers an error in the information provided to DOE as part

[7] The alternate test procedure proposed in Hussmann's petition also included a sentence stating that door openings shall start 3 hours after concluding stabilization period. In general, this instruction would be expected for testing units that do not have automatic defrost. In a follow-up communication with DOE on July 8, 2020 (available at *https://www.regulations.gov/docket?D=EERE-2020-BT-WAV-0020),* Hussmann stated that the basic models at issue have timed (*i.e.,* automatic) defrost cycles and that they are not seeking relief from the existing ASHRAE 72–2005 requirement that the door opening period start 3 hours after the start of a defrost period.

of its petition, determines that the interim waiver is no longer needed, or for other appropriate reasons. 10 CFR 431.401(k)(2).

(6) Issuance of this Interim Waiver Order does not release Hussmann from the applicable requirements set forth at 10 CFR part 429.

DOE makes decisions on waivers and interim waivers for only those basic models specifically set out in the petition, not future models that may be manufactured by the petitioner. Hussmann may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional basic models of CRE. Alternatively, if appropriate, Hussmann may request that DOE extend the scope of a waiver or an interim waiver to include additional basic models employing the same technology as the basic model(s) set forth in the original petition consistent with 10 CFR 431.401(g).

Signing Authority

This document of the Department of Energy was signed on July 22, 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 July 23, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

Hussmann Corporation
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VIA EMAIL

May 12, 2020

John Cymbalsky
U.S. Department of Energy
Building Technologies Office
Test Procedure Waiver
1000 Independence Avenue SW
Mailstop EE–5B
Washington, DC 20585–0121

Re: Petition of Hussmann Corporation for Waiver of Test Procedure for Commercial Refrigeration Equipment

Dear Mr. Cymbalsky:

Hussmann Corporation submits this Petition for Waiver and Application for Interim Waiver from DO E's test procedure for commercial refrigeration equipment (per Title 10 Chapter II Subpart V—General Provisions 431.401). Hussmann is submitting this request because the current test procedure to evaluate the energy conservation rating for certain basic models (Appendix 1) is unrepresentative of the true energy consumption characteristics.

Basic Models for Which a Waiver Is Requested

The Basic Models for which a waiver and interim waiver are being requested are set forth in Appendix I (hereinafter referred to as ''Smart Exchange Locker''). The Smart Exchange Locker consists of a self-contained refrigerated unit with modular door compartments and its use is intended for the short-term storage of temperature-controlled products as part of an ecommence [*sic*] fulfillment solution. A picture of the Smart Locker is also included in Appendix I.

Design Characteristics Constituting the Grounds for Petition

The Smart Exchange Locker consists of temperature-controlled units. These units can control both ambient temperature (non-critical food temperature) as well as medium and low temperatures (critical food temperature). Each unit is dedicated to one temperature setting with multiple compartments. End-user (retail) personnel load product into the compartments based upon the product temperature requirements. A notification system informs the end-user's customer (consumer) that the order is ready for pickup. Upon arrival at the Smart Exchange Locker, the consumer will use a code or personal mobile device to unlock the compartment(s) containing the consumer's products, thereby satisfying an order. The consumer retrieves the products and leaves. Finally, the Smart Exchange Locker compartments close and are available for the retail personnel to load subsequent orders. The Smart Exchange Locker is designed to be used in various locations including the lobbies of condominium *I* apartment complexes, corporate campuses, and college campuses/dorm facilities.

The compartments are designed for loading and retrieving product limited times per day. They are not designed or used as a traditional merchandiser where stored product may be exposed to constant door openings throughout a day.

Specific Requirements Sought To Be Waived

The current DOE test procedure sought to be waived can be found at 10 CFR Appendix B to Subpart C of Part 431—Amended Uniform Test Method for the Measurement of Energy Consumption of Commercial Refrigerators, Freezers, and Refrigerator-Freezers, per AHRl Standard 1200 (I–P)–2010, section 6, ''Rating Requirements for Self-contained Commercial Refrigerated Display Merchandisers and Storage Cabinets.''

Such procedure requires the basic models to be tested per ANSI/ASHRAE Standard 72. In ANSI/ASHRAE 72—2005, section 7.2 the door opening requirements are as follows:

Current Door Opening Requirements: Each door shall be in the fully open position for six seconds, six times per hour for eight consecutive hours. Each door shall be opened sequentially, one at a time. The eight-hour period of door opening shall begin three hours after the start of a defrost period. For units with pass-through doors, only the doors on one side of the unit shall be opened during the test.

The Need for the Requested Waiver

The required number of door openings in the current procedure do not anticipate the usage profile and application of the Smart Exchange Locker and thus overstate the energy consumption. In other words, the current test procedure overestimates the necessary door openings because ASHRAE–72–2005 is intended for traditional refrigerated merchandisers and the consumer behavior at a grocery store or convenience store. The Smart Exchange Locker is designed for short-term storage of food and non-food items that may or may not require temperature control. The usage profile of the Smart Exchange Locker is limited by the time delay from the consumer schedule and retail delivery of product and the consumer arrival to collect their order. From beta testing we conclude that the test procedure previously requested by ITW (see next paragraph) is an accurate representation how a Smart Exchange Locker is being used in the field.

Hussmann is petitioning for a waiver on the door opening process for the low temperature Smart Exchange Locker module to be identical to the Decision and Order Granting a Waiver to ITW Food Equipment Group, LLC From the

Department of Energy Commercial Refrigerati Equipment Test Procedure, in **Federal Register**/Vol. 83, No. 77/ Wednesday, September 12, 2018/ Notices pages 46148–46152, as set forth further below.

Proposed Alternate Test Procedure

ITW Door-Opening Requirement: Door openings shall start 3 hours after concluding stabilization period. Open each door for 8 seconds, every 2 hours, for 10 consecutive hours. (6 door cycles) (3 ''load'' and ''unload'' cycles) > Stock (load) + Retrieve (un-load)—Cycle (tum).

Comparison of Standard to Waiver Method

Figure 1 shows the comparison of energy performance for a Smart Exchange Locker Low Temperature Module, Model SLOL8. The allowable energy level is 10.22 KW-hr/day (DOE equipment class VCS.SC.L). The proposed alternate test procedure, based on how the locker is used in the field, shows it will meet the maximum allowable energy limits without further need to modify additional energy requirements. This also shows how the energy consumption will be more accurately represented.

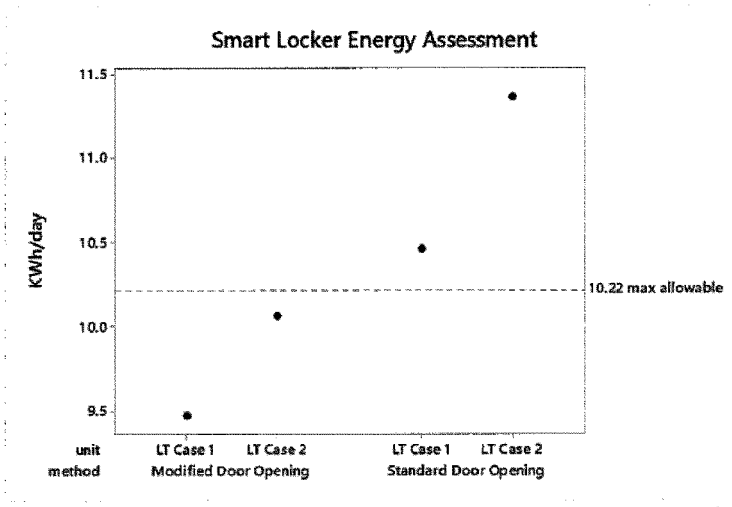

Figure 1: Energy Comparison Smart Locker Assessment Methods

List of Manufacturers of All Other Basic Models Marketed in the United States and Known to the Petitioner To Incorporate Similar Design Characteristics

Hussmann has reviewed the CCMS database as of May 8, 2020 to review all known listed products and found that there are no known listed models covered by the DOE requirements that have design characteristics similar to that on which our petition is based.

Hussmann has done web searches and inquired with customers and is not aware of any products similarly designed having been sold in the United States. Hussmann is aware that products similar to the Smart Exchange Locker exists outside of the United States and believes that domestic retailers have been eviewing such products. Hussmann has not found any data indicating such products meet DOE energy efficiency requirements, UL electrical and mechanical safety requirements, or NSF food sanitation and food product safety temperature requirements.

Therefore, Hussmann does not believe that there are other known manufacturers in which to provide concurrent notice of this Petition for Waiver and Application for Interim Waiver.

Request for Interim Waiver

Hussmann Corporation also petitions for an interim waiver for the models listed in Appendix I, based on the merits of our proposed alternate test procedure to represent actual consumer behavior. With this waiver and reliance on alternate test procedure, Hussmann's calculations of the Smart Exchange Locker will accurately represent energy consumption and therefore believes the petition for waiver is likely to be granted. It is therefore essential the interim waiver be granted to allow Hussmann Corporation to distribute the Smart Exchange Locker and meet current demands.

Economic Hardships and Competitive Disadvantages

Changes in consumer behavior over the last several years show that traditional brick and mortar groceries are facing more competition from online shopping opportunities. The need for the Smart Exchange Locker is an option that traditional groceries as well as ''new players'' in the fresh food concept are using to expand their product offerings and appeal to the newer consumer behavior. Hussmann has been working with the retailers to understand their needs moving forward. The Smart Exchange Locker is an opportunity for both current and future shopping. We understand similar products are available overseas—they do not meet the stringent electrical and mechanical safety needs, food preservation safety needs, and energy efficiency needs required in the United States. These products are being evaluated by retailers in the U.S. and there is a strong possibility these products will find their way into the U.S. market.

The above mentioned safety and energy efficiency needs may not be met because, like many newer concept products, the appropriate standards and regulations will not be apparent to local authorities having jurisdiction (AHJs).

Refrigerated lockers are critical to support the needs of the growing e-commerce market. Online grocery sales are projected to grow at a compound annual growth rate of 15% (prior to the COVID crisis) through 2022, reaching 8.2% of total grocery spending. In addition, buy online pickup in store (BOPIS) and curbside pickup increased 62% between Feb. 24 and March 21 compared to the same period in 2019. Lockers are becoming viewed as a preferred method of supporting curbside or BOPIS grocery sales to limit contact.

Shoppers prefer the ''no human contact'' that they get from ordering online and picking up their purchases at a locker. Home grocery delivery companies are seeing demand increase dramatically and expect e-commerce adoption to continue. They expect many customers not to return to traditional shopping after this change. In addition, one of the leading home grocery delivery companies projected a demand for 1000 lockers annually (prior to the increased demand created by COVID–19). We strongly expect this entire market to see an increased demand based on the changing consumer shopping behavior accelerated by the recent concerns of the COVID crisis.

Conclusion

The Smart Exchange Locker is designed for limited access short-term storage of products to facilitate consumer pickup of electronically purchased items and it is not a traditional refrigerator or freezer merchandiser. Hussmann Corporation petitions DOE to grant the use of an Alternate Test Procedure and an Interim Waiver from DOE's current requirement to test Commercial Refrigerators, Freezers, and Refrigerator-Freezers for the Smart Exchange Locker. Without such requested relief, Hussmann Corporation will not be able to meet market demand for a product supporting critical temperature short-term storage of e-commerce products. A grant of this petition is required to align a test procedure with the actual product usage profiles thereby allowing compliance with the requisite energy standards.

Sincerely,
/s/
Daniel C. Conrad, Ph.D.,
Director Reliability & Testing.

Appendix I—Smart Locker

Basic Models for Which a Waiver Is Requested

A waiver is requested for the Hussmann branded Smart Locker basic model(s) which will be distributed in commerce. These models are identified as:

Branded	Model No(s).
Hussmann	SLOL6 SLOL8 SLOLl0 SLIL6 SLIL8 SLILl0

Picture: Smart Locker
[Image available at *http://www.regulations.gov/docket?D=EERE-2020-BT-WAV-0020*]

[FR Doc. 2021–16017 Filed 7–27–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC21–24–000]

Commission Information Collection Activities (FERC–537); 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 a renewal of currently approved information collection, FERC–537 (Gas Pipeline Certificates: Construction, Acquisition, and Abandonment), which will be submitted to the Office of Management and Budget (OMB) for review.

DATES: Comments on the collection of information are due August 27, 2021.

ADDRESSES: Send written comments on FERC–537 to OMB through *www.reginfo.gov/public/do/PRAMain.* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Number (1902–0060) 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. IC21–24–000) 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–537 (Gas Pipeline Certificates: Construction, Acquisition, and Abandonment).

OMB Control No.: 1902–0060.

Type of Request: Three-year extension of the FERC–537 information collection requirements with no changes to the reporting requirements.

Abstract: The FERC–537 information collection requires natural gas companies to file the necessary information with FERC in order for the Commission to determine if the requested certificate should be authorized. The data required to be submitted in a normal certificate filing consists of identification of the company and responsible officials, factors considered in the location of the facilities and the impact on the area for environmental considerations. Also to be submitted are the following, as applicable to the specific request:

- Flow diagrams showing the design capacity for engineering design verification and safety determination;
- Cost of proposed facilities, plans for financing, and estimated revenues and expenses related to the proposed facility for accounting and financial evaluation.
- Existing and proposed storage capacity and pressures and reservoir engineering studies for requests to increase storage capacity;
- An affidavit showing the consent of existing customers for abandonment of service requests.

Certain self-implementing construction and abandonment programs do not require the filing of applications. However, those types of programs do require the filing of annual reports, so many less significant actions can be reported in a single filing/response and less detail would be

required. Additionally, requests for an increase of pipeline capacity must include a statement that demonstrates compliance with the Commission's Certificate Policy Statement by making a showing that the cost of the expansion will not be subsidized by existing customers and that there will not be adverse economic impacts to existing customers, competing pipelines or their customers, nor to landowners and to surrounding communities.

The Commission reviews and analyses the information filed under the regulations subject to FERC–537 to determine whether to approve or deny the requested authorization. If the Commission failed to collect these data, it would lose its ability to review relevant information to determine whether the requested certificate should be authorized. The 60-day notice published on May 21, 2021 [1] and received no comments.

Type of Respondents: Jurisdictional natural gas companies.

Estimate of Annual Burden [2]: The Commission estimates the annual public reporting burden for the information collection as:

FERC–537 (GAS PIPELINE CERTIFICATES: CONSTRUCTION, ACQUISITION, AND ABANDONMENT) [3]

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average annual burden & cost per response [4]	Total average annual burden hours & total annual cost	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1) [5]
18 CFR 157.5–.11 (Interstate Certificate and Abandonment Applications).	31	1.39	43.09	500 hrs.; $41,500	21,545 hrs; $1,788,235	$57,685
18 CFR 157.53 (Pipeline Purging/Testing Exemptions).	1	1	1	50 hrs.; $4,150	50 hrs.; $4,150	4,150
18 CFR 157.201–.209; 157.211; 157.214–.218 (Blanket Certificates Prior to Notice Filings).	24	2.125	51	200 hrs.; $16,600	10,200 hrs.; $846,600	35,275
18 CFR 157.201–.209; 157.211; 157.214–.218 (Blanket Certificates—Annual Reports).	162	1	162	50 hrs.; $4,150	8,100 hrs.; $672,300	4,150
18 CFR 284.11 (NGPA Section 311 Construction—Annual Reports).	75	1	75	50 hrs.; $4,150	3,750 hrs.; $311,250	4,150
18 CFR 284.8 [6] (Request for Waiver of Capacity Release Regulations).	31	1.39	43.09	10 hrs.; $830	430.90 hrs.; $35,764.70	1,153.70
18 CFR 284.13(e) and 284.126(a) (Interstate and Intrastate Bypass Notice).	2	1	2	30 hrs.; $2,490	60 hrs.; $4,980	2,490
18 CFR 284.221 (Blanket Certificates).	1	1	1	100 hrs.; $8,300	100 hrs.; $8,300	8,300
18 CFR 284.224 (Hinshaw Blanket Certificates).	1	1	1	75 hrs.; $6,225	75 hrs.; $6,225	6,225
18 CFR 157.5–.11; 157.13–.20 (Non-facility Certificate or Abandonment Applications.	11	1.36	14.96	75 hrs.; $6,225	1,122 hrs.; $93,126	8,466
Total			394.14		45,432.90 hrs.; $3,770,930.70	

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: July 22, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–16063 Filed 7–27–21; 8:45 am]

BILLING CODE 6717–01–P

[1] 86 FR 27589.

[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. Refer to 5 CFR 1320.3 for additional information.

[3] Changes to estimated number of respondents were based on average number of respondents over the past three years.

[4] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $83.00/hour = Average cost/response. The figure is the 2020 FERC average hourly cost (for wages and benefits) of $83.00 (and an average annual salary of $172,329/year). Commission staff is using the FERC average salary because we consider any reporting requirements completed in response to the FERC–537 to be compensated at rates similar to the work of FERC employees.

[5] Each of the figures in this column are rounded to the nearest dollar.

[6] A Certificate Abandonment Application would require waiver of the Commission's capacity release regulations in 18 CFR 284.8; therefore this activity is associated with Interstate Certificate and Abandonment Applications.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3511–024]

Lower Saranac Hydro, LLC;

Notice of Waiver Period for Water Quality Certification Application

On July 2, 2021, Lower Saranac Hydro, LLC filed with the Federal Energy Regulatory Commission a copy of its application for a Clean Water Act section 401(a)(1) water quality

certification submitted to the New York State Department of Environmental Conservation (New York DEC), in conjunction with the above captioned project. Pursuant to 40 CFR 121.6, we hereby notify the New York DEC of the following:

Date of Receipt of the Certification Request: July 2, 2021.

Reasonable Period of Time to Act on the Certification Request: One year.

Date Waiver Occurs for Failure to Act: July 2, 2022.

If New York DEC fails or refuses to act on the water quality certification request by the above waiver date, then the agency's certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: July 22, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–16064 Filed 7–27–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC21–147–000]

Louisville Gas and Electric Company; Kentucky Utilities Company; Notice of Filing

Take notice that on July 16, 2021, Louisville Gas and Electric Company and Kentucky Utilities Company (''Companies'') requested approval to treat the deployment of their Advanced Metering Infrastructure (AMI) program as a single project for purposes of in service and accrual of Allowance for Funds Used During Construction (''AFUDC'') and requested permission to record the remaining net book value of the Companies' legacy meters in Account 182.2—Unrecovered plant and regulatory study costs, upon the full deployment of AMI. Applicants state that their request will indirectly impact FERC-jurisdictional formula rates due to the use of plant allocators.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Federal Energy Regulatory Commission's (Commission) 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.

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.

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.

Comment Date: 5:00 p.m. Eastern time on August 2, 2021.

Dated: July 22, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–16066 Filed 7–27–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3511–024]

Lower Saranac Hydro, LLC; Notice of Intent To Prepare an Environmental Assessment

On May 29, 2020, Enel Green Power North America, Inc.[1] filed an application on behalf of Lower Saranac Hydro, LLC (Lower Saranac), for a subsequent minor license for the 1.76-megawatt Groveville Hydroelectric Project (Groveville Project or project) (FERC No. 3511). The Groveville Project is located on Fishkill Creek, in the City of Beacon, Dutchess County, New York. The project is located approximately 2.7 river miles upstream of the mouth of Fishkill Creek. The project does not occupy federal land.

In accordance with the Commission's regulations, on May 11, 2021, Commission staff issued a notice that the project was ready for environmental analysis (REA notice). Based on the information in the record, including comments filed on the REA notice, staff does not anticipate that licensing the project would constitute a major federal action significantly affecting the quality of the human environment. Therefore, staff intends to prepare an Environmental Assessment (EA) on the application to license the Groveville Project.

The EA will be issued and circulated for review by all interested parties. All comments filed on the EA will be analyzed by staff and considered in the Commission's final licensing decision.

The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Commission issues EA.	December 2021.[2]
Comments on EA	January 2022.

Any questions regarding this notice may be directed to Jeremy Feinberg at (202) 502–6893 or *jeremy.feinberg@ferc.gov.*

Dated: July 22, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–16067 Filed 7–27–21; 8:45 am]

BILLING CODE 6717–01–P

[1] In a February 9, 2021 filing, the Commission was notified that Enel Green Power North America, Inc. transferred all its ownership interests for Lower Saranac Hydro, LLC to Hydroland, Inc.

[2] The Council on Environmental Quality's (CEQ) regulations under 40 CFR 1501.10(b)(1) require that EAs be completed within 1 year of the federal action agency's decision to prepare an EA. This notice establishes the Commission's intent to prepare an EA for the Groveville Project. Therefore, in accordance with CEQ's regulations, the EA must be issued within 1 year of the issuance date of this notice.

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: ER10–1585–020; ER10–1594–020; ER10–1597–008; ER10–1617–020; ER10–1624–009; ER10–1628–020; ER10–1632–022; ER10–2385–010; ER12–60–022; ER16–1148–011; ER16–733–011.

Applicants: Alabama Electric Marketing, LLC, California Electric Marketing, LLC, Kiowa Power Partners, LLC, LQA, LLC, New Mexico Electric Marketing, LLC, Tenaska Energía de Mexico, S. de R.L. de C.V., Tenaska Gateway Partners, Ltd., Tenaska Power Management, LLC, Tenaska Power Services Co., Texas Electric Marketing, LLC, Elkhorn Ridge Wind, LLC.

Description: Notice of Change in Status of Alabama Electric Marketing, LLC, et al.

Filed Date: 7/21/21.

Accession Number: 20210721–5192.

Comments Due: 5 p.m. ET 8/11/21.

Docket Numbers: ER10–1901–013.

Applicants: Upper Peninsula Power Company.

Description: Notice of Non-Material Change in Status of Upper Peninsula Power Company.

Filed Date: 7/22/21.

Accession Number: 20210722–5176.

Comments Due: 5 p.m. ET 8/12/21.

Docket Numbers: ER15–1668–003.

Applicants: Phoenix Energy Group, LLC.

Description: Notice of Change in Status of Phoenix Energy Group, LLC.

Filed Date: 7/19/21.

Accession Number: 20210719–5225.

Comments Due: 5 p.m. ET 8/9/21.

Docket Numbers: ER21–46–000; EL10–56–000.

Applicants: Mercuria Energy America, LLC.

Description: Mercuria Energy America, LLC submits Supplement to October 7, 2020 Cost Justification Filing.

Filed Date: 7/19/21.

Accession Number: 20210719–5220.

Comments Due: 5 p.m. ET 8/9/21.

Docket Numbers: ER21–64–000; EL10–56–000.

Applicants: Macquarie Energy LLC.

Description: Macquarie Energy LLC submits Supplement to October 7, 2020 Cost Justification Filing.

Filed Date: 7/19/21.

Accession Number: 20210719–5224.

Comments Due: 5 p.m. ET 8/9/21.

Docket Numbers: ER21–1288–001.

Applicants: California Independent System Operator Corporation.

Description: Compliance filing: 2021–07–22 TCA Effective Date—Morongo to be effective 7/12/2021.

Filed Date: 7/22/21.

Accession Number: 20210722–5165.

Comments Due: 5 p.m. ET 8/12/21.

Docket Numbers: ER21–2450–000.

Applicants: Public Service Electric & Gas Company.

Description: Pre-Arranged/Pre-Agreed (Offer of Settlement and Petition for Approval) Filing of Public Service Electric and Gas Company.

Filed Date: 7/14/21.

Accession Number: 20210714–5178.

Comments Due: 5 p.m. ET 8/4/21.

Docket Numbers: ER21–2477–001.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Tariff Amendment: Errata re: Rate Schedule Numbering, Correcting Rate Schedule 328 to 331 to be effective 7/22/2021.

Filed Date: 7/22/21.

Accession Number: 20210722–5117.

Comments Due: 5 p.m. ET 8/12/21.

Docket Numbers: ER21–2480–000.

Applicants: Nexus Line, LLC.

Description: Baseline eTariff Filing: Nexus Line, LLC TSA Rate Schedule to be effective 9/1/2021.

Filed Date: 7/21/21.

Accession Number: 20210721–5151.

Comments Due: 5 p.m. ET 8/11/21.

Docket Numbers: ER21–2481–000.

Applicants: Nevada Power Company.

Description: Compliance filing: Order No. 676–I Compliance to be effective N/A.

Filed Date: 7/22/21.

Accession Number: 20210722–5114.

Comments Due: 5 p.m. ET 8/12/21.

Docket Numbers: ER21–2482–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-Prairie Switch Wind Generation Interconnection Agreement to be effective 7/6/2021.

Filed Date: 7/22/21.

Accession Number: 20210722–5129.

Comments Due: 5 p.m. ET 8/12/21.

Docket Numbers: ER21–2483–000.

Applicants: Alabama Power Company.

Description: § 205(d) Rate Filing: Origis Holdings USA Subco (Hammond I Solar & Storage) LGIA Filing to be effective 7/8/2021.

Filed Date: 7/22/21.

Accession Number: 20210722–5140.

Comments Due: 5 p.m. ET 8/12/21.

Docket Numbers: ER21–2484–000.

Applicants: Alabama Power Company.

Description: § 205(d) Rate Filing: Origis Holdings USA Subco (Hammond II Solar & Storage) LGIA Filing to be effective 7/8/2021.

Filed Date: 7/22/21.

Accession Number: 20210722–5141.

Comments Due: 5 p.m. ET 8/12/21.

Docket Numbers: ER21–2485–000.

Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.

Description: § 205(d) Rate Filing: 2021–07–22_SA 3678 OTP–MRES–WMMPA TIA to be effective 10/1/2021.

Filed Date: 7/22/21.

Accession Number: 20210722–5168.

Comments Due: 5 p.m. ET 8/12/21.

Docket Numbers: ER21–2486–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2021–07–22_MISO Waiver Request re: DRR–I Fast Start Resources to be effective N/A.

Filed Date: 7/22/21.

Accession Number: 20210722–5186.

Comments Due: 5 p.m. ET 8/12/21.

Docket Numbers: ER21–2487–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2021–07–22_MISO Filing to Clarify Modeling of DRR–I re: SCED-Pricing to be effective 5/1/2022.

Filed Date: 7/22/21.

Accession Number: 20210722–5190.

Comments Due: 5 p.m. ET 8/12/21.

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: July 22, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–16065 Filed 7–27–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8702–01–OMS]

Privacy Act of 1974; System of Records

AGENCY: Office of General Counsel, Environmental Protection Agency.

ACTION: Notice of a modified system of records.

SUMMARY: The U.S. Environmental Protection Agency's (EPA) Office of General Counsel/External Civil Rights Compliance Office (OGC/ECRCO) is giving notice that it proposes to modify a system of records pursuant to the provisions of the Privacy Act of 1974. External Compliance Case Tracking System (EXCATS) is being modified to accurately notify the public about the change of administrative location of the EXCATS from its former administrative location, the Office of the Administrator, to the Office of the General Counsel, effective, December 2016. EXCATS is also being modified to support and enhance the discrimination complaint process, including the investigation and resolution of complaints, and to provide for a discrimination complaint form to enable the public to file electronically discrimination complaints directly to the EXCATS. The purpose of EXCATS is to assist OGC/ECRCO in collecting and maintaining case-related information and provide the EPA OGC/ECRCO with the ability to more effectively manage program information needs and integrate the office's various business processes. The EXCATS assists OGC/ECRCO in the collection and maintenance of compliance-related data and other information needed by the OGC/ECRCO to complete case investigation and resolution activities and issue civil rights-related determinations.

DATES: Persons wishing to comment on this system of records notice must do so by August 27, 2021. New or modified routine uses for this modified system of records will be effective August 27, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OEI–2018–0537, by one of the following methods:

Federal eRulemaking Portal: https://www.regulations.gov. Follow the online instructions for submitting comments.

Email: docket_oms@epa.gov. Include the Docket ID number in the subject line of the message.

Fax: 202–566–1752.

Mail: OMS Docket, Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

Hand Delivery: OMS Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OEI–2018–0537. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Controlled Unclassified Information (CUI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CUI or otherwise protected through *https://www.regulations.gov.* The *https://www.regulations.gov* website is an ''anonymous access'' system for the EPA, which means the EPA will not know your identity or contact information. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Docket: All documents in the docket are listed in the *https://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CUI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *https://www.regulations.gov* or in hard copy at the OMS Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. The Public Reading Room is normally 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 OMS Docket is (202) 566–1752.

Temporary Hours During COVID–19

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov/* or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Dale Rhines, Deputy Director, OGC/ECRCO, *rhines.dale@epa.gov,* (202) 564–4174 or by mail at 1200 Pennsylvania Avenue NW, Mail Code 2310A, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: EXCATS was developed to allow OGC/ECRCO to more effectively manage its program information needs and to integrate its various business processes. Among other things, EXCATS assists OGC/ECRCO in the collection and maintenance of compliance-related data and other information needed by the OGC/ECRCO to complete case investigation and resolution activities and to issue determinations under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975 and other federal statutes that prohibit discrimination by programs or entities that apply for or receive financial assistance from EPA.

SYSTEM NAME AND NUMBER:

External Compliance Case Tracking System (EXCATS), EPA–21.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The EXCATS Web-based application is currently hosted under a contract with MicroPact, Inc. Hosting facility located at Equinix, 44470 Chilum Place DC3 Bldg. 1, Ashburn, Virginia 20147.

SYSTEM MANAGERS(S):

Dale Rhines, Deputy Director, OGC/ECRCO, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Mail Code 2310A, Washington, DC 20460 or by email at *rhines.dale@epa.gov,* or at (202) 564–4174.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The EXCATS assists ECRCO in carrying out its responsibilities under the following authorities: Title VI of the Civil Rights Act of 1964, 42 United U.S.C. 2000d to 2000d–7 (Title VI); Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 *et seq.;* Federal Water Pollution Control Act Amendments of 1972, Public Law 92–500 § 13, 86 Stat. 903 (codified as amended at 33 U.S.C. 1251 (1972)); Age Discrimination Act of 1975, 42 U.S.C. 6101 *et seq.;* 40 CFR parts 5 and 7; Executive Order 12250 (Nov. 2, 1980).

PURPOSE(S) OF THE SYSTEM:

To support and enhance the discrimination complaint process, including the investigation and resolution of complaints. EXCATS assists OGC/ECRCO in collecting and maintaining case-related information and provides OGC/ECRCO with the ability to more effectively manage program information needs and integrate the office's various business processes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed, or had filed on their behalf, discrimination complaints regarding applicants or recipients of federal financial assistance on the basis of race, color, national origin, age, sex, or disability. Witnesses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters or other documents initiating discrimination complaints including complainant's name and address, telephone numbers, email addresses, correspondence, internal memoranda and notes pertaining to the complaints; recipient staff interviews and interviews with members of the public; investigative plans; resolution agreements and other resolution documents; findings on the complaints; and related information regarding the complaints and investigations; civil rights compliance reviews of applicants for or recipients of federal financial assistance; medical information and records of physical or mental impairments; eligibility determinations impacting complainants, witnesses or other parties; administrative subpoena files; self-evaluation plans; racial/ethnic analyses of workforce and program enrollees; notice of violations; language assistance plans; training programs; civil enforcement files; environmental policies and program files.

RECORD SOURCE CATEGORIES:

Complaints, applicants and recipients of federal financial assistance, witnesses, EPA Investigators and/or contract investigators, other EPA personnel with a connection to the case, and other persons with information relevant to the case.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The routine uses below are both related to and compatible with the original purpose for which the information was collected. The following general routine uses apply to this system (73 FR 2245):

A. Disclosure for Law Enforcement Purposes. Information may be disclosed to the appropriate Federal, State, local, tribal, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

B. Disclosure Incident to Requesting Information. Information may be disclosed to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and to identify the type of information requested,) when necessary to obtain information relevant to an agency decision concerning retention of an employee or other personnel action (other than hiring,) retention of a security clearance, the letting of a contract, or the issuance or retention of a grant, or other benefit.

C. Disclosure to Requesting Agency. Disclosure may be made to a Federal, State, local, foreign, or tribal or other public authority of the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

D. Disclosure to Office of Management and Budget. Information may be disclosed to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

E. Disclosure to Congressional Offices. Information may be disclosed to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

F. Disclosure to Department of Justice. Information may be disclosed to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Agency is authorized to appear, when:

1. The Agency, or any component thereof;

2. Any employee of the Agency in his or her official capacity;

3. Any employee of the Agency in his or her individual capacity where the Department of Justice or the Agency have agreed to represent the employee; or

4. The United States, if the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Agency is deemed by the Agency to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

G. Disclosure to the National Archives. Information may be disclosed to the National Archives and Records Administration in records management inspections.

H. Disclosure to Contractors, Grantees, and Others. Information may be disclosed to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for the Agency and who have a need to have access to the information in the performance of their duties or activities for the Agency. When appropriate, recipients will be required to comply with the requirements of the Privacy Act of 1974 as provided in 5 U.S.C. 552a(m).

I. Disclosures for Administrative Claims, Complaints and Appeals. Information from this system of records may be disclosed to an authorized

appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee, but only to the extent that the information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

J. Disclosure to the Office of Personnel Management. Information from this system of records may be disclosed to the Office of Personnel Management pursuant to that agency's responsibility for evaluation and oversight of Federal personnel management.

K. Disclosure in Connection with Litigation. Information from this system of records may be disclosed in connection with litigation or settlement discussions regarding claims by or against the Agency, including public filing with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or discussions and except where court orders are otherwise required under section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

The two routine uses below (L and M) are required by OMB Memorandum M–17–12.

L. Disclosure to Persons or Entities in Response to a Compromise or Breach of Personally Identifiable Information. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that there has been a breach of the system of records, (2) the Agency has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Agency (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Agency's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

M. Disclosure to Assist Another Agency in its Efforts to Respond to a Breach. To another Federal agency or Federal entity, when the Agency determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

Additional routine uses that apply to this system are:

1. The Department of Justice or other Federal and State Agencies. When necessary to complete an investigation, enforce the nondiscrimination statutes set forth in the Authority section of this notice, or assure proper coordination between Federal agencies.

2. Persons Named as Alleged Discriminators. To allow such persons the opportunity to respond to the allegations made against them during the course of the discrimination complaint process.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

All electronic data are stored on servers maintained in locked facilities with computerized access control and all printed materials are filed in secure cabinets in secure federal facilities with access based on need.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by complaint number, name, address, email address or telephone number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records stored in this system are subject to EPA's records schedule 1044, Item c: Routine compliance and enforcement records (DAA 0412–2013–0017–0003).

Includes:

- External discrimination complaints related to civil rights violations filed by individuals or groups alleging that their civil rights have been violated by EPA-funded entities, complaints, correspondence, reports, exhibits, notices, depositions transcripts, and other related records.
- Compliance review files.

Disposition:

- Close when activity, project, or case is completed.
- Destroy 10 years after file closure.

ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAFEGUARDS:

Security controls used to protect personal sensitive data in EXCATS are commensurate with those required for an information system rated MODERATE for confidentiality, integrity, and availability, as prescribed in National Institute of Standards and Technology (NIST) Special Publication, 800–53, ''Security and Privacy Controls for Information Systems and Organizations,'' Revision 5.

1. Administrative Safeguards. EPA personnel are required to complete annual agency Information Security and Privacy training. EPA personnel are instructed to lock their computers when they leave their desks. EXCATS system administrators have appropriate security clearance.

2. Technical Safeguards. Only authorized OGC/ECRCO users whose official duties require the use of such information have access to the information in the system. No users outside of OGC/ECRCO have access to the system. Specific access is structured around need and is determined by the person's role in the organization. Access is managed through the use of electronic access control lists, which regulate the ability to read, change and delete information in the system. Each OGC/ECRCO user has read access to designated information in the system, with the ability to modify only their own submissions or those of others within their region or group. Data identified as confidential are so designated in the system and only specified individuals are granted access. The system maintains an audit trail of all actions against the data base. All electronic data are stored on servers maintained in locked facilities with computerized access control allowing access to only those support personnel with a demonstrated need for access. A database is kept of all individuals granted security card access to the room, and all visitors are escorted while in the room. The server facility has appropriate environmental security controls, including measures to mitigate damage to automated information system resources caused by fire, electricity, water and inadequate climate controls. Access control to servers, individual computers and databases includes a required user log-on with a password, inactivity lockout to systems based on a specified period of time, legal notices and security warnings at log-on, and remote access security that allows user access for remote users (*e.g.,* while on government travel) under the same terms and conditions as for users within the office.

3. Physical Safeguards. Printed materials are filed in secure cabinets in secure federal facilities with access based on need as described above for the automated component of the system.

RECORD ACCESS PROCEDURES:

Individuals seeking access to their own personal information in this system

of records will be required to provide adequate identification (*e.g.,* driver's license, military identification card, employee badge or identification card). Additional identity verification procedures may be required as warranted. Requests must meet the requirements of EPA's Privacy Act regulations at 40 CFR part 16.

CONTESTING RECORD PROCEDURES:

Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete EPA Privacy Act procedures are described in EPA's Privacy Act regulations at 40 CFR part 16.

NOTIFICATION PROCEDURE:

Any individual who wants to know whether the system of records contains a record about him or her should submit a written request to the EPA, Attn: Agency Privacy Officer, WJC West, MC2831T, 1301 Constitution Avenue, NW, Washington, DC 20460, *privacy@epa.gov.*

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(2), this system is exempt from the following provisions of the Privacy Act of 1974, subject to the limitations set forth in 5 U.S.C. 552a(c)(3), (d), and (e)(1).

HISTORY:

79 FR 63622 (October 24, 2014)—Notice of a Modified System of Records. The purpose of that notice was to inform the public that the OGC/ECRCO (formerly known as the Title VI External Compliance Program) was amending the External Compliance Program Discrimination Complaint Files system of records. The system was amended to change the (1) system name; (2) the addresses of system locations and system managers; (3) categories of individuals covered by the system; (4) routine uses; and (5) storage, retrievability and safeguard requirements.

Vaughn Noga,

Senior Agency Official for Privacy.

[FR Doc. 2021–16051 Filed 7–27–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OEI–2006–0037; FRL–8803–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Exchange Network Grants Progress Reports (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is submitting an information collection request (ICR), Exchange Network Grants Progress Reports (EPA ICR Number 2207.08, OMB Control Number 2025–0006) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through September 30, 2021. Public comments were previously requested via the **Federal Register** on February 23, 2021, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A brief description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before August 27, 2021.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OEI–2006–0037, online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* 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: Edward Mixon or Dipti Singh, Information Exchange Services Division, Office of Information Management, Office of Mission Support (2823T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–2142 or 202–566–0739 respectively; email address: *mixon.edward@epa.gov* or *singh.dipti@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA collected, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: Under the U.S. EPA National Environmental Information Exchange Network (NEIEN) Grant Program, EPA collects information from the NEIEN grantees on assistance agreements that EPA has awarded. Specifically, for each project, EPA proposes to have grantees submit a Semi-Annual report on the progress and current status of each goal and output, completion dates for outputs, and any problems encountered. This information will help EPA ensure projects are on schedule to meet their goals and produce high quality environmental results. New grant award recipients will complete one Quality Assurance Reporting Form for each award. This form provides a simple means for grant recipients to describe how quality will be addressed throughout their projects and is derived from guidelines provided in the NEIEN 2021 Grant Solicitation Notice. In addition, the grantees will submit a Final Progress report within 90 days of the grant period of performance end date.

Form Numbers: 5300–26, 5300–27.

Respondents/affected entities: State, tribal, and territorial environmental government offices.

Respondent's obligation to respond: Required to obtain or retain benefits (2 CFR part 200 and 2 CFR part 1500).

Estimated number of respondents: 220 total per year.

Frequency of response: Twice per year for the Semi-Annual Progress Report Form; once per grant for the Quality Assurance Reporting Form; and once for the Final Progress Report after close-out of the grant period of performance.

Total estimated burden: 508 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $23,287.59 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in Estimates: There is an increase of 228 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This slight increase in burden is due to the fact that this ICR takes into consideration the 59.4 hours of burden associated with the submission of Final Progress Reports which was mistakenly omitted from the previous ICR. In addition, the respondents indicated a slight increase in the burden associated with submission of the forms. This slight increase in the burden hours, compounded by the slight inflation in labor rates also explains an increase of $7,100.60 in total annual respondent costs for 2021.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2021–16088 Filed 7–27–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2016–0404; FRL–8801–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; National Study of Nutrient Removal and Secondary Technologies: Publicly Owned Treatment Works (POTW) Screener Questionnaire (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), National Study of Nutrient Removal and Secondary Technologies: Publicly Owned Treatment Works (POTW) Screener Questionnaire (EPA ICR Number 2553.03, OMB Control Number 2040–0294) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through July 31, 2021. Public comments were previously requested via the **Federal Register** on February 24, 2021 during a 60-day comment period. No comments were received. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before August 27, 2021.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2016–0404, online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* 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: Dr. Paul Shriner, Engineering and Analysis Division (4303T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–1076; email address: *nutrient-removal-study@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents are available in the public docket for this ICR that explain in detail the information that the EPA will be collecting. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: Nutrient pollution remains the single greatest challenge to our Nation's water quality and presents a growing threat to public health and local economies—contributing to toxic harmful algal blooms, contamination of drinking water sources, and costly impacts on recreation, tourism and fisheries. The National Study of Nutrient Removal and Secondary Technologies, when completed, will provide a rich database of nutrient removal performance at secondary treatment POTWs nationwide, and will help POTWs understand the range of nutrient removal performance and identify opportunities to optimize nutrient removals based on data from their peers. It will also serve as a major new resource for stakeholders to evaluate the most cost-effective approaches to nutrient reduction at the watershed scale. EPA's Office of Water is collecting data to evaluate the nutrient removals and related technology performance of POTWs with conventional secondary treatment. Due to multiple delays, most notably postponements in fielding the screener questionnaire due to circumstances associated with the coronavirus (COVID–19) pandemic, EPA is proposing to renew the ICR for the screener questionnaire.

The screener questionnaire is a one-time data collection that solicits basic facility identification, characterization, and technical information necessary to develop the future detailed questionnaire. Questions include those necessary to identify and stratify the universe of POTWs and, within that population, the secondary treatment POTWs not designed specifically to remove nitrogen and phosphorus. EPA would prepare a separate ICR for subsequent phases of the study.

In this renewal EPA proposes three revisions to the currently approved screener questionnaire ICR and supporting statement. First, EPA has reduced the maximum number of respondents from 16,500 to 15,000 reflecting survey responses already received as of October 30, 2020. Second, EPA has made minor clarifying edits to the survey questions such as providing additional examples of certain technology classifications. Third, EPA is revising the respondent burden estimates. The original average burden estimate assumed it would take one hour to complete the registration process and three hours to complete the full questionnaire. EPA reviewed start and end times associated with questionnaires submitted online and found that the average time to complete the long version of the online questionnaire was 1.1 hours and the time to complete the short version was 26 minutes. EPA revised the average burden to 2.25 hours for the questionnaire and 15 minutes for registration (Questionnaire Section A) based on this information. EPA solicits comment on these proposed changes. A copy of the screener questionnaire is available at Docket ID No. EPA–HQ–

OW–2016–0404 as part of this request for comments.

Form Numbers: None.

Respondents/affected entities: Approximately 15,000 POTWs that meet the definition under 40 CFR 403.3(q), 50 POTWs for site visits, and 100 state and/or small municipal association contacts.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 12,000 (total).

Frequency of response: One-time data collection.

Total estimated burden: 8,747 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $398,120 (per year), which includes $8,800 annualized capital or operation & maintenance costs.

Changes in Estimates: There is decrease of approximately 41,000 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to screener questionnaire responses already received, reduced number of total respondents, and replacement of EPA's estimated respondent burdens with the actual time respondents took to complete the screener questionnaire.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2021–16089 Filed 7–27–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Advisory Committee on Community Banking; Notice of Charter Renewal

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of renewal.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (FACA), and after consultation with the General Services Administration, the Chairman of the Federal Deposit Insurance Corporation has determined that renewal of the FDIC Advisory Committee on Community Banking (Committee) is in the public interest in connection with the performance of duties imposed upon the FDIC by law. The Committee has been a successful undertaking by the FDIC and has provided valuable feedback to the agency on a broad range of policy issues that have a particular impact on community banks throughout the United States and the local communities that are served by community banks. The Committee will continue to review various issues that may include, but not be limited to, examination policies and procedures, credit and lending practices, deposit insurance assessments, insurance coverage, and regulatory compliance matters to promote the continued growth and ability of community banks to extend financial services in their respective local markets. The structure and responsibilities of the Committee are unchanged from when it was originally established in July 2009. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Debra A. Decker, Committee Management Officer of the FDIC, at (202) 898–8748.

Authority: 5 U.S.C. Appendix.

Dated: July 23, 2021.

Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–16060 Filed 7–27–21; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012360–001.

Agreement Name: ''K'' Line/Volkswagen Konzernlogistik GmbH & Co. OHG Space Charter Agreement.

Parties: Kawasaki Kisen Kaisha, Ltd. and Volkswagen Konzernlogistik GmbH & Co. OHG.

Filing Party: John Meade; ''K'' Line America.

Synopsis: The amendment removes joint negotiation authority for terminal services.

Proposed Effective Date: 7/16/2021.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/53.

Agreement No.: 012322–001.

Agreement Name: TOKO Line/NYK Bulk & Projects Space Charter and Cooperative Working Agreement.

Parties: NYK Bulk & Project Carriers Ltd. and TOKO Kaiun Kaisha, Ltd.

Filing Party: Rebecca Fenneman; Jeffrey/Fenneman Law and Strategy PLLC.

Synopsis: The amendment corrects TOKO's address and removes all authority to jointly negotiate or procure terminal services in the United States.

Proposed Effective Date: 7/16/2021.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/15.

Agreement No.: 012305–001.

Agreement Name: Siem Car Carriers AS/Nippon Yusen Kaisha Space Charter Agreement.

Parties: Siem Car Carriers AS and Nippon Yusen Kaisha.

Filing Party: Ashley Craig; Venable LLP.

Synopsis: The amendment updates Article 5.3 of the Agreement to remove joint procurement and joint negotiation authority.

Proposed Effective Date: 7/16/2021.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/175.

Agreement No.: 201247–001.

Agreement Name: NMCC/KYOWA Space Charter Agreement.

Parties: Nissan Motor Car Carrier Co., Ltd. and Kyowa Shipping Co., Ltd.

Filing Party: Rebecca Fenneman; Jeffrey/Fenneman Law and Strategy PLLC.

Synopsis: The amendment removes all authority to jointly negotiate or procure terminal services in the United States.

Proposed Effective Date: 7/19/2021.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/8147.

Agreement No.: 012318–001.

Agreement Name: MOL/Kyowa Shipping Co., Ltd. Space Charter Agreement.

Parties: Mitsui O.S.K. Lines, Ltd. and Kyowa Shipping Co., Ltd.

Filing Party: Rebecca Fenneman; Jeffrey/Fenneman Law and Strategy PLLC.

Synopsis: The amendment removes all authority to jointly negotiate or procure terminal services in the United States.

Proposed Effective Date: 7/19/2021.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/190.

Agreement No.: 012450–001.

Agreement Name: Hoegh Autoliners and NYK Space Charter Agreement.

Parties: Hoegh Autoliners AS and Nippon Yusen Kaisha.

Filing Party: Kristen Chung; NYK Line (North America) Inc.

Synopsis: The amendment removes all authority to jointly negotiate or procure terminal services in the United States.

Proposed Effective Date: 7/19/2021.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/1931.

Agreement No.: 201326–001.

Agreement Name: Sallaum Lines/NYK Space Charter Agreement.

Parties: Sallaum Lines Switzerland SA and Nippon Yusen Kaisha.

Filing Party: Kristen Chung; NYK Line (North America) Inc.

Synopsis: This amendment removes all authority to jointly negotiate or procure terminal services in the United States and updates the names of the parties.

Proposed Effective Date: 7/19/2021.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/26450.

Agreement No.: 012422–001.

Agreement Name: Liberty Global Logistics/NYK Space Charter Agreement.

Parties: Liberty Global Logistics LLC and Nippon Yusen Kaisha.

Filing Party: Kristen Chung; NYK Line (North America) Inc.

Synopsis: The amendment removes all authority to jointly negotiate or procure terminal services in the United States.

Proposed Effective Date: 7/19/2021.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/1893.

Agreement No.: 012423–001.

Agreement Name: Glovis/NYK Space Charter Agreement.

Parties: Hyundai Glovis Co., Ltd. and Nippon Yusen Kaisha.

Filing Party: Kristen Chung; NYK Line (North America) Inc.

Synopsis: The amendment removes all authority to jointly negotiate or procure terminal services in the United States.

Proposed Effective Date: 7/20/2021.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/1894.

Agreement No.: 012313–001.

Agreement Name: NYK/EUKOR North America/Caribbean and Central America Space Charter Agreement.

Parties: Nippon Yusen Kaisha and EUKOR Car Carriers, Inc.

Filing Party: Kristen Chung; NYK Line (North America) Inc.

Synopsis: The amendment removes all authority to jointly negotiate or procure terminal services in the United States.

Proposed Effective Date: 7/21/2021.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/186.

Agreement No.: 201298–001.

Agreement Name: CMA CGM/COSCO SHIPPING China-U.S. West Coast Service Slot Charter Agreement.

Parties: CMA CGM S.A. and COSCO SHIPPING Lines Co., Ltd.

Filing Party: Robert Magovern; Cozen O'Connor.

Synopsis: The amendment revises Articles 1, 5, and 8 of the Agreement to update the respective services on which the parties will exchange space under the Agreement.

Proposed Effective Date: 7/21/2021.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/21398.

Agreement No.: 012227–001.

Agreement Name: NYK/EUKOR North America/Far East Space Charter Agreement.

Parties: Nippon Yusen Kaisha and EUKOR Car Carriers, Inc.

Filing Party: Kristen Chung; NYK Line (North America) Inc.

Synopsis: The amendment removes all authority to jointly negotiate or procure terminal services in the United States.

Proposed Effective Date: 7/21/2021.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/276.

Dated: July 23, 2021.

Rachel E. Dickon,

Secretary.

[FR Doc. 2021–16090 Filed 7–27–21; 8:45 am]

BILLING CODE P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Privacy Act of 1974; System of Records

AGENCY: Federal Retirement Thrift Investment Board (FRTIB).

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, the Federal Retirement Thrift Investment Board (FRTIB) proposes to establish a new system of records. Records contained in this system will be used to implement FRTIB's Insider Threat Program.

DATES: This system will become effective upon its publication in today's **Federal Register**, with the exception of the routine uses which will be effective on August 27, 2021. FRTIB invites written comments on the routine uses and other aspects of this system of records. Submit any comments by August 27, 2021.

ADDRESSES: You may submit written comments to FRTIB by any one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the website instructions for submitting comments.
- *Fax:* 202–942–1676.
- *Mail or Hand Delivery:* Office of General Counsel, Federal Retirement Thrift Investment Board, 77 K Street NE, Suite 1000, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Dharmesh Vashee, General Counsel and Senior Agency Official for Privacy, Federal Retirement Thrift Investment Board, Office of General Counsel, 77 K Street NE, Suite 1000, Washington, DC 20002, (202) 942–1600. For access to any of the FRTIB's systems of records, contact Amanda Haas, FOIA Officer, Office of General Counsel, at the above address and phone number.

SUPPLEMENTARY INFORMATION: FRTIB proposes to establish a new system of records entitled, ''FRTIB–23, Insider Threat Program Records.'' FRTIB is committed to protecting FRTIB facilities, information, and information systems. In order to better protect these resources, FRTIB has established an Insider Threat Program to prevent, detect, and mitigate the effects of insider threats. An insider threat is an individual who has or had authorized access to an organization's assets, and uses their access, either maliciously or unintentionally, to act in a way that could cause harm to FRTIB facilities, information systems, or data.

FRTIB is not legally required to have an insider threat program under Executive Order 13587, as the agency does not maintain classified information. However, FRTIB has implemented this program as a best practice in order to protect the information that it maintains, including controlled unclassified information. FRTIB's Insider Threat Program is based on standards developed by the National Institute of Standards and Technology and the National Insider Threat Task Force. The records compiled to administer the insider threat program may be from any program, record, or source, and may contain records pertaining to information security, personnel security, or physical security.

FRTIB will publish regulations to exempt such material in the new system of records from certain requirements under the Privacy Act of 1974 (5 U.S.C.

552a), based on subsection (k)(2) of the Act.

The collection and maintenance of these records is new. The implementation of this new system of records will be effective on July 28, 2021. FRTIB proposes to apply eleven routine uses to FRTIB–23.

Dharmesh Vashee,

General Counsel and Senior Agency Official for Privacy.

SYSTEM NAME AND NUMBER:

FRTIB–23, Insider Threat Program Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are located at the Federal Retirement Thrift Investment Board, 77 K Street NE, Suite 1000, Washington, DC 20002. Records may also be maintained at the business offices of third-party service providers. Records may also be maintained at additional locations for Business Continuity purposes.

SYSTEM MANAGER:

Insider Threat Program Manager, Federal Retirement Thrift Investment Board, 77 K Street NE, Suite 1000, Washington, DC 20002, (202) 942–1600.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 8474; 44 U.S.C. Chapter 35; 44 U.S.C. 3101.

PURPOSE(S) OF THE SYSTEM:

FRTIB's Insider Threat Program is being implemented to prevent, detect, and mitigate the effects of insider threats, defined as, ''the potential for an individual who has or had authorized access to an organization's assets to use their access, either maliciously or unintentionally, to act in a way that could negatively affect the organization.''

The Insider Threat Program system of records is being established to manage insider threat matters; facilitate insider threat activities, inquiries, and investigations; identify insider threats to FRTIB facilities, information, and information systems; track referrals of potential insider threats from FRTIB's hotline; and to track referrals of potential insider threats to internal and external partners.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system collects information on current or former FRTIB employees, contractors, subcontractors, or any other individuals who have or have previously had authorized access to FRTIB facilities, information, or information systems.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records compiled for each insider threat report, inquiry, or investigation may vary significantly based on the nature of each actual or potential insider threat incident.

Categories of records in the Insider Threat Program system of records may include name; social security number; date of birth; place of birth; personal and business email address; personal and business phone number; work history; background investigation information (including any information derived from SF–85, SF–85P, and SF–86 forms and background investigation processes); user ID; user activity performed on FRTIB devices; correspondence sent or received on an FRTIB device or network; personnel records (including disciplinary records and performance records); records of access to FRTIB facilities; records of security violations; reports from FRTIB's hotline for fraud, waste, abuse, and other misconduct; and law enforcement referrals.

RECORD SOURCE CATEGORIES:

To monitor, identify, and respond to potential insider threats, information in the system will be received on an as-needed basis depending on the nature of the inquiry or investigation from: FRTIB employees, contractors, vendors, or other individuals with access to FRTIB facilities, information, or information systems; FRTIB's hotline for reporting fraud, waste, abuse, and other misconduct; information collected through user activity monitoring; officials from other foreign, federal, tribal, state, and local government agencies and organizations; non-government, commercial, public, and private agencies and organizations; and from relevant records, including information security databases and files; personnel security databases and files; FRTIB human resources databases and files; access records for FRTIB facilities; FRTIB contractor files; FRTIB's Office of Technology Services; FRTIB telephone usage records; federal, state, tribal, territorial, and local law enforcement and investigatory records; other Federal agencies; and publicly available information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, as amended, 5 U.S.C. 552a(b); and:

1. Routine Use—Audit: A record from this system of records may be disclosed to an agency, organization, or individual for the purpose of performing an audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to FRTIB officers and employees.

2. Routine Use—Breach Mitigation and Notification: Response to Breach of FRTIB Records: A record from this system of records may be disclosed to appropriate agencies, entities, and persons when (1) FRTIB suspects or has confirmed that there has been a breach of the system of records; (2) FRTIB has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, FRTIB (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with FRTIB's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

3. Routine Use—Response to Breach of Other Records: A record from this system of records may be disclosed to another Federal agency or Federal entity, when FRTIB determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

4. Routine Use—Congressional Inquiries: A record from this system of records may be disclosed to a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the request of the individual to whom the record pertains.

5. Routine Use—Contractors, et al.: A record from this system of records may be disclosed to contractors, grantees, experts, consultants, the agents thereof, and others performing or working on a contract, service, grant, cooperative agreement, interagency agreement, or other assignment for FRTIB, when

necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to FRTIB officers and employees.

6. Routine Use—Third-Party Service Providers: A record from this system of records may be disclosed to third-party service providers, including other government agencies, such as the Department of Justice, that provide support for FRTIB's Insider Threat Program under a contract or interagency agreement.

7. Routine Use—Disclosure to Law Enforcement: Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

8. Routine Use—Litigation, DOJ or Outside Counsel: A record from this system of records may be disclosed to the Department of Justice, FRTIB's outside counsel, other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when: (1) FRTIB, or (2) any employee of FRTIB in his or her official capacity, or (3) any employee of FRTIB in his or her individual capacity where DOJ or FRTIB has agreed to represent the employee, or (4) the United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and FRTIB determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which FRTIB collected the records.

9. Routine Use—Litigation, Opposing Counsel: A record from this system of records may be disclosed to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena.

10. Routine Use—NARA/Records Management: A record from this system of records may be disclosed to the National Archives and Records Administration (NARA) or other Federal Government agencies pursuant to the Federal Records Act.

11. Routine Use—Insider Threat Community of Practice: A record from this system of records may be disclosed to any Federal agency or group of agencies with responsibilities for activities related to counterintelligence or the detection of insider threats.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in paper and electronic form, including on computer databases and cloud-based services, all of which are securely stored.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name, phone number, case number, or internal FRTIB identification (including FRTIB email, username, etc.).

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

These records are maintained in accordance with General Records Schedule 5.6 (Security Records), Items 210 through 240, issued by the National Archives and Records Administration (NARA).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

FRTIB has adopted appropriate administrative, technical, and physical controls in accordance with FRTIB's security program to protect the security, confidentiality, availability, and integrity of the information and to ensure that records are not disclosed to or accessed by unauthorized individuals. Access to the records in this system is limited to individuals who have the appropriate permissions and who have a need to know the information in order to perform their official duties.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records within this system must submit a request pursuant to 5 CFR part 1630. Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual, such as a Power of Attorney, in order for the representative to act on their behalf.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures above.

NOTIFICATION PROCEDURES:

See Record Access Procedures above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Records in this system will be exempt, based on 5 U.S.C. 552a(k)(2), from the requirements in subsections (c)(3), (d)(1)–(4), (e)(1), (e)(4)(G)–(I), and (f) of the Privacy Act. The Agency has promulgated regulations implementing the Privacy Act at 5 CFR 1632.15 that establish this exemption.

HISTORY:

None.

[FR Doc. 2021–16016 Filed 7–27–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–P–0299]

Determination That EFUDEX (Fluorouracil) Topical Solution, 5 Percent, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that EFUDEX (fluorouracil) topical solution, 5 percent, was not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of the abbreviated new drug application (ANDA) that refers to this drug product, and it will allow FDA to continue to approve ANDAs that refer to the product as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Kaetochi Okemgbo, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 51, Rm. 6272, Silver Spring, MD 20993–0002, 240–825–9944, *Kaetochi.Okemgbo@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

EFUDEX (fluorouracil) topical solution, 5 percent, is the subject of NDA 016831, held by Bausch Health Americas, Inc., and initially approved on July 29, 1970. EFUDEX is indicated for the topical treatment of multiple actinic or solar keratoses, and treatment of superficial basal cell carcinomas when conventional methods are impractical, such as with multiple lesions or difficult treatment sites. EFUDEX (fluorouracil) topical solution, 5 percent, is currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

Encube Ethicals Private Ltd. submitted a citizen petition dated March 16, 2021 (Docket No. FDA–2021–P–0299), under 21 CFR 10.30, requesting that the Agency determine whether EFUDEX (fluorouracil) topical solution, 5 percent, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that EFUDEX (fluorouracil) topical solution, 5 percent, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that EFUDEX (fluorouracil) topical solution, 5 percent, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of EFUDEX (fluorouracil) topical solution, 5 percent, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this drug product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list EFUDEX (fluorouracil) topical solution, 5 percent, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of the approved ANDA that refers to this drug product. Additional ANDAs that refer to EFUDEX (fluorouracil) topical solution, 5 percent, may also be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: July 20, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–16037 Filed 7–27–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0708]

Biosimilar User Fee Rates for Fiscal Year 2022

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the rates for biosimilar user fees for fiscal year (FY) 2022. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Biosimilar User Fee Amendments of 2017 (BsUFA II), authorizes FDA to assess and collect user fees for certain activities in connection with biosimilar biological product development; review of certain applications for approval of biosimilar biological products; and each biosimilar biological product approved in a biosimilar biological product application. BsUFA II directs FDA to establish, before the beginning of each fiscal year, the amount of initial and annual biosimilar biological product development (BPD) fees, the reactivation fee, and the biosimilar biological product application and program fees for such year. These fees apply to the period from October 1, 2021, through September 30, 2022.

FOR FURTHER INFORMATION CONTACT: Melissa Hurley, Office of Financial Management, Food and Drug Administration, 4041 Powder Mill Rd., Rm. 61075, Beltsville, MD 20705–4304, 240–402–4585.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 744G, 744H, and 744I of the FD&C Act (21 U.S.C. 379j-51, 379j-52, and 379j-53), as amended by BsUFA II (title IV of the FDA Reauthorization Act of 2017, Pub. L. 115–52), authorize the collection of fees for biosimilar biological products. Under section 744H(a)(1)(A) of the FD&C Act, the initial BPD fee for a product is due when the sponsor submits an investigational new drug (IND) application that FDA determines is intended to support a biosimilar biological product application or within 5 calendar days after FDA grants the first BPD meeting, whichever occurs first. A sponsor who has paid the initial BPD fee is considered to be participating in FDA's BPD program for that product.

Under section 744H(a)(1)(B) of the FD&C Act, once a sponsor has paid the initial BPD fee for a product, the annual BPD fee is assessed beginning with the next fiscal year. The annual BPD fee is assessed for the product each fiscal year until the sponsor submits a marketing application for the product that is accepted for filing or the sponsor discontinues participation in FDA's BPD program for the product.

Under section 744H(a)(1)(D) of the FD&C Act, if a sponsor has discontinued participation in FDA's BPD program and wants to reengage with FDA on development of the product, the sponsor must pay a reactivation fee to resume participation in the program. The sponsor must pay the reactivation fee by the earlier of the following dates: No later than 5 calendar days after FDA grants the sponsor's request for a BPD meeting for that product or upon the date of submission by the sponsor of an IND describing an investigation that FDA determines is intended to support a biosimilar biological product application for that product. The sponsor will be assessed an annual BPD fee beginning with the first fiscal year after payment of the reactivation fee.

BsUFA II also authorizes fees for certain biosimilar biological product

applications and for each biosimilar biological product identified in an approved biosimilar biological product application (section 744H(a)(2) and (3) of the FD&C Act). Under certain conditions, FDA will grant a small business a waiver from its first biosimilar biological product application fee (section 744H(d)(1) of the FD&C Act).

For FY 2018 through FY 2022, the base revenue amounts for the total revenues from all BsUFA fees are established by BsUFA II. For FY 2022, the base revenue amount is the FY 2021 inflation-adjusted fee revenue amount of $42,493,066. The FY 2022 base revenue amount is to be adjusted for inflation and to reflect changes in the resource capacity needs for the process for the review of biosimilar biological product applications. Additionally, it may be reduced, as appropriate, for long-term financial planning purposes.

This document provides fee rates for FY 2022 for the initial and annual BPD fee ($57,184), for the reactivation fee ($114,368), for an application requiring clinical data ($1,746,745), for an application not requiring clinical data ($873,373), and for the program fee ($304,162). These fees are effective on October 1, 2021, and will remain in effect through September 30, 2022. For applications that are submitted on or after October 1, 2021, the new fee schedule must be used.

II. Fee Revenue Amount for FY 2022

The base revenue amount for FY 2022 is $42,493,066 prior to adjustments for inflation, resource capacity, and operating reserves (see section 744H(c)(1) through (3) of the FD&C Act).

A. FY 2022 Statutory Fee Revenue Adjustments for Inflation

BsUFA II specifies that the $42,493,066 is to be adjusted for inflation increases for FY 2022 using two separate adjustments—one for personnel compensation and benefits (PC&B) and one for non-PC&B costs (see section 744H(c)(1) of the FD&C Act).

The component of the inflation adjustment for payroll costs shall be one plus the average annual percent change in the cost of all PC&B paid per full-time equivalent (FTE) positions at FDA for the first 3 of the preceding 4 fiscal years, multiplied by the proportion of PC&B costs to total FDA costs of the process for the review of biosimilar biological product applications for the first 3 of the preceding 4 fiscal years (see section 744H(c)(1)(B) of the FD&C Act).

Table 1 summarizes the actual cost and FTE data for the specified fiscal years and provides the percent changes from the previous fiscal years and the average percent changes over the first 3 of the 4 fiscal years preceding FY 2022. The 3-year average is 2.7383 percent.

TABLE 1—FDA PC&B EACH YEAR AND PERCENT CHANGES

Fiscal year	2018	2019	2020	3-Year average
Total PC&B	$2,690,678,000	$2,620,052,000	$2,875,592,000	
Total FTE	17,023	17,144	17,535	
PC&B per FTE	$158,061	$152,826	$163,992	
Percent Change From Previous Year	4.2206%	-3.3120%	7.3063%	2.7383%

The statute specifies that this 2.7383 percent be multiplied by the proportion of PC&B costs to the total FDA costs of the process for the review of biosimilar biological product applications. Table 2 shows the PC&B and the total obligations for the process for the review of biosimilar biological product applications for the first 3 of the preceding 4 fiscal years.

TABLE 2—PC&B AS A PERCENT OF TOTAL COST OF THE PROCESS FOR THE REVIEW OF BIOSIMILAR BIOLOGICAL PRODUCT APPLICATIONS

Fiscal year	2018	2019	2020	3-Year average
Total PC&B	$35,477,032	$32,946,252	$25,445,175	
Total Costs	$62,604,122	$65,210,467	$56,798,694	
PC&B Percent	56.6688%	50.5230%	44.7989%	50.6636%

The payroll adjustment is 2.7383 percent from table 1 multiplied by 50.6636 percent (or 1.3873 percent).

The statute specifies that the portion of the inflation adjustment for nonpayroll costs is the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington-Baltimore, DC–MD–VA–WV; not seasonally adjusted; all items; annual index) for the first 3 years of the preceding 4 years of available data multiplied by the proportion of all costs other than PC&B costs to total costs of the process for the review of biosimilar biological product applications for the first 3 years of the preceding 4 fiscal years (see section 744H(c)(1)(B) of the FD&C Act). As a result of a geographical revision made by the Bureau of Labor and Statistics in January 2018,[1] the Washington-Baltimore, DC–MD–VA–WV index was discontinued and replaced with two separate indices (*i.e.,* Washington-Arlington-Alexandria, DC–VA–MD–WV and Baltimore-Columbia-Towson, MD). In order to continue applying a CPI which best reflects the geographic region in which FDA is headquartered and which provides the most current data available, the Washington-Arlington-Alexandria index will be used in calculating the relevant adjustment factors for FY 2020 and subsequent years. Table 3 provides the summary data for the percent changes in the specified CPI for the Washington-Arlington-Alexandria area. The data are published by the Bureau of Labor Statistics and can be found on its website at: *https://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUURS35ASA0,CUUSS35ASA0.*

[1] The Bureau of Labor Statistics' announcement of the geographical revision can be viewed at *https://www.bls.gov/cpi/additional-resources/geographic-revision-2018.htm.*

TABLE 3—ANNUAL AND THREE-YEAR AVERAGE PERCENT CHANGE IN CPI FOR WASHINGTON-ARLINGTON-ALEXANDRIA AREA

Year	2018	2019	2020	3-Year average
Annual CPI	261.445	264.777	267.157	.....
Annual Percent Change	2.0389%	1.2745%	0.8989%	1.4041%

The statute specifies that this 1.4041 percent be multiplied by the proportion of all costs other than PC&B to total costs of the process for the review of biosimilar biological product applications obligated. Since 50.6636 percent was obligated for PC&B (as shown in table 2), 49.3364 percent is the portion of costs other than PC&B (100 percent minus 50.6636 percent equals 49.3364 percent). The nonpayroll adjustment is 1.4041 percent times 49.3364 percent, 0.6927 percent.

Next, we add the payroll adjustment (1.3873 percent) to the nonpayroll adjustment (0.6927 percent), for a total inflation adjustment of 2.0800 percent (rounded) for FY 2022.

We then multiply the base revenue amount for FY 2022 ($42,493,066) by one plus the inflation adjustment (1.0208), yielding an inflation-adjusted amount of $43,376,922.

B. FY 2022 Statutory Fee Revenue Adjustments for Capacity Planning

The statute specifies a process to establish and implement a capacity planning adjustment (CPA) to adjust the total revenue amount to reflect changes in the resource capacity needs for the process for the review of biosimilar biological product applications (see section 744H(c)(2) of the FD&C Act). Following a process required in statute, FDA established the capacity planning adjustment methodology and first applied it in the setting of FY 2021 fees. The establishment of this new methodology is described in the **Federal Register** at 85 FR 47220.

The CPA methodology consists of four steps:

1. Forecast workload volumes: predictive models estimate the volume of workload for the upcoming fiscal year.

2. Forecast the resource needs: Forecast algorithms are generated utilizing time reporting data. These algorithms estimate the required demand in FTEs [2] for direct review-related effort. This is then compared to current available resources for the direct review-related workload.

3. Assess the resource forecast in the context of additional internal factors: Program leadership examines operational, financial, and resourcing data to assess whether the FDA will be able to utilize additional funds during the fiscal year and the funds are required to support additional review capacity. FTE amounts are adjusted, if needed.

4. Convert the FTE need to dollars: utilizing the FDA's fully loaded FTE cost model, the final feasible FTEs are converted to an equivalent dollar amount.

The following section outlines the major components of the FY 2022 BsUFA CPA. Table 4 summarizes the forecasted workload volumes for BsUFA in FY 2022 based on predictive models, as well as historical actuals from FY 2020 for comparison.

TABLE 4—BSUFA ACTUAL FY 2020 WORKLOAD VOLUMES & PREDICTED FY 2022 WORKLOAD VOLUMES

Workload category	FY 2020 actuals	FY 2022 predictions
Supplements with Clinical Data	2	4
Labeling Supplements	4	8
Manufacturing Supplements	79	111
Biosimilar Biological Product Applications	7	7
BsUFA Industry Meetings (BIA, BPD Type 1–4)	95	120
Participating BPD Programs	104	131

Utilizing the resource forecast algorithms, the forecasted workload volumes for FY 2022 were then converted into estimated FTE needs for FDA's BsUFA direct review-related work. The resulting expected FY 2022 FTE need for BsUFA was compared to current onboard capacity for BsUFA direct review-related work to determine the FY 2022 resource delta, as summarized in table 5.

TABLE 5—FY 2022 BSUFA RESOURCE DELTA

Current resource capacity	FY 2022 resource forecast	Predicted FY 2022 FTE delta
54	71	17

The projected 17 FTE delta was then assessed by FDA in the context of additional operational and internal factors to ensure that a fee adjustment is only made for resources which can be utilized in the fiscal year and for which funds are required to support additional review capacity. FDA determined that the expected net FTE gains could be funded through the expected FY 2022 collections amount without a further adjustment from the CPA. In summary, after accounting for these internal factors, FDA determined that in FY 2022 the BsUFA fee amounts did not need adjustment from the CPA to provide funds for the realistic estimated net FTE gains.

[2] Full-time equivalents refers to a paid staff year, rather than a count of individual employees.

TABLE 6—FY 2022 BSUFA CPA

Additional FTEs for FY 2022	Cost for each additional FTE	FY 2022 BsUFA CPA
0	$312,185	$0

Although an adjustment to the fee amounts for resource needs by the CPA will not be made in FY 2022, FDA will evaluate the need for a fee adjustment from the CPA in future fiscal years and will make adjustments as warranted.

C. FY 2022 Statutory Fee Revenue Adjustments for Operating Reserve

BsUFA II provides for an operating reserve adjustment to allow FDA to adjust the fee revenue and fees for any given fiscal year during BsUFA II, after FY 2018, to maintain an appropriate operating reserve of carryover user fees. Beginning in FY 2019, FDA may reduce the fee revenue and fees for long-term financial planning purposes. Once the capacity planning adjustment is effective, FDA also may, if necessary, increase the fee revenue and fees to maintain not more than 21 weeks of operating reserve of carryover user fees.

As described in the BsUFA II commitment letter, *Biosimilar Biological Product Reauthorization Goals and Procedures Fiscal Years 2018 Through 2022,*[3] FDA is committed to reducing the BsUFA carryover reserve to an amount no greater than 21 weeks of operating reserve of carryover user fees by the end of FY 2022. Based on estimates published in the FY 2021 update to the BsUFA II Five-Year Financial Plan, FDA currently shows an operating reserve amount that currently exceeds the committed amount. As such, FDA is applying a downward operating reserve adjustment of $3,336,686 (rounded to the nearest dollar), an amount equivalent to 4 weeks of operations. With this operating reserve adjustment, the inflation-adjusted amount, $43,376,922, will be lowered by $3,336,686, yielding the FY 2022 target revenue amount of $40,040,000 (rounded to the nearest thousand).

III. Fee Amounts for FY 2022

Under section 744H(b)(3)(A) of the FD&C Act, FDA must determine the percentage of the total revenue amount for a fiscal year to be derived from: (1) Initial and annual BPD fees and reactivation fees; (2) biosimilar biological product application fees; and (3) biosimilar biological product program fees. In establishing the fee amounts for the final year of BsUFA II, FDA considered how best to balance the fee allocation to provide stable funding and reasonable fee amounts.

A. Application Fees

In establishing the biosimilar biological product application fee amount for FY 2022, FDA utilized an average of the 3 most recently completed fiscal years (*i.e.,* FY 2018–2020) of biosimilar biological product application submissions. Based on the available information, FDA estimates it will receive 7 biosimilar biological product applications requiring clinical data for approval in FY 2022.

FDA will maintain the biosimilar biological product application fee for FY 2022 at the same level as FY 2021, which is $1,746,745. This is estimated to provide a total of $12,227,215 representing 31 percent (rounded to the nearest whole number) of the FY 2022 target revenue amount.

B. Biosimilar Biological Product Program Fee

Under BsUFA II, FDA assesses biosimilar biological product program fees (''program fees''). An applicant in a biosimilar biological product application shall not be assessed more than five program fees for a fiscal year for biosimilar biological products identified in a single biosimilar biological product application (see section 744H(a)(3)(D) of the FD&C Act). Applicants are assessed a program fee for a fiscal year only for biosimilar biological products identified in a biosimilar biological product application approved as of October 1 of such fiscal year.

Based on available information, FDA estimates that 67 program fees will be invoiced for FY 2022, including currently approved products and products with the potential to be approved in pending applications with goal dates in FY 2021. For products invoiced in the FY 2022 regular billing cycle, FDA anticipates that zero program fees will be refunded.

FDA will maintain the biosimilar biological product program fee for FY 2022 at the same level as FY 2021, which is $304,162. This is estimated to provide a total of $20,378,854, representing 51 percent (rounded to the nearest whole number) of the FY 2022 target revenue amount.

C. Initial and Annual BPD Fees, Reactivation Fees

To estimate the number of BPD fees to be paid in FY 2022, FDA must consider the number of new BPD programs, the number of current BPD programs, and the number of BPD programs that will be reactivated. These estimates provide information that, when aggregated, allows FDA to set BPD fees (initial BPD fees, annual BPD fees, reactivation fees).

FDA analyzes available data to estimate the total number of BPD programs for FY 2022. In FY 2022, FDA estimates 39 new BPD programs, no reactivations (a single reactivation is weighted as two BPD fees), and 91 BPD programs (out of 92 invoiced) to pay the annual BPD fee, yielding a total estimated equivalent of 130 BPD fees to be collected in FY 2022.

The remainder of the target revenue of $7,433,931, or 19 percent (rounded to the nearest whole number), is to be collected from the BPD fees. Dividing this amount by the estimated 130 BPD fees to be paid equals an initial BPD and annual BPD fee amount of $57,184. The reactivation fee is set at twice the initial/annual BPD amount at $114,368 (rounded to the nearest dollar). This represents a reduction of the BPD fees from the FY 2021 levels.

IV. Fee Schedule for FY 2022

The fee rates for FY 2022 are displayed in table 7.

TABLE 7—FEE SCHEDULE FOR FY 2022

Fee category	Fee rates for FY 2022
Initial BPD	$57,184
Annual BPD	57,184
Reactivation	114,368
Applications:	
Requiring clinical data	1,746,745
Not requiring clinical data	873,373
Program	304,162

V. Fee Payment Options and Procedures

A. Initial BPD, Reactivation, and Application Fees

The fees established in the new fee schedule apply to FY 2022, *i.e.,* the period from October 1, 2021, through September 30, 2022. The initial BPD fee for a product is due when the sponsor submits an IND that FDA determines is intended to support a biosimilar biological product application for the product or within 5 calendar days after FDA grants the first BPD meeting for the product, whichever occurs first. Sponsors who have discontinued participation in the BPD program for a product and seek to resume participation in such program must pay the reactivation fee by the earlier of the following dates: No later than 5 calendar

[3] See: *https://www.fda.gov/media/100573/download.*

days after FDA grants the sponsor's request for a BPD meeting for that product or upon the date of submission by the sponsor of an IND describing an investigation that FDA determines is intended to support a biosimilar biological product application for that product.

The application fee for a biosimilar biological product is due upon submission of the application (see section 744H(a)(2)(C) of the FD&C Act).

To make a payment of the initial BPD, reactivation, or application fee, complete the Biosimilar User Fee Cover Sheet, available on FDA's website (*https://www.fda.gov/bsufa*) and generate a user fee identification (ID) number. Payment must be made in U.S. currency by electronic check, check, bank draft, U.S. postal money order, or wire transfer. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). FDA has partnered with the U.S. Department of the Treasury to use *Pay.gov*, a web-based payment application, for online electronic payment. The *Pay.gov* feature is available on the FDA website after the user fee ID number is generated. Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay* (Note: Only full payments are accepted. No partial payments can be made online). Once you search for your invoice, click ''Pay Now'' to be redirected to *Pay.gov*. Electronic payment options are based on the balance due. Payment by credit card is available for balances that are less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

If a check, bank draft, or postal money order is submitted, make it payable to the order of the Food and Drug Administration and include the user fee ID number to ensure that the payment is applied to the correct fee(s). Payments can be mailed to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000. If a check, bank draft, or money order is to be sent by a courier that requests a street address, the courier should deliver your payment to: U.S. Bank, Attention: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery, contact U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery.) Please make sure that the FDA post office box number (P.O. Box 979108) and ID number is written on the check, bank draft, or postal money order.

For payments made by wire transfer, include the unique user fee ID number to ensure that the payment is applied to the correct fee(s). Without the unique user fee ID number, the payment may not be applied. The originating financial institution may charge a wire transfer fee. Include applicable wire transfer fees with payment to ensure fees are fully paid. Questions about wire transfer fees should be addressed to the financial institution. The following account information should be used to send payments by wire transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No.: 75060099, Routing No.: 021030004, SWIFT: FRNYUS33. FDA's tax identification number is 53–0196965.

B. Annual BPD and Program Fees

FDA will issue invoices with payment instructions for FY 2022 annual BPD and program fees under the new fee schedule in August 2021. Payment will be due on October 1, 2021. If sponsors join the BPD program after the annual BPD invoices have been issued in August 2021, FDA will issue invoices in December 2021 to firms subject to fees for FY 2022 that qualify for the annual BPD fee after the August 2021 billing. FDA will issue invoices in December 2021 for any annual program fees for FY 2022 that qualify for fee assessments and were not issued in August 2021.

Dated: July 23, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0701]

Food Safety Modernization Act Domestic and Foreign Facility Reinspection, Recall, and Importer Reinspection Fee Rates for Fiscal Year 2022

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the fiscal year (FY) 2022 fee rates for certain domestic and foreign facility reinspections, failures to comply with a recall order, and importer reinspections that are authorized by the Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the FDA Food Safety Modernization Act (FSMA). These fees are effective on October 1, 2021, and will remain in effect through September 30, 2022.

FOR FURTHER INFORMATION CONTACT: Jimmy Carlton, Office of Management, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857,240–888–1556,*jimmy.carlton@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 107 of FSMA (Pub. L. 111–353) added section 743 to the FD&C Act (21 U.S.C. 379j–31) to provide FDA with the authority to assess and collect fees from, in part: (1) The responsible party for each domestic facility and the U.S. agent for each foreign facility subject to a reinspection, to cover reinspection-related costs; (2) the responsible party for a domestic facility and an importer who does not comply with a recall order, to cover food [1] recall activities associated with such order; and (3) each importer subject to a reinspection to cover reinspection-related costs (sections 743(a)(1)(A), (B), and (D) of the FD&C Act). Section 743 of the FD&C Act directs FDA to establish fees for each of these activities based on an estimate of 100 percent of the costs of each activity for each year (sections 743(b)(2)(A)(i), (ii), and (iv)), and these fees must be made available solely to pay for the costs of each activity for which the fee was incurred (section 743(b)(3)). These fees are effective on October 1, 2021, and will remain in effect through September 30, 2022. Section 743(b)(2)(B)(iii) of the FD&C Act directs FDA to develop a proposed set of guidelines in consideration of the burden of fee amounts on small businesses. As a first step in developing these guidelines, FDA invited public comment on the potential impact of the fees authorized by section 743 of the FD&C Act on small businesses (76 FR 45818, August 1, 2011). The comment period for this request ended November 30, 2011. As stated in FDA's September 2011 ''Guidance for Industry: Implementation of the Fee Provisions of Section 107 of the FDA Food Safety Modernization Act,'' (*https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-implementation-fee-*

[1] The term ''food'' for purposes of this document has the same meaning as such term in section 201(f) of the FD&C Act (21 U.S.C. 321(f)).

provisions-section-107-fda-food-safety-modernization-act), because FDA recognizes that for small businesses the full cost recovery of FDA reinspection or recall oversight could impose severe economic hardship, FDA intends to consider reducing certain fees for those firms. FDA does not intend to issue invoices for reinspection or recall order fees until FDA publishes a guidance document outlining the process through which firms may request a reduction in fees.

In addition, as stated in the September 2011 Guidance, FDA is in the process of considering various issues associated with the assessment and collection of importer reinspection fees. The fee rates set forth in this notice will be used to determine any importer reinspection fees assessed in FY 2022.

II. Estimating the Average Cost of a Supported Direct FDA Work Hour for FY 2022

FDA is required to estimate 100 percent of its costs for each activity in order to establish fee rates for FY 2022. In each year, the costs of salary (or personnel compensation) and benefits for FDA employees account for between 50 and 60 percent of the funds available to, and used by, FDA. Almost all of the remaining funds (operating funds) available to FDA are used to support FDA employees for paying rent, travel, utility, information technology (IT), and other operating costs.

A. Estimating the Full Cost per Direct Work Hour in FY 2022

Full-time Equivalent (FTE) reflects the total number of regular straight-time hours—not including overtime or holiday hours—worked by employees, divided by the number of compensable hours applicable to each fiscal year. Annual leave, sick leave, compensatory time off, and other approved leave categories are considered ''hours worked'' for purposes of defining FTE employment.

In general, the starting point for estimating the full cost per direct work hour is to estimate the cost of an FTE or paid staff year. Calculating an Agency-wide total cost per FTE requires three primary cost elements: Payroll, non-payroll, and rent.

We have used an average of past year cost elements to predict the FY 2022 cost. The FY 2022 FDA-wide average cost for payroll (salaries and benefits) is $171,228; non-payroll—including equipment, supplies, IT, general and administrative overhead—is $101,625; and rent, including cost allocation analysis and adjustments for other rent and rent-related costs, is $23,597 per paid staff year, excluding travel costs.

Summing the average cost of an FTE for payroll, non-payroll, and rent, brings the FY 2022 average fully supported cost to $296,450 per FTE, excluding travel costs. FDA will use this base unit fee in determining the hourly fee rate for reinspection and recall order fees for FY 2022 prior to including domestic or foreign travel costs as applicable for the activity.

To calculate an hourly rate, FDA must divide the FY 2022 average fully supported cost of $296,450 per FTE by the average number of supported direct FDA work hours in FY 2020—the last fiscal year for which data are available. See table 1.

TABLE 1—SUPPORTED DIRECT FDA WORK HOURS IN A PAID STAFF YEAR IN FY 2020

Total number of hours in a paid staff year	2,080
Less:	
10 paid holidays	−80
20 days of annual leave	−160
10 days of sick leave	−80
12.5 days of training	−100
26.5 days of general administration	−184
26.5 days of travel	−212
2 hours of meetings per week	−104
Net Supported Direct FDA Work Hours Available for Assignments	1,160

Dividing the average fully supported FTE cost in FY 2022 ($296,450) by the total number of supported direct work hours available for assignment in FY 2022 (1,160) results in an average fully supported cost of $256 (rounded to the nearest dollar), excluding inspection travel costs, per supported direct work hour in FY 2022.

B. Adjusting FY 2020 Travel Costs for Inflation To Estimate FY 2022 Travel Costs

To adjust the hourly rate for FY 2022, FDA must estimate the cost of inflation in each year for FY 2021 and FY 2022. FDA uses the method prescribed for estimating inflationary costs under the Prescription Drug User Fee Act (PDUFA) provisions of the FD&C Act (section 736(c)(1) (21 U.S.C. 379h(c)(1)), the statutory method for inflation adjustment in the FD&C Act that FDA has used consistently. FDA previously determined the FY 2021 inflation rate to be 1.3493 percent; this rate was published in the FY 2021 PDUFA user fee rates notice in the **Federal Register** (August 3, 2020, 85 FR 46651). Utilizing the method set forth in section 736(c)(1) of the FD&C Act, FDA has calculated an inflation rate of 1.3493 percent for FY 2021 and 2.2013 percent for FY 2022, and FDA intends to use these inflation rates to make inflation adjustments for FY 2022 for several of its user fee programs; the derivation of this rate will be published in the **Federal Register** in the FY 2022 notice for the PDUFA user fee rates.

The average fully supported cost per supported direct FDA work hour, excluding travel costs, of $256 already takes into account inflation as the calculation above is based on FY 2022 predicted costs. FDA will use this base unit fee in determining the hourly fee rate for reinspection and recall order fees for FY 2022 prior to including domestic or foreign travel costs as applicable for the activity. In FY 2020, FDA's Office of Regulatory Affairs (ORA) spent a total of $3,831,758 for domestic regulatory inspection travel costs and General Services Administration Vehicle costs related to FDA's Center for Food Safety and Applied Nutrition (CFSAN) and Center for Veterinary Medicine (CVM) field activities programs. The total ORA domestic travel costs spent is then divided by the 4,399 CFSAN and CVM domestic inspections, which averages a total of $871 per inspection. These inspections average 42.65 hours per inspection. Dividing $871 per inspection by 42.65 hours per inspection results in a total and an additional cost of $20 (rounded to the nearest dollar) per hour spent for domestic inspection travel costs in FY 2020. To adjust for the $20 per hour additional domestic cost inflation increases for FY 2021 and FY 2022, FDA must multiply the FY 2021 PDUFA inflation rate adjustor (1.013493) times the FY 2022 PDUFA inflation rate adjustor (1.022013) times the $20 additional domestic cost, which results in an estimated cost of $21 (rounded to the nearest dollar) per paid hour in addition to $256 for a total of $277 per paid hour ($256 plus $21) for each direct hour of work requiring domestic inspection travel. FDA will use these rates in charging fees in FY 2022 when domestic travel is required.

In FY 2020, ORA spent a total of $1,449,058 on 171 foreign inspection trips related to FDA's CFSAN and CVM field activities programs, which averaged a total of $8,474 per foreign inspection trip. These trips averaged 3 weeks (or 120 paid hours) per trip. Dividing $8,474 per trip by 120 hours per trip results in a total and an additional cost of $71 (rounded to the nearest dollar) per paid hour spent for foreign inspection travel costs in FY 2020. To adjust $71 for inflationary increases in FY 2021 and FY 2022, FDA must multiply it by the same inflation factors mentioned previously in this

document (1.013493 and 1.022013), which results in an estimated cost of $74 (rounded to the nearest dollar) per paid hour in addition to $256 for a total of $330 per paid hour ($256 plus $74) for each direct hour of work requiring foreign inspection travel. FDA will use these rates in charging fees in FY 2022 when foreign travel is required.

TABLE 2—FSMA FEE SCHEDULE FOR FY 2022

Fee category	Fee rates for FY 2022
Hourly rate if domestic travel is required	$277
Hourly rate if foreign travel is required	330

III. Fees for Reinspections of Domestic or Foreign Facilities Under Section 743(a)(1)(A)

A. What will cause this fee to be assessed?

The fee will be assessed for a reinspection conducted under section 704 of the FD&C Act (21 U.S.C. 374) to determine whether corrective actions have been implemented and are effective and compliance has been achieved to the Secretary of Health and Human Services' (the Secretary) (and, by delegation, FDA's) satisfaction at a facility that manufactures, processes, packs, or holds food for consumption necessitated as a result of a previous inspection (also conducted under section 704) of this facility, which had a final classification of Official Action Indicated (OAI) conducted by or on behalf of FDA, when FDA determined the non-compliance was materially related to food safety requirements of the FD&C Act. FDA considers such non-compliance to include non-compliance with a statutory or regulatory requirement under section 402 of the FD&C Act (21 U.S.C. 342) and section 403(w) of the FD&C Act (21 U.S.C. 343(w)). However, FDA does not consider non-compliance that is materially related to a food safety requirement to include circumstances where the non-compliance is of a technical nature and not food safety related (*e.g.,* failure to comply with a food standard or incorrect font size on a food label). Determining when non-compliance, other than under sections 402 and 403(w) of the FD&C Act, is materially related to a food safety requirement of the FD&C Act may depend on the facts of a particular situation. FDA intends to issue guidance to provide additional information about the circumstances under which FDA would consider non-compliance to be materially related to a food safety requirement of the FD&C Act.

Under section 743(a)(1)(A) of the FD&C Act, FDA is directed to assess and collect fees from ''the responsible party for each domestic facility (as defined in section 415(b) (21 U.S.C. 350d(b))) and the United States agent for each foreign facility subject to a reinspection'' to cover reinspection-related costs.

Section 743(a)(2)(A)(i) of the FD&C Act defines the term ''reinspection'' with respect to domestic facilities as ''1 or more inspections conducted under section 704 subsequent to an inspection conducted under such provision which identified non-compliance materially related to a food safety requirement of th[e] Act, specifically to determine whether compliance has been achieved to the Secretary's satisfaction.''

The FD&C Act does not contain a definition of ''reinspection'' specific to foreign facilities. In order to give meaning to the language in section 743(a)(1)(A) of the FD&C Act to collect fees from the U.S. agent of a foreign facility subject to a reinspection, the Agency is using the following definition of ''reinspection'' for purposes of assessing and collecting fees under section 743(a)(1)(A), with respect to a foreign facility, ''1 or more inspections conducted by officers or employees duly designated by the Secretary subsequent to such an inspection which identified non-compliance materially related to a food safety requirement of the FD&C Act, specifically to determine whether compliance has been achieved to the Secretary's (and, by delegation, FDA's) satisfaction.''

This definition allows FDA to fulfill the mandate to assess and collect fees from the U.S. agent of a foreign facility in the event that an inspection reveals non-compliance materially related to a food safety requirement of the FD&C Act, causing one or more subsequent inspections to determine whether compliance has been achieved to the Secretary's (and, by delegation, FDA's) satisfaction. By requiring the initial inspection to be conducted by officers or employees duly designated by the Secretary, the definition ensures that a foreign facility would be subject to fees only in the event that FDA, or an entity designated to act on its behalf, has made the requisite identification at an initial inspection of non-compliance materially related to a food safety requirement of the FD&C Act. The definition of ''reinspection-related costs'' in section 743(a)(2)(B) of the FD&C Act relates to both a domestic facility reinspection and a foreign facility reinspection, as described in section 743(a)(1)(A).

B. Who will be responsible for paying this fee?

The FD&C Act states that this fee is to be paid by the responsible party for each domestic facility (as defined in section 415(b) of the FD&C Act) and by the U.S. agent for each foreign facility (section 743(a)(1)(A) of the FD&C Act). This is the party to whom FDA will send the invoice for any fees that are assessed under this section.

C. How much will this fee be?

The fee is based on the number of direct hours spent on such reinspections, including time spent conducting the physical surveillance and/or compliance reinspection at the facility, or whatever components of such an inspection are deemed necessary, making preparations and arrangements for the reinspection, traveling to and from the facility, preparing any reports, analyzing any samples or examining any labels if required, and performing other activities as part of the OAI reinspection until the facility is again determined to be in compliance. The direct hours spent on each such reinspection will be billed at the appropriate hourly rate shown in table 2 of this document.

IV. Fees for Non-Compliance With a Recall Order Under Section 743(a)(1)(B)

A. What will cause this fee to be assessed?

The fee will be assessed for not complying with a recall order under section 423(d) (21 U.S.C. 350l(d)) or section 412(f) of the FD&C Act (21 U.S.C. 350a(f)) to cover food recall activities associated with such order performed by the Secretary (and by delegation, FDA) (section 743(a)(1)(B) of the FD&C Act). Non-compliance may include the following: (1) Not initiating a recall as ordered by FDA; (2) not conducting the recall in the manner specified by FDA in the recall order; or (3) not providing FDA with requested information regarding the recall, as ordered by FDA.

B. Who will be responsible for paying this fee?

Section 743(a)(1)(B) of the FD&C Act states that the fee is to be paid by the responsible party for a domestic facility (as defined in section 415(b) of the FD&C Act) and an importer who does not comply with a recall order under section 423 or under section 412(f) of the FD&C Act. In other words, the party paying the fee would be the party that received the recall order.

C. How much will this fee be?

The fee is based on the number of direct hours spent on taking action in response to the firm's failure to comply with a recall order. Types of activities could include conducting recall audit checks, reviewing periodic status reports, analyzing the status reports and the results of the audit checks, conducting inspections, traveling to and from locations, and monitoring product disposition. The direct hours spent on each such recall will be billed at the appropriate hourly rate shown in table 2 of this document.

V. How must the fees be paid?

An invoice will be sent to the responsible party for paying the fee after FDA completes the work on which the invoice is based. Payment must be made within 30 days of the invoice date in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration. Detailed payment information will be included with the invoice when it is issued.

VI. What are the consequences of not paying these fees?

Under section 743(e)(2) of the FD&C Act, any fee that is not paid within 30 days after it is due shall be treated as a claim of the U.S. Government subject to provisions of subchapter II of chapter 37 of title 31, United States Code.

Dated: July 20, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–16056 Filed 7–27–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369]

Product-Specific Guidance for Olodaterol Hydrochloride; Tiotropium Bromide; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Draft Guidance for Olodaterol Hydrochloride; Tiotropium Bromide.'' The draft guidance, when finalized, will provide product-specific recommendations on, among other things, the information and data needed to demonstrate bioequivalence (BE) to support abbreviated new drug applications (ANDAs) for olodaterol hydrochloride; tiotropium bromide inhalation spray.

DATES: Submit either electronic or written comments on the draft guidance by September 27, 2021 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked, and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2007–D–0369 for ''Draft Guidance for Olodaterol Hydrochloride; Tiotropium Bromide.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Christine Le, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4714, Silver Spring, MD 20993–0002, 301–796–2398 and/or *PSG-Questions@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products,'' which explained the process that would be used to make product-specific guidances available to the public on FDA's website at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs.*

As described in that guidance, FDA adopted this process to develop and disseminate product-specific guidances and to provide a meaningful opportunity for the public to consider and comment on the guidances. This notice announces the availability of a draft guidance on a generic olodaterol hydrochloride; tiotropium bromide inhalation spray.

FDA initially approved new drug application (NDA) 206756 for STIOLTO RESPIMAT (olodaterol hydrochloride; tiotropium bromide inhalation spray) in May 2015. We are now issuing draft guidance for industry on BE recommendations for generic olodaterol hydrochloride; tiotropium bromide inhalation spray (''Draft Guidance for Olodaterol Hydrochloride; Tiotropium Bromide'').

In October 2012, Boehringer Ingelheim, manufacturer of the reference listed drug SPIRIVA HANDIHALER, NDA 21395, submitted a citizen petition requesting, among other things, that FDA adopt and apply certain requirements in its review of any proposed generic and follow-on versions of SPIRIVA HANDIHALER or any other Boehringer Ingelheim oral inhalation product containing the active ingredient tiotropium bromide under section 505(j) and (b)(2), respectively, of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j) and (b)(2)) (Docket No. FDA–2012–P–1072). Boehringer Ingelheim submitted a supplement to the citizen petition in January 2021 further expanding on its initial petition requests. FDA is reviewing the issues raised in the petition and supplement and will consider any comments on the draft guidance entitled ''Draft Guidance for Olodaterol Hydrochloride; Tiotropium Bromide'' before responding to Boehringer's citizen petition.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on the information and data to demonstrate BE to support ANDAs for tiotropium bromide inhalation spray. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

FDA tentatively concludes that this draft guidance contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: July 20, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–16046 Filed 7–27–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0702]

Food Safety Modernization Act Third-Party Certification Program User Fee Rate for Fiscal Year 2022

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fiscal year (FY) 2022 annual fee rate for recognized accreditation bodies and accredited certification bodies, and the initial and renewal fee rate for accreditation bodies applying to be recognized in the third-party certification program that is authorized by the Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the FDA Food Safety Modernization Act (FSMA). We are also announcing the fee rate for certification bodies that are applying to be directly accredited by FDA.

DATES: This fee is effective October 1, 2021.

FOR FURTHER INFORMATION CONTACT: Donald Prater, Office of Food Policy and Response, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 3202, Silver Spring, MD 20993, 301–348–3007.

SUPPLEMENTARY INFORMATION:

I. Background

Section 307 of FSMA (Pub. L. 111–353), Accreditation of Third-Party Auditors, amended the FD&C Act to create a new provision, section 808, under the same name. Section 808 of the FD&C Act (21 U.S.C. 384d) directs FDA to establish a program for accreditation of third-party certification bodies [1] conducting food safety audits and issuing food and facility certifications to eligible foreign entities (including registered foreign food facilities) that meet our applicable requirements. Under this provision, we established a system for FDA to recognize accreditation bodies to accredit certification bodies, except for limited circumstances in which we may directly accredit certification bodies to participate in the third-party certification program.

Section 808(c)(8) of the FD&C Act directs FDA to establish a reimbursement (user fee) program by which we assess fees and require reimbursement for the work FDA performs to establish and administer the third-party certification program under section 808 of the FD&C Act. The user fee program for the third-party certification program was established by a final rule entitled ''Amendments to Accreditation of Third-Party Certification Bodies To Conduct Food Safety Audits and To Issue Certifications To Provide for the User Fee Program'' (81 FR 90186, December 14, 2016).

The FSMA FY 2022 third-party certification program user fee rate announced in this notice is effective on October 1, 2021 and will remain in effect through September 30, 2022.

[1] For the reasons explained in the third-party certification final rule (80 FR 74570 at 74578–74579, November 27, 2015), and for consistency with the implementing regulations for the third-party certification program in 21 CFR parts 1, 11, and 16, this notice uses the term ''third-party certification body'' rather than the term ''third-party auditor'' used in section 808(a)(3) of the FD&C Act.

II. Estimating the Average Cost of a Supported Direct FDA Work Hour for FY 2022

FDA must estimate its costs for each activity in order to establish fee rates for FY 2022. In each year, the costs of salary (or personnel compensation) and benefits for FDA employees account for between 50 and 60 percent of the funds available to, and used by, FDA. Almost all the remaining funds (operating funds) available to FDA are used to support FDA employees for paying rent, travel, utility, information technology, and other operating costs.

A. Estimating the Full Cost per Direct Work Hour in FY 2022

Full-time Equivalent (FTE) reflects the total number of regular straight-time hours—not including overtime or holiday hours—worked by employees, divided by the number of compensable hours applicable to each fiscal year. Annual leave, sick leave, compensatory time off, and other approved leave categories are considered ''hours worked'' for purposes of defining FTE employment.

In general, the starting point for estimating the full cost per direct work hour is to estimate the cost of an FTE or paid staff year. Calculating an Agency-wide total cost per FTE requires three primary cost elements: Payroll, non-payroll, and rent.

We have used an average of past year cost elements to predict the FY 2022 cost. The FY 2022 FDA-wide average cost for payroll (salaries and benefits) is $171,228; non-payroll—including equipment, supplies, information technology, general and administrative overhead—is $101,625; and rent, including cost allocation analysis and adjustments for other rent and rent-related costs, is $23,597 per paid staff year, excluding travel costs.

Summing the average cost of an FTE for payroll, non-payroll, and rent, brings the FY 2022 average fully supported cost to $296,450 per FTE, excluding travel costs. FDA will use this base unit fee in determining the hourly fee rate for third-party certification user fees for FY 2022 prior to including travel costs as applicable for the activity.

To calculate an hourly rate, FDA must divide the FY 2022 average fully supported cost of $296,450 per FTE by the average number of supported direct FDA work hours in FY 2020—the last FY for which data are available. See table 1.

TABLE 1—SUPPORTED DIRECT FDA WORK HOURS IN A PAID STAFF YEAR IN FY 2020

Total number of hours in a paid staff year	2,080
Less:	
10 paid holidays	−80
20 days of annual leave	−160
10 days of sick leave	−80
12.5 days of training	−100
26.5 days of general administration	−184
26.5 days of travel	−212
2 hours of meetings per week	−104
Net Supported Direct FDA Work Hours Available for Assignments	1,160

Dividing the average fully supported FTE cost in FY 2022 ($296,450) by the total number of supported direct work hours available for assignment in FY 2020 (1,160) results in an average fully supported cost of $256 (rounded to the nearest dollar), excluding travel costs, per supported direct work hour in FY 2022.

B. Adjusting FY 2020 Travel Costs for Inflation To Estimate FY 2022 Travel Costs

To adjust the hourly rate for FY 2022, FDA must estimate the cost of inflation in each year for FY 2021 and FY 2022. FDA uses the method prescribed for estimating inflationary costs under the Prescription Drug User Fee Act (PDUFA) provisions of the FD&C Act (section 736(c)(1) (21 U.S.C. 379h(c)(1))), the statutory method for inflation adjustment in the FD&C Act that FDA has used consistently. FDA previously determined the FY 2021 inflation rate to be 1.3493 percent; this rate was published in the FY 2021 PDUFA user fee rates notice in the **Federal Register** (August 3, 2020, 85 FR 46651). Utilizing the method set forth in section 736(c)(1) of the FD&C Act, FDA has calculated an inflation rate of 1.3493 percent for FY 2021 and 2.2013 percent for FY 2022, and FDA intends to use this inflation rate to make inflation adjustments for FY 2022; the derivation of this rate will be published in the **Federal Register** in the FY 2022 notice for the PDUFA user fee rates. The compounded inflation rate for FYs 2021 and 2022, therefore, is 1.035803 (or 3.5803 percent) (calculated as 1 plus 1.35803 percent times 1 plus 2.2013 percent).

The average fully supported cost per supported direct FDA work hour, excluding travel costs, of $256 already takes into account inflation as the calculation above is based on FY 2022 predicted costs. FDA will use this base unit fee in determining the hourly fee rate for third-party certification program fees for FY 2022 prior to including travel costs as applicable for the activity. For the purpose of estimating the fee, we are using the travel cost rate for foreign travel because we anticipate that the vast majority of onsite assessments made by FDA under this program will require foreign travel. In FY 2020, the Office of Regulatory Affairs spent a total of $1,449,058 on 171 foreign inspection trips related to FDA's Center for Food Safety and Applied Nutrition and Center for Veterinary Medicine field activities programs, which averaged a total of $8,474 per foreign inspection trip. These trips averaged 3 weeks (or 120 paid hours) per trip. Dividing $8,474 per trip by 120 hours per trip results in a total and an additional cost of $71 (rounded to the nearest dollar) per paid hour spent for foreign inspection travel costs in FY 2020. To adjust $71 for inflationary increases in FY 2021 and FY 2022, FDA must multiply it by the same inflation factor mentioned previously in this document (1.035803 or 3.5803 percent), which results in an estimated cost of $74 (rounded to the nearest dollar) per paid hour in addition to $256 for a total of $330 per paid hour ($256 plus $74) for each direct hour of work requiring foreign inspection travel. FDA will use this rate in charging fees in FY 2022 when travel is required for the third-party certification program.

TABLE 2—FSMA FEE SCHEDULE FOR FY 2022

Fee category	Fee rates for FY 2022
Hourly rate without travel	$256
Hourly rate if travel is required	330

III. Fees for Accreditation Bodies and Certification Bodies in the Third-Party Certification Program Under Section 808(c)(8) of the FD&C Act

The third-party certification program assesses application fees and annual fees. In FY 2022, the only fees that could be collected by FDA under section 808(c)(8) of the FD&C Act are the initial application fee for accreditation bodies seeking recognition, the annual fee for recognized accreditation bodies, the annual fee for certification bodies accredited by a recognized accreditation body, the initial application fee for a certification body seeking direct accreditation from FDA, and the renewal fee for recognized accreditation bodies. Table 3 provides an overview of the fees for FY 2022.

TABLE 3—FSMA THIRD-PARTY CERTIFICATION PROGRAM USER FEE SCHEDULE FOR FY 2022

Fee category	Fee rates for FY 2022
Initial Application Fee for Accreditation Body Seeking Recognition	$44,512
Annual Fee for Recognized Accreditation Body	2,064
Annual Fee for Accredited Certification Body	2,580
Initial Application Fee for a Certification Body Seeking Direct Accreditation From FDA	44,512
Renewal Application Fee for Recognized Accreditation Body	27,120

A. Application Fee for Accreditation Bodies Applying for Recognition in the Third-Party Certification Program Under Section 808(c)(8) of the FD&C Act

Section 1.705(a)(1) (21 CFR 1.705(a)(1)) establishes an application fee for accreditation bodies applying for initial recognition that represents the estimated average cost of the work FDA performs in reviewing and evaluating initial applications for recognition of accreditation bodies.

The fee is based on the fully supported FTE hourly rates and estimates of the number of hours it would take FDA to perform relevant activities. These estimates represent FDA's current thinking, and as the program evolves, FDA will continue to reconsider the estimated hours. Based on data we have acquired since starting the program, we estimate that it would take, on average, 80 person-hours to review an accreditation body's submitted application, 48 person-hours for an onsite performance evaluation of the applicant (including travel and other steps necessary for a fully supported FTE to complete an onsite assessment), and 32 person-hours to prepare a written report documenting the onsite assessment.

FDA employees review applications and prepare reports from their worksites, so we use the fully supported FTE hourly rate excluding travel, $256/hour, to calculate the portion of the user fee attributable to those activities: $256/hour × (80 hours (application review) + 32 hours (written report)) = $28,672. FDA employees will likely travel to foreign countries for the onsite performance evaluations because most accreditation bodies are anticipated to be located in foreign countries. For this portion of the fee we use the fully supported FTE hourly rate for work requiring travel, $330/hour, to calculate the portion of the user fee attributable to those activities: $330/hour × 48 hours (*i.e.,* two fully supported FTEs × ((2 travel days × 8 hours) + (1 day onsite × 8 hours))) = $15,840. The estimated average cost of the work FDA performs in total for reviewing an initial application for recognition for an accreditation body based on these figures would be $28,672 + $15,840 = $44,512. Therefore, the application fee for accreditation bodies applying for recognition in FY 2022 will be $44,512.

B. Annual Fee for Accreditation Bodies Participating in the Third-Party Certification Program Under Section 808(c)(8) of the FD&C Act

To calculate the annual fee for each recognized accreditation body, FDA takes the estimated average cost of work FDA performs to monitor performance of a single recognized accreditation body and annualizes that over the average term of recognition. At this time, we assume an average term of recognition of 5 years. We also assume that FDA will monitor 10 percent of recognized accreditation bodies onsite. As the program proceeds, we will adjust the term of recognition as appropriate. We estimate that for one performance evaluation of a recognized accreditation body, it would take, on average (taking into account that not all recognized accreditation bodies would be monitored onsite), 22 hours for FDA to conduct records review, 8 hours to prepare a report detailing the records review and onsite performance evaluation, and 8 hours of onsite performance evaluation. Using the fully supported FTE hourly rates in table 2, the estimated average cost of the work FDA performs to monitor performance of a single recognized accreditation body would be $7,680 ($256/hour × (22 hours (records review) + 8 hours (written report))) plus $2,640 ($330/hour × 8 hours (onsite evaluation)), which is $10,320. Annualizing this amount over 5 years would lead to an annual fee for recognized accreditation bodies of $2,064 for FY 2022.

C. Annual Fee for Certification Bodies Accredited by a Recognized Accreditation Body in the Third-Party Certification Program Under Section 808(c)(8) of the FD&C Act

To calculate the annual fee for a certification body accredited by a recognized accreditation body, FDA takes the estimated average cost of work FDA performs to monitor performance of a single certification body accredited by a recognized accreditation body and annualizes that over the average term of accreditation. At this time, we assume an average term of accreditation of 4 years. This fee is based on the fully supported FTE hourly rates and estimates of the number of hours it would take FDA to perform relevant activities. We estimate that FDA would conduct, on average, the same activities, for the same amount of time to monitor certification bodies accredited by a recognized accreditation body as we would to monitor an accreditation body recognized by FDA. Using the fully supported FTE hourly rates in Table 2, the estimated average cost of the work FDA performs to monitor performance of a single accredited certification body would be $7,680 ($256/hour × (22 hours (records review) + 8 hours (written report))) plus $2,640 ($330/hour × 8 hours (onsite evaluation)), which is $10,320. Annualizing this amount over 4 years would lead to an annual fee for accredited certification bodies of $2,580 for FY 2022.

D. Initial Application Fee for Certification Bodies Seeking Direct Accreditation From FDA in the Third-Party Certification Program Under Section 808(c)(8) of the FD&C Act

Section 1.705(a)(3) establishes an application fee for certification bodies applying for direct accreditation from FDA that represents the estimated average cost of the work FDA performs in reviewing and evaluating initial applications for direct accreditation of certification bodies.

The fee is based on the fully supported FTE hourly rates and estimates of the number of hours it would take FDA to perform relevant activities. These estimates represent FDA's current thinking, and as the program evolves, FDA will reconsider the estimated hours. We estimate that it would take, on average, 80 person-hours to review a certification body's submitted application, 48 person-hours for an onsite performance evaluation of the applicant (including travel and other steps necessary for a fully supported FTE to complete an onsite assessment), and 32 person-hours to prepare a written report documenting the onsite assessment.

FDA employees are likely to review applications and prepare reports from their worksites, so we use the fully supported FTE hourly rate excluding travel, $256/hour, to calculate the portion of the user fee attributable to those activities: $256/hour × (80 hours (application review) + 32 hours (written report)) = $28,672. FDA employees will likely travel to foreign countries for the onsite performance evaluations because most certification bodies are anticipated to be located in foreign countries. For

this portion of the fee we use the fully supported FTE hourly rate for work requiring travel, $330/hour, to calculate the portion of the user fee attributable to those activities: $330/hour × 48 hours (*i.e.,* two fully supported FTEs × ((2 travel days × 8 hours) + (1 day onsite × 8 hours))) = $15,840. The estimated average cost of the work FDA performs in total for reviewing an initial application for direct accreditation of a certification body based on these figures would be $28,672 + $15,840 = $44,512. Therefore, the application fee for certification bodies applying for direct accreditation from FDA in FY 2022 will be $44,512.

E. Renewal Fee for Accreditation Bodies Participating in the Third-Party Certification Program Under Section 808(c)(8) of the FD&C Act

Section 1.705(a)(2) establishes a renewal application fee for recognized accreditation bodies that represents the estimated average cost of the work FDA performs in reviewing and evaluating renewal applications for recognition of accreditation bodies.

The fee is based on the fully supported FTE hourly rates and estimates of the number of hours it would take FDA to perform relevant activities. These estimates represent FDA's current thinking, and as the program evolves, FDA will reconsider the estimated hours. We estimate that it would take, on average, 43 person-hours to review an accreditation body's submitted renewal application, 24 person-hours for an onsite performance evaluation of the applicant (including travel and other steps necessary for a fully supported FTE to complete an onsite assessment), and 32 person-hours to prepare a written report documenting the onsite assessment.

FDA employees are likely to review renewal applications and prepare reports from their worksites, so we use the fully supported FTE hourly rate excluding travel, $256/hour, to calculate the portion of the user fee attributable to those activities: $256/hour × (43 hours (application review) + 32 hours (written report)) = $19,200. FDA employees will likely travel to foreign countries for the onsite performance evaluations because most certification bodies are anticipated to be located in foreign countries. For this portion of the fee we use the fully supported FTE hourly rate for work requiring travel, $330/hour, to calculate the portion of the user fee attributable to those activities: $330/hour × 24 hours (*i.e.,* fully supported FTE × ((2 travel days × 8 hours) + (1 day onsite × 8 hours))) = $7,920. The estimated average cost of the work FDA performs in total for reviewing a renewal application for recognition of an accreditation body based on these figures would be $19,200 + $7,920 = $27,120. Therefore, the renewal application fee for recognized accreditation bodies in FY 2022 will be $27,120.

IV. Estimated Fees for Accreditation Bodies and Certification Bodies in Other Fee Categories for FY 2022

Section 1.705(a) also establishes application fees for certification bodies applying for renewal of direct accreditation. Section 1.705(b) also establishes annual fees for certification bodies directly accredited by FDA.

Although we will not be collecting these other fees in FY 2022, for transparency and planning purposes, we have provided an estimate of what these fees would be for FY 2022 based on the fully supported FTE hourly rates for FY 2022 and estimates of the number of hours it would take FDA to perform relevant activities as outlined in the Final Regulatory Impact Analysis for the Third-Party Certification Regulation. Table 4 provides an overview of the estimated fees for other fee categories.

TABLE 4—ESTIMATED FEE RATES FOR OTHER FEE CATEGORIES UNDER THE FSMA THIRD-PARTY CERTIFICATION PROGRAM

Fee category	Estimated fee rates for FY 2022
Renewal application fee for directly accredited certification body	$27,120
Annual fee for certification body directly accredited by FDA	21,392

V. How must the fee be paid?

Accreditation bodies seeking initial recognition must submit the application fee with the application. For recognized accreditation bodies and accredited certification bodies, an invoice will be sent annually. Payment must be made within 30 days of the receipt invoice date. The payment must be made in U.S. currency from a U.S. bank by one of the following methods: Wire transfer, electronically, check, bank draft, or U.S. postal money order made payable to the Food and Drug Administration. The preferred payment method is online using an electronic check (Automated Clearing House (ACH), also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay.* (Note: only full payments are accepted. No partial payments can be made online.) Once you have found your invoice, select ''Pay Now'' to be redirected to Pay.gov. Electronic payment options are based on the balance due. Payment by credit card is available only for balances less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards. When paying by check, bank draft, or U.S. postal money order, please include the invoice number. Also write the FDA post office box number (P.O. Box 979108) on the enclosed check, bank draft, or money order. Mail the payment including the invoice number on the check stub to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000. When paying by wire transfer, it is required that the invoice number is included; without the invoice number the payment may not be applied. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required to add that amount to the payment to ensure that the invoice is paid in full. For international wire transfers, please inquire with the financial institutions prior to submitting the payment. Use the following account information when sending a wire transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Account Name: Food and Drug Administration, Account No.: 75060099, Routing No.: 021030004, Swift No.: FRNYUS33.

To send a check by a courier such as Federal Express, the courier must deliver the check to: U.S. Bank, Attn: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (Note: this address is for courier delivery only. If you have any questions concerning courier delivery, contact U.S. Bank at 314–418–4013. This phone number is only for questions about courier delivery.) The tax identification number of FDA is 53–0196965. (Note: invoice copies do not need to be submitted to FDA with the payments.)

VI. What are the consequences of not paying this fee?

The consequences of not paying these fees are outlined in 21 CFR 1.725. If FDA does not receive an application fee with an application for recognition, the application will be considered incomplete and FDA will not review the application. If a recognized accreditation body fails to submit its annual user fee within 30 days of the due date, we will suspend its recognition. If the recognized

accreditation body fails to submit its annual user fee within 90 days of the due date, we will revoke its recognition. If an accredited certification body fails to pay its annual fee within 30 days of the due date, we will suspend its accreditation. If the accredited certification body fails to pay its annual fee within 90 days of the due date, we will withdraw its accreditation.

Dated: July 20, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–16062 Filed 7–27–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–2366]

Justin Ash: Final Debarment Order

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring Justin Ash for a period of 5 years from importing or offering for import any drug into the United States. FDA bases this order on a finding that Mr. Ash was convicted of one felony count under Federal law for conspiracy to commit offenses against the United States. The factual basis supporting Mr. Ash's conviction, as described below, is conduct relating to the importation into the United States of a drug or controlled substance. Mr. Ash was given notice of the proposed debarment and was given an opportunity to request a hearing to show why he should not be debarred. As of April 4, 2021 (30 days after receipt of the notice), Mr. Ash had not responded. Mr. Ash's failure to respond and request a hearing constitutes a waiver of his right to a hearing concerning this matter.

DATES: This order is applicable July 28, 2021.

ADDRESSES: Submit applications for termination of debarment to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500, or at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa (ELEM–4029), Division of Enforcement (ELEM–4029), Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 240–402–8743, or at *debarments@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(1)(D) of the FD&C Act (21 U.S.C. 335a(b)(1)(D)) permits debarment of an individual from importing or offering for import any drug into the United States if FDA finds, as required by section 306(b)(3)(C) of the FD&C Act, that the individual has been convicted of a felony for conduct relating to the importation into the United States of any drug or controlled substance.

On November 24, 2020, Mr. Ash was convicted, as defined in section 306(l)(1) of FD&C Act, in the U. S. District Court for the Western District of Pennsylvania, when the court entered judgment against him for the offense of conspiracy to commit offenses against the United States, in violation of 18 U.S.C. 371.

FDA's finding that debarment is appropriate is based on the felony conviction referenced herein. The factual basis for this conviction is as follows: As contained in the information in Mr. Ash's case, filed December 10, 2019, to which he plead guilty, from on or about January 1, 2016, and continuing until May 8, 2018, he controlled an internet-based business entity known as both DRC and Domestic RCS (hereinafter DRC). During this time, Mr. Ash obtained bulk supplies of clonazolam, diclazepam, flubromazolam, and etizolam (none of which have been approved for use by FDA in the United States) from overseas sources, including from suppliers in China. Mr. Ash caused his overseas suppliers to ship these drugs in smaller quantities to multiple addresses in the United States he controlled to draw less government scrutiny. After receiving these bulk drugs, Mr. Ash caused his employees to press them into pills and package them. Mr. Ash caused the pill packaging to include disclaimers stating that the drugs were for research purposes only, in part to evade detection by regulatory authorities, including FDA. Mr. Ash then had the packages shipped to customers throughout the United States who ordered the drugs through a website he operated.

As a result of this conviction, FDA sent Mr. Ash, by certified mail, on February 26, 2021, a notice proposing to debar him for a 5-year period from importing or offering for import any drug into the United States. The proposal was based on a finding under section 306(b)(3)(C) of the FD&C Act that Mr. Ash's felony conviction under Federal law for conspiracy to commit offenses against the United States, in violation of 18 U.S.C. 371, was for conduct relating to the importation into the United States of any drug or controlled substance because he illegally imported, manufactured, repackaged, and then introduced unapproved clonazolam, diclazepam, flubromazolam, and etizolam drug products into interstate commerce.

In proposing a debarment period, FDA weighed the considerations set forth in section 306(c)(3) of the FD&C Act that it considered applicable to Mr. Ash's offense, and concluded that the offense warranted the imposition of a 5-year period of debarment.

The proposal informed Mr. Ash of the proposed debarment and offered him an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Ash received the proposal and notice of opportunity for a hearing on March 5, 2021. Mr. Ash failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(b)(3)(C) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Mr. Justin Ash has been convicted of a felony under Federal law for conduct relating to the importation into the United States of any drug or controlled substance. FDA finds that the offense should be accorded a debarment period of 5 years as provided by section 306(c)(2)(A)(iii) of the FD&C Act.

As a result of the foregoing finding, Mr. Ash is debarred for a period of 5 years from importing or offering for import any drug into the United States, effective (see **DATES**). Pursuant to section 301(cc) of the FD&C Act (21 U.S.C. 331(cc)), the importing or offering for import into the United States of any drug or controlled substance by, with the assistance of, or at the direction of Mr. Ash is a prohibited act.

Any application by Mr. Ash for termination of debarment under section 306(d)(1) of the FD&C Act should be

identified with Docket No. FDA–2020–N–2366 and sent to the Dockets Management Staff (see **ADDRESSES**). The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions will be placed in the docket and will be viewable at *https://www.regulations.gov* or at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

Dated: July 19, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–16044 Filed 7–27–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0704]

Food Safety Modernization Act Voluntary Qualified Importer Program User Fee Rate for Fiscal Year 2022

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fiscal year (FY) 2022 annual fee rate for importers approved to participate in the Voluntary Qualified Importer Program (VQIP) that is authorized by the Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the FDA Food Safety Modernization Act (FSMA). This fee is effective August 1, 2021, and will remain in effect through September 30, 2022.

FOR FURTHER INFORMATION CONTACT: Donald Prater, Office of Food Policy and Response, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 3202, Silver Spring, MD 20993, 301–348–3007.

SUPPLEMENTARY INFORMATION:

I. Background

Section 302 of FSMA, Voluntary Qualified Importer Program, amended the FD&C Act to create a new provision, section 806, under the same name. Section 806 of the FD&C Act (21 U.S.C. 384b) directs FDA to establish a program to provide for the expedited review and importation of food offered for importation by importers who have voluntarily agreed to participate in such program, and a process, consistent with section 808 of the FD&C Act (21 U.S.C. 384d), for the issuance of a facility certification to accompany a food offered for importation by importers participating in the VQIP.

Section 743 of the FD&C Act (21 U.S.C. 379j–31) authorizes FDA to assess and collect fees from each importer participating in VQIP to cover FDA's costs of administering the program. Each fiscal year, fees are to be established based on an estimate of 100 percent of the costs for the year. The fee rates must be published in a **Federal Register** notice not later than 60 days before the start of each fiscal year (section 743(b)(1) of the FD&C Act). After FDA approves a VQIP application, the user fee must be paid before October 1, the start of the VQIP fiscal year, to begin receiving benefits for that VQIP fiscal year.

The FY 2022 VQIP user fee will support benefits from October 1, 2021, through September 30, 2022.

II. Estimating the Average Cost of a Supported Direct FDA Work Hour for FY 2022

FDA is required to estimate 100 percent of its costs for each activity in order to establish fee rates for FY 2022. In each year, the costs of salary (or personnel compensation) and benefits for FDA employees account for between 50 and 60 percent of the funds available to, and used by, FDA. Almost all of the remaining funds (operating funds) available to FDA are used to support FDA employees for paying rent, travel, utility, information technology (IT), and other operating costs.

A. Estimating the Full Cost per Direct Work Hour in FY 2022

Full-time Equivalent (FTE) reflects the total number of regular straight-time hours—not including overtime or holiday hours—worked by employees, divided by the number of compensable hours applicable to each fiscal year. Annual leave, sick leave, compensatory time off, and other approved leave categories are considered ''hours worked'' for purposes of defining FTE employment.

In general, the starting point for estimating the full cost per direct work hour is to estimate the cost of an FTE or paid staff year. Calculating an Agency-wide total cost per FTE requires three primary cost elements: payroll, non-payroll, and rent.

We have used an average of past year cost elements to predict the FY 2022 cost. The FY 2022 FDA-wide average cost for payroll (salaries and benefits) is $171,228; non-payroll—including equipment, supplies, IT, general and administrative overhead—is $101,625; and rent, including cost allocation analysis and adjustments for other rent and rent-related costs, is $23,597 per paid staff year, excluding travel costs.

Summing the average cost of an FTE for payroll, non-payroll, and rent, brings the FY 2022 average fully supported cost to $296,450 per FTE, excluding travel costs. FDA will use this base unit fee in determining the hourly fee rate for VQIP fees for FY 2022 prior to including domestic or foreign travel costs as applicable for the activity.

To calculate an hourly rate, FDA must divide the FY 2022 average fully supported cost of $296,450 per FTE by the average number of supported direct FDA work hours in FY 2020—the last FY for which data are available. See table 1.

TABLE 1—SUPPORTED DIRECT FDA WORK HOURS IN A PAID STAFF YEAR IN FY 2020

Total number of hours in a paid staff year	2,080
Less:	
10 paid holidays	−80
20 days of annual leave	−160
10 days of sick leave	−80
12.5 days of training	−100
23 days of general administration	−184
26.5 days of travel	−212
2 hours of meetings per week	−104
Net Supported Direct FDA Work Hours Available for Assignments	1,160

Dividing the average fully supported FTE cost in FY 2022 ($296,450) by the total number of supported direct work hours available for assignment in FY 2020 (1,160) results in an average fully supported cost of $256 (rounded to the nearest dollar), excluding inspection travel costs, per supported direct work hour in FY 2022.

B. Adjusting FY 2020 Travel Costs for Inflation To Estimate FY 2022 Travel Costs

To adjust the hourly rate for FY 2022, FDA must estimate the cost of inflation in each year for FY 2021 and FY 2022. FDA uses the method prescribed for estimating inflationary costs under the Prescription Drug User Fee Act (PDUFA) provisions of the FD&C Act (section 736(c)(1) (21 U.S.C. 379h(c)(1)), the statutory method for inflation adjustment in the FD&C Act that FDA has used consistently. FDA previously determined the FY 2021 inflation rate to be 1.3493 percent; this rate was published in the FY 2021 PDUFA user fee rates notice in the **Federal Register** (August 3, 2020, 85 FR 46651). Utilizing the method set forth in section 736(c)(1) of the FD&C Act, FDA has calculated an inflation rate of 1.3493 percent for FY

2021 and 2.2013 percent for FY 2022, and FDA intends to use these inflation rates to make inflation adjustments for FY 2022; the derivation of this rate will be published in the **Federal Register** in the FY 2022 notice for the PDUFA user fee rates. The compounded inflation rate for FYs 2021 and 2022, therefore, is 1.035803 (or 3.5803 percent) (calculated as 1 plus 1.3493 percent times 1 plus 2.2013 percent).

The average fully supported cost per supported direct FDA work hour, excluding travel costs, of $256 already takes into account inflation as the calculation above is based on FY 2022 predicted costs. FDA will use this base unit fee in determining the hourly fee rate for VQIP fees for FY 2022 prior to including domestic or foreign travel costs as applicable for the activity.

In FY 2020, FDA's Office of Regulatory Affairs (ORA) spent a total of $3,831,758 for domestic regulatory inspection travel costs and General Services Administration Vehicle costs related to FDA's Center for Food Safety and Applied Nutrition (CFSAN) and Center for Veterinary Medicine (CVM) field activities programs. The total ORA domestic travel costs spent is then divided by the 4,399 CFSAN and CVM domestic inspections, which averages a total of $871 per inspection. These inspections average 42.65 hours per inspection. Dividing $871 per inspection by 42.65 hours per inspection results in a total and an additional cost of $20 (rounded to the nearest dollar) per hour spent for domestic inspection travel costs in FY 2020. To adjust for the $20 per hour additional domestic cost inflation increases for FY 2021 and FY 2022, FDA must multiply the FY 2021 PDUFA inflation rate adjustor (1.013493) by the FY 2022 PDUFA inflation rate adjustor (1.022013) times the $20 additional domestic cost, which results in an estimated cost of $21 (rounded to the nearest dollar) per paid hour in addition to $256 for a total of $277 per paid hour ($256 plus $21) for each direct hour of work requiring domestic inspection travel. FDA will use these rates in charging fees in FY 2022 when domestic travel is required.

In FY 2020, ORA spent a total of $1,449,058 on 171 foreign inspection trips related to FDA's CFSAN and CVM field activities programs, which averaged a total of $8,474 per foreign inspection trip. These trips averaged 3 weeks (or 120 paid hours) per trip. Dividing $8,474 per trip by 120 hours per trip results in a total and an additional cost of $71 (rounded to the nearest dollar) per paid hour spent for foreign inspection travel costs in FY 2020. To adjust $71 for inflationary increases in FY 2021 and FY 2022, FDA must multiply it by the same inflation factors mentioned previously in this document (1.013493 and 1.022013), which results in an estimated cost of $74 (rounded to the nearest dollar) per paid hour in addition to $256 for a total of $330 per paid hour ($256 plus $74) for each direct hour of work requiring foreign inspection travel. FDA will use these rates in charging fees in FY 2022 when foreign travel is required.

TABLE 2—FSMA FEE SCHEDULE FOR FY 2022

Hourly rate without travel	$256
Hourly rate if domestic travel is required	277
Hourly rate if foreign travel is required	330

III. Fees for Importers Approved To Participate in the Voluntary Qualified Importer Program Under Section 743 of the FD&C Act

FDA assesses fees for VQIP annually. Table 3 provides an overview of the fees for FY 2022.

TABLE 3—FSMA VQIP USER FEE SCHEDULE FOR FY 2022

Fee category	Fee rates for FY 2022
VQIP User Fee	$15,938

Section 743 of the FD&C Act requires that each importer participating in VQIP pay a fee to cover FDA's costs of administering the program. This fee represents the estimated average cost of the work FDA performs in reviewing and evaluating a VQIP importer. At this time, FDA is not offering an adjusted fee for small businesses. As required by section 743(b)(2)(B)(iii) of the FD&C Act, FDA previously published a set of guidelines in consideration of the burden of the VQIP fee on small businesses and provided for a period of public comment on the guidelines (80 FR 32136, June 5, 2015). While we did receive some comments in response, they did not address the questions posed, *i.e.,* how a small business fee reduction should be structured, what percentage of fee reduction would be appropriate, or what alternative structures FDA might consider to indirectly reduce fees for small businesses by charging different fee amounts to different VQIP participants. We plan on monitoring costs and collecting data to determine if, in future fiscal years, we will provide for a small business fee reduction. Consistent with section 743(b)(2)(B)(iii) of the FD&C Act, we will adjust the fee schedule for small businesses only through notice and comment rulemaking.

The fee is based on the fully supported FTE hourly rates and estimates of the number of hours it would take FDA to perform relevant activities. These estimates represent FDA's current thinking, and as the program evolves, FDA will reconsider the estimated hours. We estimate that it would take, on average, 39 person-hours to review a new VQIP application (including communication provided through the VQIP Importer's Help Desk), 28 person-hours to review a returning VQIP application (including communication provided through the VQIP Importer's Help Desk), 16 person-hours for an onsite performance evaluation of a domestic VQIP importer (including travel and other steps necessary for a fully supported FTE to complete and document an onsite assessment), and 34 person-hours for an onsite performance evaluation of a foreign VQIP importer (including travel and other steps necessary for a fully supported FTE to complete and document an onsite assessment). Additional costs include maintenance and support costs of information technology of administering benefits of the program. These costs are estimated to be $7,000 per VQIP importer.

Based on updated data, FDA anticipates that there may be up to three returning VQIP applicants and up to one new applicant this fiscal year. FDA employees are likely to review new VQIP applications from their worksites, so we use the fully supported FTE hourly rate excluding travel, $256/hour, to calculate the portion of the user fee attributable to those activities: $256/hour × (39 hours) = $9,984. FDA employees are likely to review returning VQIP applications from their worksites, so we use the fully supported FTE hourly rate excluding travel, $256/hour, to calculate the portion of the user fee attributable to those activities: $256/hour × (28 hours) = $7,168.

FDA employees will conduct a VQIP inspection to verify the eligibility criteria and full implementation of the food safety and food defense systems established in the Quality Assurance Program. A VQIP importer may be located inside or outside of the United States. However, this fiscal year, all VQIP importers will be located inside the United States. One new applicant may have an associated VQIP inspection.

FDA employees are likely to prepare for and report on the performance evaluation of a domestic VQIP importer at an FTE's worksite, so we use the fully

supported FTE hourly rate excluding travel, $256/hour, to calculate the portion of the user fee attributable to those activities: $256/hour × (8 hours) = $2,048. For the portion of the fee covering onsite evaluation of a domestic VQIP importer, we use the fully supported FTE hourly rate for work requiring domestic travel, $277/hour, to calculate the portion of the user fee attributable to those activities: $277/hour × 8 hours (*i.e.,* one fully supported FTE × (1 day onsite × 8 hours)) = $2,216. Therefore, the total cost of conducting the domestic performance evaluation of a VQIP importer is determined to be $2,216 + $2,048 = $4,264.

Coordination of the onsite performance evaluation of a foreign VQIP importer is estimated to take place at an FTE's worksite, so we use the fully supported FTE hourly rate excluding travel, $256/hour, to calculate the portion of the user fee attributable to those activities: $256/hour × (10 hours) = $2,560. For the portion of the fee covering onsite evaluation of a foreign VQIP importer, we use the fully supported FTE hourly rate for work requiring foreign travel, $330/hour, to calculate the portion of the user fee attributable to those activities: $330/hour × 24 hours (*i.e.,* one fully supported FTE × ((2 travel days × 8 hours) + (1 day onsite × 8 hours))) = $7,920. Therefore, the total cost of conducting the foreign performance evaluation of a VQIP importer is determined to be $2,560 + $7,920 = $10,480.

Therefore, the estimated average cost of the work FDA performs in total for approving an application for a VQIP importer in FY22 based on these figures would be $7,000 + ($9,984 × 0.25) + ($7,168 × 0.75) + ($4,264 × 0.25) = $15,938

IV. How must the fee be paid?

An invoice will be sent to VQIP importers approved to participate in the program. Payment must be made prior to October 1, 2021, to be eligible for VQIP participation for the benefit year beginning October 1, 2021. FDA will not refund the VQIP user fee for any reason.

The payment must be made in U.S. currency from a U.S. bank by one of the following methods: wire transfer, electronically, check, bank draft, or U.S. postal money order made payable to the Food and Drug Administration. The preferred payment method is online using an electronic check (Automated Clearing House (ACH), also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay.* (Note: only full payments are accepted. No partial payments can be made online.) Once you have found your invoice, select ''Pay Now'' to be redirected to *Pay.gov*. Electronic payment options are based on the balance due. Payment by credit card is available only for balances less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

When paying by check, bank draft, or U.S. postal money order, please include the invoice number in the check stub. Also write the FDA post office box number (P.O. Box 979108) on the enclosed check, bank draft, or money order. Mail the payment including the invoice number on the check stub to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000.

When paying by wire transfer, it is required that the invoice number is included; without the invoice number the payment may not be applied. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required to add that amount to the payment to ensure that the invoice is paid in full. For international wire transfers, please inquire with the financial institutions prior to submitting the payment. Use the following account information when sending a wire transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Account Name: Food and Drug Administration, Account No.: 75060099, Routing No.: 021030004, Swift No.: FRNYUS33.

To send a check by a courier such as Federal Express, the courier must deliver the check to: U.S. Bank, Attn: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (*Note:* This address is for courier delivery only. If you have any questions concerning courier delivery, contact U.S. Bank at 314–418–4013. This phone number is only for questions about courier delivery.)

The tax identification number of FDA is 53–0196965. (*Note:* Invoice copies do not need to be submitted to FDA with the payments.)

V. What are the consequences of not paying this fee?

The consequences of not paying these fees are outlined in Section J of ''FDA's Voluntary Qualified Importer Program; Guidance for Industry'' document (available at *https://www.fda.gov/media/92196/download*). If the user fee is not paid before October 1, a VQIP importer will not be eligible to participate in VQIP. For the first year a VQIP application is approved, if the user fee is not paid before October 1, 2021, you are not eligible to participate in VQIP. If you subsequently pay the user fee, FDA will begin your benefits after we receive the full payment. The user fee may not be paid after December 31, 2021. For a subsequent year, if you do not pay the user fee before October 1, FDA will send a Notice of Intent to Revoke your participation in VQIP. If you do not pay the user fee within 30 days of the date of the Notice of Intent to Revoke, we will revoke your participation in VQIP.

Dated: July 20, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–16053 Filed 7–27–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0661]

Generic Drug User Fee Rates for Fiscal Year 2022

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Federal Food, Drug, and Cosmetic Act (FD&C Act or statute), as amended by the Generic Drug User Fee Amendments of 2017 (GDUFA II), authorizes the Food and Drug Administration (FDA, Agency, or we) to assess and collect fees for abbreviated new drug applications (ANDAs); drug master files (DMFs); generic drug active pharmaceutical ingredient (API) facilities, finished dosage form (FDF) facilities, and contract manufacturing organization (CMO) facilities; and generic drug applicant program user fees. In this document, FDA is announcing fiscal year (FY) 2022 rates for GDUFA II fees.

FOR FURTHER INFORMATION CONTACT: Lola Olajide, Office of Financial Management, Food and Drug Administration, 4041 Powder Mill Rd., Rm. 61077B, Beltsville, MD 20705–4304, 240–402–4244.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 744A and 744B of the FD&C Act (21 U.S.C. 379j–41 and 379j–42) establish fees associated with human generic drug products. Fees are assessed on: (1) Certain types of applications for

human generic drug products; (2) certain facilities where APIs and FDFs are produced; (3) certain DMFs associated with human generic drug products; and (4) generic drug applicants who have approved ANDAs (the program fee) (see section 744B(a)(2) through (5) of the FD&C Act).

GDUFA II provides that user fees should total $493,600,000 annually adjusted each year for inflation. For FY 2022, the generic drug fee rates are: ANDA ($225,712), DMF ($74,952), domestic API facility ($42,557) foreign API facility ($57,557), domestic FDF facility ($195,012), foreign FDF facility ($210,012), domestic CMO facility ($65,004), foreign CMO facility ($80,004), large size operation generic drug applicant program ($1,536,856), medium size operation generic drug applicant program ($614,742), and small business generic drug applicant program ($153,686). These fees are effective on October 1, 2021, and will remain in effect through September 30, 2022.

II. Fee Revenue Amount for FY 2022

GDUFA II directs FDA to use the yearly revenue amount determined under the statute as a starting point to set the fee rates for each fee type. The base revenue amount for FY 2022 is $520,208,640. This is the amount calculated for the prior fiscal year, FY 2021, pursuant to the statute (see section 744B(b)(1) of the FD&C Act). For more information about GDUFA II, please refer to the FDA website (*https://www.fda.gov/gdufa*). The ANDA, DMF, API facility, FDF facility, CMO facility, and generic drug applicant program fee (GDUFA program fee) calculations for FY 2022 are described in this document.

A. Inflation Adjustment

The base revenue amount for FY 2022 is $520,208,640. This is the amount calculated for the prior fiscal year, FY 2021, pursuant to the statute (see section 744B(b)(1) of the FD&C Act). GDUFA II specifies that the $520,208,640 is to be adjusted for inflation increases for FY 2022 using two separate adjustments—one for personnel compensation and benefits (PC&B) and one for non-PC&B costs (see sections 744B(c)(1)(B) and (C) of the FD&C Act).

The component of the inflation adjustment for PC&B costs shall be one plus the average annual percent change in the cost of all PC&B paid per full-time equivalent position (FTE) at FDA for the first 3 of the 4 preceding fiscal years, multiplied by the proportion of PC&B costs to total FDA costs of human generic drug activities for the first 3 of the preceding 4 fiscal years (see section 744B(c)(1)(B) of the FD&C Act).

Table 1 summarizes the actual cost and total FTEs for the specified fiscal years, and provides the percent change from the previous fiscal year and the average percent change over the first 3 of the 4 fiscal years preceding FY 2022. The 3-year average is 2.7383 percent.

TABLE 1—FDA PERSONNEL COMPENSATION AND BENEFITS (PC&B) EACH YEAR AND PERCENT CHANGE

Fiscal year	2018	2019	2020	3-Year average
Total PC&B	$2,690,678,000	$2,620,052,000	$2,875,592,000	.....
Total FTEs	17,023	17,144	17,535	.....
PC&B per FTE	$158,061	$152,826	$163,992	.....
Percent Change from Previous Year	4.2206	-3.3120	7.3063	2.7383

The statute specifies that this 2.7383 percent should be multiplied by the proportion of PC&B expended for human generic drug activities for the first 3 of the preceding 4 fiscal years. Table 2 shows the amount of PC&B and the total amount obligated for human generic drug activities from FY 2018 through FY 2020.

TABLE 2—PC&B AS A PERCENT OF FEE REVENUES SPENT ON THE PROCESS OF HUMAN GENERIC DRUG APPLICATIONS OVER THE LAST 3 YEARS

Fiscal year	2018	2019	2020	3-Year average
PC&B	$332,617,643	$356,874,114	$397,392,785	.....
Non-PC&B	$276,911,265	$290,439,277	$300,692,399	.....
Total Costs	$609,528,908	$647,313,391	$698,085,185	.....
PC&B Percent	54.5696	55.1316	56.9261	55.5424
Non-PC&B Percent	45.4304	44.8684	43.0739	44.4576

The payroll adjustment is 2.7383 percent multiplied by 55.5424 percent (or 1.5209 percent).

The statute specifies that the portion of the inflation adjustment for non-PC&B costs for FY 2022 is the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington-Baltimore, DC–MD–VA–WV; not seasonally adjusted; all items; annual index) for the first 3 of the preceding 4 years of available data multiplied by the proportion of all costs other than PC&B costs to total costs of human generic drug activities (see section 744B(c)(1)(C) of the FD&C Act). As a result of a geographical revision made by the Bureau of Labor and Statistics in January 2018,[1] the Washington-Baltimore, DC–MD–VA–WV index was discontinued and replaced with two separate indices (*i.e.,* Washington-Arlington-Alexandria, DC–VA–MD–WV and Baltimore-Columbia-Towson, MD). In order to continue applying a CPI that best reflects the geographic region in which FDA is headquartered and that provides the most current data available, the Washington-Arlington-Alexandria index will be used in calculating the relevant adjustment factors for FY 2022 and subsequent years. Table 3 provides the summary data for the percent change in the specified CPI. The data are published by

[1] The Bureau of Labor Statistics' announcement of the geographical revision can be viewed at *https://www.bls.gov/cpi/additional-resources/geographic-revision-2018.htm.*

the Bureau of Labor Statistics and can be found on its website at: *https://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUURS35ASA0,CUUSS35ASA0.*

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN CPI FOR WASHINGTON-ARLINGTON-ALEXANDRIA AREA

Year	2018	2019	2020	3-Year average
Annual CPI	261.445	264.777	267.157	.....
Annual Percent Change	2.0389	1.2745	0.8989	1.4041

To calculate the inflation adjustment for non-pay costs, we multiply the 3-year average percent change in the CPI (1.4041 percent) by the proportion of all costs other than PC&B to total costs of human generic drug activities obligated. Because 55.5424 percent was obligated for PC&B as shown in table 2, 44.4576 percent is the portion of costs other than PC&B. The non-pay adjustment is 1.4041 percent times 44.4576 percent, or 0.6242 percent.

To complete the inflation adjustment for FY 2022, we add the PC&B component (1.5209 percent) to the non-PC&B component (0.6242 percent) for a total inflation adjustment of 2.1451 percent (rounded), and then add 1, making an inflation adjustment multiple of 1.021451. We then multiply the base revenue amount for FY 2022 ($520,208,640) by 1.021451, yielding an inflation-adjusted amount of $531,367,636.

B. Final Year Adjustment

For FY 2022, FDA may, in addition to the inflation adjustment, further increase the fee revenue and fees established if such an adjustment is necessary to provide for not more than 3 months of operating reserves of carryover user fees for human generic drug activities for the first 3 months of FY 2023. To determine whether a final year adjustment applies, FDA calculates operating reserves of carryover and its estimated balance as of the beginning of FY 2023.

After running analyses on the projected collections and obligations for FY 2021 and FY 2022, FDA estimates available carryover balance will be $63,131,283 as of the beginning of FY 2023. FDA estimates the cost of operations per week is $10,202,769; thus, the projected available carryover balance of $63,131,283 at the beginning of FY 2023 represents approximately 6 weeks of operating reserves. Per the statute, FDA could raise the fee revenue by $59,301,948 (12 weeks × $10,202,769 minus projected carryover of $63,131,283) for the final year adjustment. FDA recognizes that adding $59,301,948 to the fee revenue in FY 2022 may pose as a burden to the regulated industry. In light of this, and in light of the fact that the legislative language authorizing the final year adjustment allows FDA discretion in whether to make this adjustment for a full 3 months of operating reserves or for a shorter period, FDA has decided to make the final year adjustment to allow for only 7 weeks of operating reserves. Accordingly, the final year adjustment will be $8,288,102 (7 × $10,202,769 less projected carryover of $63,131,283). Adding this amount to the inflation adjusted amount of $531,367,636 results in a total revenue target of $539,656,000 (rounded to the nearest thousand dollars).

III. ANDA Filing Fee

Under GDUFA II, the FY 2022 ANDA filing fee is owed by each applicant that submits an ANDA on or after October 1, 2021. This fee is due on the submission date of the ANDA. Section 744B(b)(2)(B) of the FD&C Act specifies that the ANDA fee will make up 33 percent of the $539,656,000, which is $178,086,480.

To calculate the ANDA fee, FDA estimated the number of full application equivalents (FAEs) that will be submitted in FY 2022. The submissions are broken down into three categories: New originals (submissions that have not been received by FDA previously); submissions that FDA refused to receive (RTR) for reasons other than failure to pay fees; and applications that are resubmitted after an RTR decision for reasons other than failure to pay fees. An ANDA counts as one FAE; however, 75 percent of the fee paid for an ANDA that has been RTR shall be refunded according to GDUFA II if: (1) The ANDA is refused for a cause other than failure to pay fees or (2) the ANDA has been withdrawn prior to receipt (section 744B(a)(3)(D)(i) of the FD&C Act). Therefore, an ANDA that is considered not to have been received by FDA due to reasons other than failure to pay fees or withdrawn prior to receipt counts as one-fourth of an FAE. After an ANDA has been RTR, the applicant has the option of resubmitting. For user fee purposes, these resubmissions are equivalent to new original submissions—ANDA resubmissions are charged the full amount for an application (one FAE).

FDA utilized data from ANDAs submitted from October 1, 2019, to April 30, 2021, to estimate the number of new original ANDAs that will incur filing fees in FY 2022. For FY 2022, the Agency estimates that approximately 788 new original ANDAs will be submitted and incur filing fees. Not all of the new original ANDAs will be received by the Agency and some of those not received will be resubmitted in the same fiscal year. Therefore, the Agency expects that the FAE count for ANDAs will be 789 for FY 2022.

The FY 2022 application fee is estimated by dividing the number of FAEs that will pay the fee in FY 2022 (789) into the fee revenue amount to be derived from ANDA application fees in FY 2022 ($178,086,480). The result, rounded to the nearest dollar, is a fee of $225,712 per ANDA.

The statute provides that those ANDAs that include information about the production of active pharmaceutical ingredients other than by reference to a DMF will pay an additional fee that is based on the number of such active pharmaceutical ingredients and the number of facilities proposed to produce those ingredients (see section 744B(a)(3)(F) of the FD&C Act). FDA anticipates that this additional fee is unlikely to be assessed often; therefore, FDA has not included projections concerning the amount of this fee in calculating the fees for ANDAs.

IV. DMF Fee

Under GDUFA II, the DMF fee is owed by each person that owns a type II API DMF that is referenced, on or after October 1, 2012, in a generic drug submission by an initial letter of authorization. This is a one-time fee for each DMF. This fee is due on the earlier of the date on which the first generic drug submission is submitted that references the associated DMF or the date on which the DMF holder requests the initial completeness assessment. Under section 744B(a)(2)(D)(iii) of the FD&C Act, if a DMF has successfully undergone an initial completeness

assessment and the fee is paid, the DMF will be placed on a publicly available list documenting DMFs available for reference.

To calculate the DMF fee, FDA assessed the volume of DMF submissions over time. The Agency assessed DMFs from October 1, 2019, to April 30, 2021, and concluded that averaging the number of fee-paying DMFs provided the most accurate model for predicting fee-paying DMFs for FY 2022. The monthly average of paid DMF submissions the Agency received in FY 2020 and FY 2021 is 30. To determine the FY 2022 projected number of fee-paying DMFs, the average of 30 DMF submissions is multiplied by 12 months, which results in 360 estimated FY 2022 fee-paying DMFs. FDA is estimating 360 fee-paying DMFs for FY 2022.

The FY 2022 DMF fee is determined by dividing the DMF target revenue by the estimated number of fee-paying DMFs in FY 2022. Section 744B(b)(2)(A) of the FD&C Act specifies that the DMF fees will make up 5 percent of the $539,656,000, which is $26,982,800. Dividing the DMF revenue amount ($26,982,800) by the estimated fee-paying DMFs (360), and rounding to the nearest dollar, yields a DMF fee of $74,952 for FY 2022.

V. Foreign Facility Fee Differential

Under GDUFA II, the fee for a facility located outside the United States and its territories and possessions shall be $15,000 higher than the amount of the fee for a facility located in the United States and its territories and possessions. The basis for this differential is the extra cost incurred by conducting an inspection outside the United States and its territories and possessions.

VI. FDF and CMO Facility Fees

Under GDUFA II, the annual FDF facility fee is owed by each person who owns an FDF facility that is identified in at least one approved generic drug submission owned by that person or its affiliates. The CMO facility fee is owed by each person who owns an FDF facility that is identified in at least one approved ANDA but is not identified in an approved ANDA held by the owner of that facility or its affiliates. These fees are due no later than the first business day on or after October 1 of each such year. Section 744B(b)(2)(C) of the FD&C Act specifies that the FDF and CMO facility fee revenue will make up 20 percent of the $539,656,000, which is $107,931,200.

To calculate the fees, data from FDA's Integrity Services (IS) were utilized as the primary source of facility information for determining the denominators of each facility fee type. IS is the master data steward for all facility information provided in generic drug submissions received by FDA. A facility's reference status in an approved generic drug submission is extracted directly from submission data rather than relying on data from self-identification. This information provided the number of facilities referenced as FDF manufacturers in at least one approved generic drug submission. Based on FDA's IS data, the FDF and CMO facility denominators are 181 FDF domestic, 279 FDF foreign, 88 CMO domestic, and 104 CMO foreign facilities for FY 2022.

GDUFA II specifies that the CMO facility fee is to be equal to one-third the amount of the FDF facility fee. Therefore, to generate the target collection revenue amount from FDF and CMO facility fees ($107,931,200), FDA must weight a CMO facility as one-third of an FDF facility. FDA set fees based on the estimate of 181 FDF domestic, 279 FDF foreign, 29.33 CMO domestic (88 multiplied by one-third), and 34.67 CMO foreign facilities (104 multiplied by one-third), which equals 524 total weighted FDF and CMO facilities for FY 2022.

To calculate the fee for domestic facilities, FDA first determines the total fee revenue that will result from the foreign facility differential by subtracting the fee revenue resulting from the foreign facility fee differential from the target collection revenue amount ($107,931,200) as follows. The foreign facility fee differential revenue equals the foreign facility fee differential ($15,000) multiplied by the number of FDF foreign facilities (279) plus the foreign facility fee differential ($15,000) multiplied by the number of CMO foreign facilities (104), totaling $5,745,000. This results in foreign fee differential revenue of $5,745,000 from the total FDF and CMO facility fee target collection revenue. Subtracting the foreign facility differential fee revenue ($5,745,000) from the total FDF and CMO facility target collection revenue ($107,931,200) results in a remaining facility fee revenue balance of $102,186,200. To determine the domestic FDF facility fee, FDA divides the $102,186,200 by the total weighted number of FDF and CMO facilities (524), which results in a domestic FDF facility fee of $195,012. The foreign FDF facility fee is $15,000 more than the domestic FDF facility fee, or $210,012.

According to GDUFA II, the domestic CMO fee is calculated as one-third the amount of the domestic FDF facility fee. Therefore, the domestic CMO fee is $65,004, rounded to the nearest dollar. The foreign CMO fee is calculated as the domestic CMO fee plus the foreign fee differential of $15,000. Therefore, the foreign CMO fee is $80,004.

VII. API Facility Fee

Under GDUFA II, the annual API facility fee is owed by each person who owns a facility that is identified in: (1) At least one approved generic drug submission or (2) in a Type II API DMF referenced in at least one approved generic drug submission. These fees are due no later than the first business day on or after October 1 of each such year. Section 744B(b)(2)(D) of the FD&C Act specifies the API facility fee will make up 7 percent of $539,656,000 in fee revenue, which is $37,775,920.

To calculate the API facility fee, data from FDA's IS were utilized as the primary source of facility information for determining the denominator. As stated above, IS is the master data steward for all facility information provided in generic drug submissions received by FDA. A facility's reference status in an approved generic drug submission is extracted directly from submission data rather than relying on data from self-identification. This information provided the number of facilities referenced as API manufacturers in at least one approved generic drug submission.

The total number of API facilities identified was 679; of that number, 87 were domestic and 592 were foreign facilities. The foreign facility differential is $15,000. To calculate the fee for domestic facilities, FDA must first subtract the fee revenue that will result from the foreign facility fee differential. FDA takes the foreign facility differential ($15,000) and multiplies it by the number of foreign facilities (592) to determine the total fee revenue that will result from the foreign facility differential. As a result of that calculation, the foreign fee differential revenue will make up $8,880,000 of the total API fee revenue. Subtracting the foreign facility differential fee revenue ($8,880,000) from the total API facility target revenue ($37,775,920) results in a remaining balance of $28,895,920. To determine the domestic API facility fee, we divide the $28,895,920 by the total number of facilities (679), which gives us a domestic API facility fee of $42,557. The foreign API facility fee is $15,000 more than the domestic API facility fee, or $57,557.

VIII. Generic Drug Applicant Program Fee

Under GDUFA II, if a person and its affiliates own at least one but not more

than five approved ANDAs on October 1, 2021, the person and its affiliates shall owe a small business GDUFA program fee. If a person and its affiliates own at least 6 but not more than 19 approved ANDAs, the person and its affiliates shall owe a medium size operation GDUFA program fee. If a person and its affiliates own at least 20 approved ANDAs, the person and its affiliates shall owe a large size operation GDUFA program fee. These fees are due no later than the first business day on or after October 1 of each such year. Section 744B(b)(2)(E) of the FD&C Act specifies the GDUFA program fee will make up 35 percent of $539,656,000 in fee revenue, which is $188,879,600.

To determine the appropriate number of parent companies for each tier, the Agency asked companies to claim their ANDAs and affiliates in the Center for Drug Evaluation and Research (CDER) NextGen Portal. The companies were able to confirm relationships currently present in the Agency's records, while also reporting newly approved ANDAs, newly acquired ANDAs, and new affiliations.

In determining the appropriate number of approved ANDAs, the Agency has factored in a number of variables that could affect the collection of the target revenue: (1) Inactive ANDAs—applicants who have not submitted an annual report for one or more of their approved applications within the past 2 years; (2) Program Fee Arrears List—parent companies that are on the arrears list for any fiscal year; (3) Center for Biologics Evaluation and Research (CBER) approved ANDAs—applicants and their affiliates with CBER-approved ANDAs in addition to CDER's approved ANDAs; and (4) withdrawals of approved ANDAs by April 1st—applicants who have submitted a written request for withdrawal of approval by April 1st of the previous fiscal year. The list of original approved ANDAs from the Generic Drug Review Platform as of April 30, 2021, shows 291 applicants in the small business tier, 76 applicants in the medium size tier, and 76 applicants in the large size tier. Factoring in all the variables for the fourth year of GDUFA II, the Agency estimates there will be 203 applicants in the small business tier, 69 applicants in the medium size tier, and 75 applicants in the large size tier for FY 2022.

To calculate the GDUFA program fee, GDUFA II provides that large size operation generic drug applicants pay the full fee, medium size operation applicants pay two-fifths of the full fee, and small business applicants pay one-tenth of the full fee. To generate the target collection revenue amount from GDUFA program fees ($188,879,600), we must weigh medium and small tiered applicants as a subset of a large size operation generic drug applicant. FDA will set fees based on the weighted estimate of 20.30 applicants in the small business tier (203 multiplied by 10 percent), 27.6 applicants in the medium size tier (69 multiplied by 40 percent), and 75 applicants in the large size tier, arriving at 122.90 total weighted applicants for FY 2022.

To generate the large size operation GDUFA program fee, FDA divides the target revenue amount of $188,879,600 by 122.90, which equals $1,536,856. The medium size operation GDUFA program fee is 40 percent of the full fee ($614,742), and the small business operation GDUFA program fee is 10 percent of the full fee ($153,686).

IX. Fee Schedule for FY 2022

The fee rates for FY 2022 are set out in table 4.

TABLE 4—FEE SCHEDULE FOR FY 2022

Fee category	Fees rates for FY 2022
Applications:	
Abbreviated New Drug Application (ANDA)	$225,712
Drug Master File (DMF)	74,952
Facilities:	
Active Pharmaceutical Ingredient (API)—Domestic	42,557
API—Foreign	57,557
Finished Dosage Form (FDF)—Domestic	195,012
FDF—Foreign	210,012
Contract Manufacturing Organization (CMO)—Domestic	65,004
CMO—Foreign	80,004
GDUFA Program:	
Large size operation generic drug applicant	1,536,856
Medium size operation generic drug applicant	614,742
Small business operation generic drug applicant	153,686

X. Fee Payment Options and Procedures

The new fee rates are effective October 1, 2021. To pay the ANDA, DMF, API facility, FDF facility, CMO facility, and GDUFA program fees, a Generic Drug User Fee Cover Sheet must be completed, available at *https://www.fda.gov/gdufa* and *http://userfees.fda.gov/OA_HTML/gdufaCAcdLogin.jsp,* and a user fee identification (ID) number must be generated. Payment must be made in U.S. currency drawn on a U.S. bank by electronic check, check, bank draft, U.S. postal money order, credit card, or wire transfer. The preferred payment method is online using electronic check (Automated Clearing House (ACH), also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). FDA has partnered with the U.S. Department of the Treasury to utilize *Pay.gov*, a web-based payment application, for online electronic payment. The *Pay.gov* feature is available on the FDA website after completing the Generic Drug User Fee Cover Sheet and generating the user fee ID number.

Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay.* (Note: only full payments are accepted; no partial payments can be made online.) Once an invoice is located, ''Pay Now'' should be selected to be redirected to *Pay.gov*. Electronic payment options are based on the balance due. Payment by credit card is available for balances less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

The user fee ID number must be included on the check, bank draft, or postal money order and must be made payable to the order of the Food and Drug Administration. Payments can be mailed to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000. If checks are to be sent by a courier that requests a street address, the courier can deliver checks to: U.S. Bank, Attention: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This U.S. Bank address is for courier delivery only. For questions concerning courier delivery, U.S. Bank can be contacted at 314–418–4013. This telephone number is only for questions about courier delivery.) The FDA post office box number (P.O. Box 979108) must be written on the check, bank draft, or postal money order.

For payments made by wire transfer, the unique user fee ID number must be referenced. Without the unique user fee ID number, the payment may not be applied. If the payment amount is not applied, the invoice amount will be referred to collections. The originating financial institution may charge a wire transfer fee. Applicable wire transfer fees must be included with payment to ensure fees are fully paid. Questions about wire transfer fees should be addressed to the financial institution. The following account information should be used to send payments by

wire transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, account number: 75060099, routing number: 021030004, SWIFT: FRNYUS33. FDA's tax identification number is 53–0196965.

Dated: July 20, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–16039 Filed 7–27–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0649]

Determination That CECLOR CD (Cefaclor Extended-Release Tablets) 375 Milligrams and 500 Milligrams Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness, Except the Indication of Secondary Bacterial Infections of Acute Bronchitis, Which Was Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) has determined that CECLOR CD (cefaclor extended-release tablets) 375 milligrams (mg) and 500 mg were not withdrawn from sale for reasons of safety or effectiveness, except with respect to the indication of secondary bacterial infections of acute bronchitis (SBIAB) that was withdrawn for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to suspend approval of any abbreviated new drug application (ANDA) that refers to this drug product and has removed the indication for SBIAB. This determination also will allow FDA to continue to approve ANDAs that refer to these drug products as long as they meet relevant legal and regulatory requirements. However, the Agency will not accept or approve ANDAs for CECLOR CD (cefaclor extended-release tablets) 375 mg and 500 mg that include SBIAB as an indication.

FOR FURTHER INFORMATION CONTACT: Stacy Kane, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6236, Silver Spring, MD 20993–0002, 301–796–8363, *Stacy.Kane@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) Has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and, with certain exceptions, labeling as the listed drug, which is a version of the drug that was previously approved and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

Under § 314.161(a)(2), the Agency must also determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness if ANDAs that referred to the listed drug have already been approved prior to its market withdrawal. If the Agency determines that a listed drug was withdrawn from sale for reasons of safety or effectiveness, and there are approved ANDAs that reference that listed drug, FDA will initiate a proceeding to determine whether the suspension of the ANDAs is also required (21 CFR 314.161(d)).

CECLOR CD (cefaclor extended-release tablets) 375 mg and 500 mg are the subject of NDA 050673 held by Eli Lilly and Co., and initially approved on June 28, 1996. CECLOR CD (cefaclor extended-release tablets) is indicated for the treatment of patients with the following mild to moderate infections when caused by susceptible strains of the designated microorganisms:

- Acute bacterial exacerbations of chronic bronchitis due to *Haemophilus influenzae* (non-β-lactamase-producing strains only), *Moraxella catarrhalis* (including β-lactamase-producing strains) or *Streptococcus pneumoniae.*
- Secondary bacterial infections of acute bronchitis due to *H. influenzae* (non-β-lactamase-producing strains only), *M. catarrhalis* (including β-lactamase-producing strains), or *S. pneumoniae.*
- Pharyngitis and tonsillitis due to *Streptococcus pyogenes.*
- Uncomplicated skin and skin structure infections due to *Staphylococcus aureus* (methicillin-susceptible).

On June 13, 2005, Eli Lilly and Co. submitted a request to the Agency to withdraw approval of NDA 050673, CECLOR CD (cefaclor extended-release tablets), 375 mg and 500 mg, under 21 CFR 314.150(c). The Agency published a **Federal Register** notice on April 22, 2014, withdrawing approval of NDA 050673, effective May 22, 2014.[1]

After reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that CECLOR CD (cefaclor extended-release tablets), 375 mg and 500 mg, were not withdrawn from sale for reasons of safety or effectiveness, except with respect to the indication for SBIAB.

Based on a review of relevant information, FDA has concluded that the SBIAB indication is not appropriate because most cases of SBIAB are considered to be viral or noninfectious. As an antibacterial drug, CECLOR CD (cefaclor extended-release tablets) is not considered to be effective to treat SBIAB. Such use of CECLOR CD (cefaclor extended-release tablets) would likely result in inappropriate antibacterial drug use. Accordingly, for the treatment of SBIAB, the benefit-risk profile of CECLOR CD (cefaclor extended-release tablets) is unfavorable and does not support approval of these products (or ANDAs referencing them) for this indication. For the remaining indications, the Agency has determined that CECLOR CD (cefaclor extended-release tablets) continues to have a favorable benefit-risk profile.

Accordingly, the Agency will continue to list CECLOR CD (cefaclor extended-release tablets), 375 mg and 500 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The approved ANDA has

[1] See 79 FR 22501 (April 22, 2014).

removed the SBIAB indication from its labeling, consistent with this decision. In addition, FDA will continue to accept and, where appropriate, approve ANDAs that refer to CECLOR CD (cefaclor extended-release tablets) as long as they meet relevant legal and regulatory requirements, but FDA will not accept or approve ANDAs that refer to this drug product and propose to include the SBIAB indication. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: July 20, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0698]

Outsourcing Facility Fee Rates for Fiscal Year 2022

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fiscal year (FY) 2022 rates for the establishment and reinspection fees related to entities that compound human drugs and elect to register as outsourcing facilities under the Federal Food, Drug, and Cosmetic Act (FD&C Act). The FD&C Act authorizes FDA to assess and collect an annual establishment fee from outsourcing facilities, as well as a reinspection fee for each reinspection of an outsourcing facility. This document establishes the FY 2022 rates for the small business establishment fee ($5,824), the non-small business establishment fee ($18,999), and the reinspection fee ($17,472) for outsourcing facilities; provides information on how the fees for FY 2022 were determined; and describes the payment procedures outsourcing facilities should follow. These fee rates are effective October 1, 2021, and will remain in effect through September 30, 2022.

FOR FURTHER INFORMATION CONTACT: *For more information on human drug compounding and outsourcing facility fees:* Visit FDAs website at: *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/default.htm.*

For questions relating to this notice: Melissa Hurley, Office of Financial Management, Food and Drug Administration, 4041 Powder Mill Rd., Rm. 61075, Beltsville, MD 20705–4304, 240–402–4585.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 503B of the FD&C Act (21 U.S.C. 353b), a human drug compounder can become an ''outsourcing facility.'' Outsourcing facilities, as defined in section 503B(d)(4), are facilities that meet all the conditions described in section 503B(a), including registering with FDA as an outsourcing facility and paying an annual establishment fee. If the conditions of section 503B are met, a drug compounded by or under the direct supervision of a licensed pharmacist in an outsourcing facility is exempt from three sections of the FD&C Act: (1) Section 502(f)(1) (21 U.S.C. 352(f)(1)) concerning the labeling of drugs with adequate directions for use; (2) section 505 (21 U.S.C. 355) concerning the approval of human drug products under new drug applications (NDAs) or abbreviated new drug applications (ANDAs); and (3) section 582 (21 U.S.C. 360eee–1) concerning drug supply chain security requirements. Drugs compounded in outsourcing facilities are not exempt from the requirements of section 501(a)(2)(B) of the FD&C Act (21 U.S.C. 351(a)(2)(B)) concerning current good manufacturing practice requirements for drugs.

Section 744K of the FD&C Act (21 U.S.C. 379j–62) authorizes FDA to assess and collect the following fees associated with outsourcing facilities: (1) An annual establishment fee from each outsourcing facility and (2) a reinspection fee from each outsourcing facility subject to a reinspection (see section 744K(a)(1) of the FD&C Act). Under statutorily defined conditions, a qualified applicant may pay a reduced small business establishment fee (see section 744K(c)(4) of the FD&C Act).

FDA announced in the **Federal Register** of November 24, 2014 (79 FR 69856), the availability of a final guidance for industry entitled ''Fees for Human Drug Compounding Outsourcing Facilities Under Sections 503B and 744K of the FD&C Act.'' The guidance provides additional information on the annual fees for outsourcing facilities and adjustments required by law, reinspection fees, how to submit payment, the effect of failure to pay fees, and how to qualify as a small business to obtain a reduction of the annual establishment fee. This guidance can be accessed on FDA's website at: *https://www.fda.gov/media/136683/download.*

II. Fees for FY 2022

A. Methodology for Calculating FY 2022 Adjustment Factors

1. Inflation Adjustment Factor

Section 744K(c)(2) of the FD&C Act specifies the annual inflation adjustment for outsourcing facility fees. The inflation adjustment has two components: One based on FDA's payroll costs and one based on FDA's non-payroll costs for the first 3 of the 4 previous fiscal years. The payroll component of the annual inflation adjustment is calculated by taking the average change in FDA's per-full time equivalent (FTE) personnel compensation and benefits (PC&B) in the first 3 of the 4 previous fiscal years (see section 744K(c)(2)(A)(ii) of the FD&C Act). FDA's total annual spending on PC&B is divided by the total number of FTEs per fiscal year to determine the average PC&B per FTE.

Table 1 summarizes the actual cost and FTE data for the specified fiscal years, and provides the percent change from the previous fiscal year and the average percent change over the first 3 of the 4 fiscal years preceding FY 2022. The 3-year average is 2.7383 percent.

TABLE 1—FDA PC&BS EACH YEAR AND PERCENT CHANGE

Fiscal year	2018	2019	2020	3-Year average
Total PC&B	$2,690,678,000	$2,620,052,000	$2,875,592,000	.....
Total FTE	17,023	17,144	17,535	.....
PC&B per FTE	$158,061	$152,826	$163,992	.....
Percent change from previous year	4.2206	−3.3120	7.3063	2.7383

Section 744K(c)(2)(A)(ii) of the FD&C Act specifies that this 2.7383 percent should be multiplied by the proportion of PC&B to total costs of an average FDA FTE for the same 3 fiscal years.

TABLE 2—FDA PC&BS AS A PERCENT OF FDA TOTAL COSTS OF AN AVERAGE FTE

Fiscal year	2018	2019	2020	3-Year average
Total PC&B	$2,690,678,000	$2,620,052,000	$2,875,592,000	.....
Total Costs	$5,370,935,000	$5,663,389,000	$6,039,321,000	.....
PC&B Percent	50.0970	46.2630	47.6145	47.9915

The payroll adjustment is 2.7383 percent multiplied by 47.9915 percent, or 1.3142 percent.

Section 744K(c)(2)(A)(iii) of the FD&C Act specifies that the portion of the inflation adjustment for non-payroll costs for FY 2022 is equal to the average annual percent change in the Consumer Price Index (CPI) for urban consumers (U.S. City Average; Not Seasonally Adjusted; All items; Annual Index) for the first 3 years of the preceding 4 years of available data, multiplied by the proportion of all non-PC&B costs to total costs of an average FDA FTE for the same period.

Table 2 provides the summary data for the percent change in the specified CPI for U.S. cities. These data are published by the Bureau of Labor Statistics and can be found on its website: *https://data.bls.gov/cgi-bin/surveymost?cu.* The data can be viewed by checking the box marked ''U.S. city average, All items—CUUR0000SA0'' and then selecting ''Retrieve Data.''

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN U.S. CITY AVERAGE CPI

Year	2018	2019	2020	3-Year average
Annual CPI	251.107	255.657	258.811	.....
Annual Percent Change	2.4425	1.8120	1.2337	1.8294

Section 744K(c)(2)(A)(iii) of the FD&C Act specifies that this 1.8294 percent should be multiplied by the proportion of all non-PC&B costs to total costs of an average FTE for the same 3 fiscal years. The proportion of all non-PC&B costs to total costs of an average FDA FTE for FYs 2018 to 2020 is 52.0085 percent (100 percent minus 47.9915 percent equal 52.0085 percent). Therefore, the non-pay adjustment is 1.8294 percent times 52.0085 percent, or 0.9514 percent.

The PC&B component (1.3142 percent) is added to the non-PC&B component (0.9514 percent), for a total inflation adjustment of 2.2656 percent (rounded). Section 744K(c)(2)(A)(i) of the FD&C Act specifies that one is added to that figure, making the inflation adjustment 1.022656.

Section 744K(c)(2)(B) of the FD&C Act provides for this inflation adjustment to be compounded after FY 2015. This factor for FY 2022 (2.2656 percent) is compounded by adding one to it, and then multiplying it by one plus the inflation adjustment factor for FY 2021 (13.8991 percent), as published in the **Federal Register** on August 4, 2020 (85 FR 47225). The result of this multiplication of the inflation factors for the 7 years since FY 2015 (1.022656×1.138991) becomes the inflation adjustment for FY 2022. For FY 2022, the inflation adjustment is 16.4796 percent (rounded). We then add one, making the FY 2022 inflation adjustment factor 1.164796.

2. Small Business Adjustment Factor

Section 744K(c)(3) of the FD&C Act specifies that in addition to the inflation adjustment factor, the establishment fee for non-small businesses is to be further adjusted for a small business adjustment factor. Section 744K(c)(3)(B) of the FD&C Act provides that the small business adjustment factor is the adjustment to the establishment fee for non-small businesses that is necessary to achieve total fees equaling the amount that FDA would have collected if no entity qualified for the small business exception in section 744K(c)(4) of the FD&C Act. Additionally, section 744K(c)(5)(A) states that in establishing the small business adjustment factor for a fiscal year, FDA shall provide for the crediting of fees from the previous year to the next year if FDA overestimated the amount of the small business adjustment factor for such previous fiscal year.

Therefore, to calculate the small business adjustment to the establishment fee for non-small businesses for FY 2022, FDA must estimate: (1) The number of outsourcing facilities that will pay the reduced fee for small businesses for FY 2022 and (2) the total fee revenue it would have collected if no entity had qualified for the small business exception (*i.e.,* if each entity that registers as an outsourcing facility for FY 2022 were to pay the inflation-adjusted fee amount of $17,472).

With respect to (1), FDA estimates that 12 entities will qualify for small business exceptions and will pay the reduced fee for FY 2022. With respect to (2), to estimate the total number of entities that will register as outsourcing facilities for FY 2022, FDA used data submitted by outsourcing facilities through the voluntary registration process, which began in December 2013. Accordingly, FDA estimates that 80 outsourcing facilities, including 12 small businesses, will be registered with FDA in FY 2022.

If the projected 80 outsourcing facilities paid the full inflation-adjusted fee of $17,472, this would result in total revenue of $1,397,760 in FY 2022 ($\$17,472 \times 80$). However, 12 of the entities that are expected to register as outsourcing facilities for FY 2022 are projected to qualify for the small business exception and to pay one-third of the full fee ($\$5,824 \times 12$), totaling $69,888 instead of paying the full fee ($\$17,472 \times 12$), which would total $209,664. This would leave a potential shortfall of $139,776 ($209,664 minus $69,888).

Additionally, section 744K(c)(5)(A) of the FD&C Act states that in establishing the small business adjustment factor for a fiscal year, FDA shall provide for the

crediting of fees from the previous year to the next year if FDA overestimated the amount of the small business adjustment factor for such previous fiscal year. FDA has determined that it is appropriate to credit excess fees collected from the last completed fiscal year, due to the inability to conclusively determine the amount of excess fees from the fiscal year that is in progress at the time this calculation is made. This crediting is done by comparing the small business adjustment factor for the last completed fiscal year, FY 2020 ($2,208), to what would have been the small business adjustment factor for FY 2020 ($1,671) if FDA had estimated perfectly.

The calculation for what the small business adjustment would have been if FDA had estimated perfectly begins by determining the total target collections (15,000 × [inflation adjustment factor] × [number of registrants]). For the most recent complete fiscal year, FY 2020, this was $1,293,446 ($16,798 × 77). The actual FY 2020 revenue from the 77 total registrants (*i.e.,* 67 registrants paying FY 2020 non-small business establishment fee and 10 small business registrants) paying establishment fees is $1,181,456. $1,181,456 is calculated as follows: (FY 2020 Non-Small Business Establishment Fee adjusted for inflation only) × (total number of registrants in FY 2020 paying Non-Small Business Establishment Fee) + (FY 2020 Small Business Establishment Fee) × (total number of small business registrants in FY 2020 paying Small Business Establishment Fee). $16,798 × 67 + $5,599 × 10 = $1,181,456. This left a shortfall of $111,990 from the estimated total target collection amount ($1,293,446 minus $1,181,456). This amount ($111,990) divided by the total number of registrants in FY 2020 paying Standard Establishment Fee (67) equals $1,671.

The difference between the small business adjustment factor used in FY 2020 and the small business adjustment factor that would have been used had FDA estimated perfectly is $537 ($2,208 minus $1,671). The $537 (rounded to the nearest dollar) is then multiplied by the number of actual registrants who paid the standard fee for FY 2020 (67), which provides us a total excess collection of $35,963 in FY 2020.

Therefore, to calculate the small business adjustment factor for FY 2022, FDA subtracts $35,963 from the projected shortfall of $139,776 for FY 2022 to arrive at the numerator for the small business adjustment amount, which equals $103,813. This number divided by 68 (the number of expected non-small businesses for FY 2022) is the small business adjustment amount for FY 2022, which is $1,527 (rounded to the nearest dollar).

B. FY 2022 Rates for Small Business Establishment Fee, Non-Small Business Establishment Fee, and Reinspection Fee

1. Establishment Fee for Qualified Small Businesses [1]

The amount of the establishment fee for a qualified small business is equal to $15,000 multiplied by the inflation adjustment factor for that fiscal year, divided by 3 (see section 744K(c)(4)(A) and (c)(1)(A) of the FD&C Act). The inflation adjustment factor for FY 2022 is 1.164796. See section II.A.1 for the methodology used to calculate the FY 2022 inflation adjustment factor. Therefore, the establishment fee for a qualified small business for FY 2022 is one third of $17,472, which equals $5,824 (rounded to the nearest dollar).

2. Establishment Fee for Non-Small Businesses

Under section 744K(c) of the FD&C Act, the amount of the establishment fee for a non-small business is equal to $15,000 multiplied by the inflation adjustment factor for that fiscal year, plus the small business adjustment factor for that fiscal year, and plus or minus an adjustment factor to account for over or under collections due to the small business adjustment factor in the prior year. The inflation adjustment factor for FY 2022 is 1.164796. The small business adjustment amount for FY 2022 is $1,527. See section II.A.2 for the methodology used to calculate the small business adjustment factor for FY 2022. Therefore, the establishment fee for a non-small business for FY 2022 is $15,000 multiplied by 1.164796 plus $1,527, which equals $18,999 (rounded to the nearest dollar).

3. Reinspection Fee

Section 744K(c)(1)(B) of the FD&C Act provides that the amount of the FY 2022 reinspection fee is equal to $15,000, multiplied by the inflation adjustment factor for that fiscal year. The inflation adjustment factor for FY 2022 is 1.164796. Therefore, the reinspection fee for FY 2022 is $15,000 multiplied by 1.164796, which equals $17,472 (rounded to the nearest dollar). There is no reduction in this fee for small businesses.

C. Summary of FY 2022 Fee Rates

TABLE 4—OUTSOURCING FACILITY FEES

Qualified Small Business Establishment Fee	$5,824
Non-Small Business Establishment Fee	18,999
Reinspection Fee	17,472

III. Fee Payment Options and Procedures

A. Establishment Fee

Once an entity submits registration information and FDA has determined that the information is complete, the entity will incur the annual establishment fee. FDA will send an invoice to the entity, via email to the email address indicated in the registration file, or via regular mail if email is not an option. The invoice will contain information regarding the obligation incurred, the amount owed, and payment procedures. A facility will not be registered as an outsourcing facility until it has paid the annual establishment fee under section 744K of the FD&C Act. Accordingly, it is important that facilities seeking to operate as outsourcing facilities pay all fees immediately upon receiving an invoice. If an entity does not pay the full invoiced amount within 15 calendar days after FDA issues the invoice, FDA will consider the submission of registration information to have been withdrawn and adjust the invoice to reflect that no fee is due.

Outsourcing facilities that registered in FY 2021 and wish to maintain their status as an outsourcing facility in FY 2022 must register during the annual registration period that lasts from October 1, 2021, to December 31, 2021. Failure to register and complete payment by December 31, 2021, will result in a loss of status as an outsourcing facility on January 1, 2022. Entities should submit their registration information no later than December 10, 2021, to allow enough time for review of the registration information, invoicing, and payment of fees before the end of the registration period.

B. Reinspection Fee

FDA will issue invoices for each reinspection after the conclusion of the reinspection, via email to the email address indicated in the registration file

[1] To qualify for a small business reduction of the FY 2022 establishment fee, entities had to submit their exception requests by April 30, 2021. See section 744K(c)(4)(B) of the FD&C Act. The time for requesting a small business exception for FY 2022 has now passed. An entity that wishes to request a small business exception for FY 2023 should consult section 744K(c)(4) of the FD&C Act and section III.D of FDA's guidance for industry entitled ''Fees for Human Drug Compounding Outsourcing Facilities Under Sections 503B and 744K of the FD&C Act,'' which can be accessed on FDA's website at *https://www.fda.gov/media/136683/download.*

or via regular mail if email is not an option. Invoices must be paid within 30 days.

C. Fee Payment Procedures

1. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at—*https://userfees.fda.gov/pay.* (Note: only full payments are accepted. No partial payments can be made online.) Once you search for your invoice, click ''Pay Now'' to be redirected to *Pay.gov.* Electronic payment options are based on the balance due. Payment by credit card is available for balances less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

2. If paying with a paper check: Checks must be in U.S. currency from a U.S. bank and made payable to the Food and Drug Administration. Payments can be mailed to: Food and Drug Administration, P.O. Box 979033, St. Louis, MO 63197–9000. Include invoice number on check. If a check is sent by a courier that requests a street address, the courier can deliver the check to: U.S. Bank, Attn: Government Lockbox 979033, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery, contact the U.S. Bank at 314–418–4013).

3. When paying by wire transfer, the invoice number must be included. Without the invoice number the payment may not be applied. Regarding reinspection fees, if the payment amount is not applied, the invoice amount will be referred to collections. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required that the outsourcing facility add that amount to the payment to ensure that the invoice is paid in full. Use the following account information when sending a wire transfer: U.S. Dept of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33. If needed, FDA's tax identification number is 53–0196965.

Dated: July 20, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–16057 Filed 7–27–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0652]

Fresenius Kabi USA, LLC, et al.; Withdrawal of Approval of 15 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is withdrawing approval of 15 abbreviated new drug applications (ANDAs) from multiple applicants. The applicants notified the Agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: Approval is withdrawn as of August 27, 2021.

FOR FURTHER INFORMATION CONTACT: Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave, Bldg. 75, Rm. 1676, Silver Spring, MD 20993–0002, 240–402–6980, *Martha.Nguyen@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The applicants listed in the table have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications under the process described in § 314.150(c) (21 CFR 314.150(c)). The applicants have also, by their requests, waived their opportunity for a hearing. Withdrawal of approval of an application or abbreviated application under § 314.150(c) is without prejudice to refiling.

Application No.	Drug	Applicant
ANDA 040265	Methotrexate Sodium Injection, Equivalent to (EQ) 25 milligrams (mg) base/milliliters (mL).	Fresenius Kabi USA, LLC, Three Corporate Dr., Lake Zurich, IL 60047.
ANDA 070963	Clonidine Hydrochloride (HCl) Tablets, 0.3 mg	Watson Laboratories, Inc. (an indirect, wholly owned subsidiary of Teva Pharmaceuticals USA, Inc.), 400 Interpace Pkwy., Bldg. A, Parsippany, NJ 07054.
ANDA 074292	Dobutamine HCl Injection, EQ 12.5 mg base/mL	Hospira, Inc., 275 North Field Dr., Bldg. H1, Lake Forest, IL 60045.
ANDA 075069	Etodolac Tablets, 400 mg	Watson Laboratories, Inc.
ANDA 075856	Midazolam HCl Injection, EQ 1 mg base/mL and EQ 5 mg base/mL.	Hospira, Inc.
ANDA 084504	Hydralazine HCl Tablets, 25 mg	Watson Laboratories, Inc.
ANDA 090379	Budesonide Delayed Release Capsules, 3 mg	Barr Laboratories, Inc. (an indirect, wholly owned subsidiary of Teva Pharmaceuticals USA, Inc.), 400 Interpace Pkwy., Bldg. A, Morris Corporate Center III, Parsippany, NJ 07054.
ANDA 091590	Losartan Potassium Tablets, 25 mg, 50 mg, and 100 mg.	Mylan Pharmaceuticals Inc., a Viatris Company, 81 Chestnut Ridge Rd., P.O. Box 4310, Morgantown, WV 26504.
ANDA 091652	Hydrochlorothiazide and Losartan Potassium Tablets, 12.5 mg/50 mg, 12.5 mg/100 mg, and 25 mg/100 mg.	Do.
ANDA 204361	Eptifibatide Injection, 2 mg/mL and 75 mg/100 mL	USV Private Limited, U.S. Agent, Omega Pharmaceutical Consulting, Inc., 752 West Shuhthagi Lane, New Harmony, UT 84757.
ANDA 204362	Eptifibatide Injection, 2 mg/mL	Do.

Application No.	Drug	Applicant
ANDA 204464	Sodium Fluoride F–18 Injection, 10–200 millicurie/mL	Decatur Memorial Hospital, 2300 North Edward St., Suite 100, Decatur, IL 62526.
ANDA 206177	Docetaxel Injection, 20 mg/mL (20 mg/mL), 80 mg/4 mL (20 mg/mL), and 200 mg/10 mL (20 mg/mL).	DFB Oncology, LLC, 3909 Hulen St., Fort Worth, TX 76107.
ANDA 206631	Olmesartan Medoxomil Tablets, 5 mg, 20 mg, and 40 mg.	Lupin Limited, U.S. Agent, Lupin Pharmaceuticals, Inc., 111 South Calvert St., Harborplace Tower, 21st Floor, Baltimore, MD 21202.
ANDA 209399	Olanzapine Tablets, 2.5 mg, 5 mg, and 10 mg	Jiangsu Hansoh Pharmaceutical Group Co., Ltd., U.S. Agent, eVenus Pharmaceutical Laboratories Inc., 506 Carnegie Center, Suite 100, Princeton, NJ 08540.

Therefore, approval of the applications listed in the table, and all amendments and supplements thereto, is hereby withdrawn as of August 27, 2021. Approval of each entire application is withdrawn, including any strengths and dosage forms inadvertently missing from the table. Introduction or delivery for introduction into interstate commerce of products without approved new drug applications violates section 301(a) and (d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(a) and (d)). Drug products that are listed in the table that are in inventory on August 27, 2021 may continue to be dispensed until the inventories have been depleted or the drug products have reached their expiration dates or otherwise become violative, whichever occurs first.

Dated: July 20, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–16047 Filed 7–27–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–2169]

Jacobo Geissler: Final Debarment Order

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring Jacobo Geissler for a period of 5 years from importing articles of food or offering such articles for importation into the United States. FDA bases this order on a finding that Mr. Geissler was convicted of a felony count under Federal law for conduct relating to the importation into the United States of an article of food. Mr. Geissler was given notice of the proposed debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. As of April 7, 2021 (30 days after receipt of the notice), Mr. Geissler has not responded. Mr. Geissler's failure to respond and request a hearing constitutes a waiver of Mr. Geissler's right to a hearing concerning this matter.

DATES: This order is applicable July 28, 2021.

ADDRESSES: Submit applications for termination of debarment to the Dockets Management Staff, Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500, or at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa, Division of Enforcement (ELEM–4029), Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 240–402–8743, or at *debarments@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(1)(C) of the FD&C Act (21 U.S.C. 335a(b)(1)(C)) permits FDA to debar an individual from importing an article of food or offering such an article for import into the United States if FDA finds, as required by section 306(b)(3)(A) of the FD&C Act, that the individual has been convicted of a felony for conduct relating to the importation into the United States of any food.

On October 13, 2020, Mr. Geissler was convicted as defined in section 306(*l*)(1)(A) of the FD&C Act (21 U.S.C. 335a(*l*)(1)(A)), in the U.S. District Court for the Northern District of Texas-Dallas Division, when the court accepted his plea of guilty and entered judgment against him for the offense of conspiracy to introduce misbranded food into interstate commerce with an intent to defraud and mislead in violation of 18 U.S.C. 371 (21 U.S.C. 331(a) and 21 U.S.C. 333(a)(2)).

FDA's finding that the debarment is appropriate is based on the felony conviction referenced herein. The factual basis for this conviction is as follows: As contained in the Factual Resume, dated February 24, 2019, in Mr. Geissler's case, he was the Chief Executive Officer (CEO) and coowner of USPlabs, LLC (USP Labs). USP Labs sold dietary supplements. Beginning in or around October 2008 and continuing until at least around August 2014, Mr. Geissler engaged in a conspiracy with others to import a variety of chemicals with false labeling in order to either use those chemicals in dietary supplements which would themselves also contain false labeling, or to determine whether those chemicals could be used in new dietary supplements. To further this conspiracy, Mr. Geissler's coconspirators ordered chemicals from a Chinese company to be used as ingredients in dietary supplements and had them labeled falsely as other food substances. USP Labs sold dietary supplements called Jack3d and OxyElite Pro, which originally contained a substance called 1,3-dimethylamine (DMAA), which is also known as methylhexaneamine. USP Labs imported the DMAA it used in its products, Jack3d and OxyElite Pro, from a Chinese chemical factory by using false and fraudulent Certificate of Analysis (COA) and other false and fraudulent documentation and labeling. At least some of the false COAs that USP Labs caused to be created for their DMAA shipments stated falsely that the substance in the shipments had been extracted from the geranium plant.

Further, as contained in the factual resume and superseding indictment, filed January 5, 2016, in December 2011, Mr. Geissler instructed a Chinese company via email to misbrand a shipment of nine different chemicals sent from China to USP Labs in Texas. One of those synthetic chemicals was called ''aegeline.'' The first aegeline containing version of OxyElite Pro, which was called OxyElite ''New Formula'', went on sale in December 2012, but did not sell as well as the DMAA-containing version. Therefore, in the summer 2013, USP Labs began using

pulverized roots of cynanchum auriculatum, in addition to aegeline, in its OxyElite Pro ''Advanced Formula'' supplement. The cynanchum auriculatum-containing product was called OxyElite Pro ''Advanced Formula.'' On or about June 15, 2013, Mr. Geissler's coconspirator instructed a Chinese chemical seller to have two metric tons of ground cynanchum auriculatum root powder, rather than an extract, shipped internationally to laboratories in California for inclusion in USP Labs' products, using the false name ''cynanchum auriculatum root extract.'' USP Labs then used the substance in its OxyElite Pro ''Advanced Formula'' supplement which it shipped to retailers and wholesalers using false labels. When there was a liver-injury outbreak, USP Labs put out a misleading press release stating that the ingredients in OxyElite Pro had been studied and showed ''no negative liver issues,'' but USP Labs knew that a study had shown ''liver issues'' related to cynanchum auriculatum. Mr. Geissler did, with intent to defraud and mislead, cause the shipment of misbranded OxyElite Pro ''Advanced Formula'' to be shipped in interstate commerce. The conspirators collected millions in revenue.

As a result of this conviction FDA sent Mr. Geissler, by certified mail on March 4, 2021, a notice proposing to debar him for a period of 5 years from importing articles of food or offering such articles for import into the United States. The proposal was based on a finding under section 306(b)(1)(C) of the FD&C Act that Mr. Geissler's felony conviction of conspiracy to introduce misbranded food into interstate commerce with an intent to defraud and mislead in violation of 18 U.S.C. 371 (21 U.S.C. 331(a) and 21 U.S.C. 333(a)(2)), constitutes conduct relating to the importation of an article of food into the United States because the offense involved a conspiracy with others to import a variety of chemicals with false labeling in order to either use those chemicals in dietary supplements which would themselves also contain false labeling or to determine whether those chemicals could be used in new dietary supplements.

The proposal was also based on a determination, after consideration of the relevant factors set forth in section 306(c)(3) of the FD&C Act, that Mr. Geissler should be subject to a 5-year period of debarment. The proposal also offered Mr. Geissler an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised Mr. Geissler that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Geissler failed to respond within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(b)(1)(C) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Mr. Jacobo Geissler has been convicted of a felony count under Federal law for conduct relating to the importation into the United States of an article of food and that he is subject to a 5-year period of debarment.

As a result of the foregoing finding, Mr. Geissler is debarred for a period of 5 years from importing articles of food or offering such articles for import into the United States, effective July 28, 2021. Pursuant to section 301(cc) of the FD&C Act (21 U.S.C. 331(cc)), the importing or offering for import into the United States of an article of food by, with the assistance of, or at the direction of Jacobo Geissler is a prohibited act.

Any application by Mr. Geissler for termination of debarment under section 306(d)(1) of the FD&C Act should be identified with Docket No. FDA–2020–N–2169 and sent to the Dockets Management Staff (**ADDRESSSES**). The public availability of information in these submissions is governed by 21 CFR 10.20.

Publicly available submissions will be placed in the docket and will be viewable at *https://www.regulations.gov* or at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

Dated: July 19, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–16045 Filed 7–27–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–6730]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Device Reporting

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by August 27, 2021.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0437. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Device Reporting—21 CFR Part 803

OMB Control Number 0910–0437—Extension

This information collection supports FDA regulations and FDA's Medical Device Reporting program. Section 519(a), (b), and (c) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360i(a), (b), and (c)) requires user facilities, manufacturers, importers, and distributors of medical devices to report adverse events involving medical

devices to FDA. These provisions are codified in part 803 (21 CFR part 803), Medical Device Reporting. As amended most recently by the FDA Reauthorization Act of 2017 (FDARA) (Pub. L. 115–52), medical device manufacturers and importers must submit medical device reports (MDRs) using FDA's electronic submission system. User facilities, however, may elect to submit reports using paper-based Form FDA 3500A—MedWatch—Mandatory Reporting (approved under OMB control number 0910–0291). The regulations also establish recordkeeping requirements and provide for certain exemptions, variances, or alternative forms of reporting. Exemptions and/or variances from individual reporting must be requested in writing and must receive Agency approval. Additionally, the regulations permit user facilities to submit paper-based annual reports, for which we have developed Form FDA 3419 entitled ''Medical Device Reporting Annual User Facility Report.''

This information collection also includes the use of existing formats such as Form FDA 3500A [1]—MedWatch—Mandatory Reporting to allow manufacturers to summarize in a single report multiple events with shared characteristics for device associated reportable malfunction events. For example, the Voluntary Malfunction Summary Reporting Program (VMSRP) [2] provides recommendations for manufacturers of certain devices to submit a single report that summarizes multiple device associated reportable malfunction events on a quarterly basis. The VMSRP was established under section 519(a)(1)(B)(ii) of the FD&C Act and reflects goals for streamlining malfunction reporting as outlined in the Medical Device User Fee Amendments (MDUFA) IV ''Commitment Letter'' for 2018 through 2022 agreed to by FDA and industry and submitted to Congress. The Commitment Letter was finalized with the passage of FDARA on August 18, 2017, and, as passed, is entitled ''MDUFA Performance Goals And Procedures, Fiscal Years 2018 Through 2022.'' [3]

The information that is obtained from this information collection will be used to evaluate risks associated with medical devices and enable FDA to take appropriate measures to protect the public health. Complete, accurate, and timely adverse event information is necessary for the identification of emerging device problems so the Agency can protect the public health under section 519 of the FD&C Act. FDA makes the releasable information available to the public for downloading on its website. Respondents are manufacturers and importers of medical devices and device user facilities.[4]

In the **Federal Register** of April 29, 2021 (86 FR 22671), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received. Upon our own review, however, we have updated submission figures from our VMSRP program and supplemental reports under § 803.56 (21 CFR 803.56) to reflect an increase in submissions. Since publication of our 60-day notice, therefore, we have modified our estimated burden for collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity/21 CFR section	FDA form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours [2]
Exemptions/Variances—803.19		6	135.8	815	0.10 (6 minutes).	82
User Facility Reporting—803.30 and 803.32.		271	17.2	4,661	0.35 (21 minutes).	1,631
User Facility Annual Reporting—803.33	3,419	93	2	186	1	186
Importer Reporting, Death and Serious Injury—803.40 and 803.42.		112	440.25	49,308	0.10 (6 minutes).	4,931
Manufacturer Reporting—803.50, 803.52 and 803.53.		1,799	809.83	1,456,884	0.10 (6 minutes).	145,688
Voluntary Malfunction Summary Reporting Program.		67	695.15	46,575	0.10 (6 minutes).	4,658
Supplemental Reports—803.56		1,291	438	565,458	0.10 (6 minutes).	56,546
Total						213,722

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Number has been rounded.

The number of respondents to the information collection is based on MDRs received by FDA recently. The annual frequency per response and total annual responses shown are based on the number of MDRs reported during the same period. Based on the scope and conditions of the VMSRP and our experience with MDR reporting, FDA estimates that approximately 10 percent of malfunction reports would continue to be submitted as individual reports. Approximately 62 percent of the manufacturer reports received under §§ 803.50, 803.52 and 803.53 are malfunction reports (903,268 of the 1,456,884 total annual responses received in 2020).

Supplemental Reports—§ 803.56. We have increased our estimate, of the number of supplemental reports to reflect a corresponding increase of annual submissions, as reflected in table 1, row 7.

Voluntary Malfunction Summary Reporting Program. The VMSRP includes the same respondent pool as individual manufacturer reporting. Based on a current review of Agency data, we have increased our estimate to

[1] Form FDA 3500A is approved under OMB control number 0910–0291.

[2] In the **Federal Register** of August 17, 2018 (83 FR 40973), FDA issued a notification permitting manufacturers to report certain device malfunction MDRs in summary form on a quarterly basis.

[3] Available at: *https://www.fda.gov/downloads/ForIndustry/UserFees/MedicalDeviceUserFee/UCM535548.pdf.*

[4] Device user facility means a hospital, ambulatory surgical facility, nursing home, outpatient diagnostic facility, or outpatient treatment facility as defined in § 803.3 (21 CFR 803.3), which is not a physician's office (also defined in § 803.3).

reflect an increase in annual submissions, as reflected in table 1, row 6.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity/21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
MDR Procedures—803.17	1,799	1	1,799	3.3	5,937
MDR Files—803.18	1,799	1	1,799	1.5	2,699
Total					8,636

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The number of respondents in table 2 is based on the MDRs reported to FDA's internal databases recently. We believe that the majority of respondents (manufacturers, user facilities, and importers) have already established written procedures and MDR files to document complaints and information to meet the MDR requirements as part of their internal quality control system.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity/21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours [2]
Importer Reporting, Death and Serious Injury—803.40 and 803.42.	112	25	2,800	0.35 (21 minutes).	980

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Number has been rounded.

The number of respondents for each CFR section in table 3 was identified from the MDRs reported to FDA's internal databases during the period recently.

Since the publication of the 60 day notice we have adjusted our burden estimate. Our estimated burden for the information collection reflects an increase of 155,360 total burden hours and a corresponding increase of 1,566,458 total annual responses. This increase corresponds with data obtained from our database.

Dated: July 21, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–16034 Filed 7–27–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0706]

Animal Drug User Fee Rates and Payment Procedures for Fiscal Year 2022

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the fee rates and payment procedures for fiscal year (FY) 2022 animal drug user fees. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Animal Drug User Fee Amendments of 2018 (ADUFA IV), authorizes FDA to collect user fees for certain animal drug applications and supplemental animal drug applications, for certain animal drug products, for certain establishments where such products are made, and for certain sponsors of such animal drug applications and/or investigational animal drug submissions. This notice establishes the fee rates for FY 2022.

FOR FURTHER INFORMATION CONTACT: Visit FDA's website at *https://www.fda.gov/ForIndustry/UserFees/AnimalDrugUserFeeActADUFA/default.htm* or contact Lisa Kable, Center for Veterinary Medicine (HFV–10), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–6888, *Lisa.Kable@fda.hhs.gov.* For general questions, you may also email FDA's Center for Veterinary Medicine (CVM) at: *cvmadufa@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 740 of the FD&C Act (21 U.S.C. 379j–12) establishes four different types of user fees: (1) Fees for certain types of animal drug applications and supplemental animal drug applications; (2) annual fees for certain animal drug products; (3) annual fees for certain establishments where such products are made; and (4) annual fees for certain sponsors of animal drug applications and/or investigational animal drug submissions (21 U.S.C. 379j–12(a)). When certain conditions are met, FDA will waive or reduce fees (21 U.S.C. 379j–12(d)).

For FYs 2019 through 2023, the FD&C Act establishes aggregate yearly base revenue amounts for each fiscal year (21 U.S.C. 379j–12(b)(1)). Base revenue amounts are subject to adjustment for inflation and workload (21 U.S.C. 379j–12(c)(2) and (3)). Beginning with FY 2021, the annual fee revenue amounts are also subject to adjustment to reduce workload-based increases by the amount of certain excess collections or to account for certain collection shortfalls (21 U.S.C. 379j–12(c)(3) and (g)(5)). Fees for applications, establishments, products, and sponsors are to be established each year by FDA so that the percentages of the total revenue that are derived from each type of user fee will be as follows: (1) Revenue from application fees shall be 20 percent of total fee revenue; (2) revenue from product fees shall be 27 percent of total fee revenue; (3) revenue from establishment fees shall be 26 percent of

total fee revenue; and (4) revenue from sponsor fees shall be 27 percent of total fee revenue (21 U.S.C. 379j–12(b)(2)).

For FY 2022, the animal drug user fee rates are: $580,569 for an animal drug application; $290,284 for a supplemental animal drug application for which safety or effectiveness data are required and for an animal drug application subject to the criteria set forth in section 512(d)(4) of the FD&C Act (21 U.S.C. 360b(d)(4)); $10,787 for an annual product fee; $155,220 for an annual establishment fee; and $137,791 for an annual sponsor fee. FDA will issue invoices for FY 2022 product, establishment, and sponsor fees by December 31, 2021, and payment will be due by January 31, 2022. The application fee rates are effective for applications submitted on or after October 1, 2021, and will remain in effect through September 30, 2022. Applications will not be accepted for review until FDA has received full payment of application fees and any other animal drug user fees owed under the Animal Drug User Fee Act program (ADUFA program).

II. Revenue Amount for FY 2022

A. Statutory Fee Revenue Amounts

ADUFA IV, Title I of Public Law 115–234, specifies that the aggregate base fee revenue amount for FY 2022 for all animal drug user fee categories is $29,931,240 (21 U.S.C. 379j–12(b)(1)(B)).

B. Inflation Adjustment to Fee Revenue Amount

ADUFA IV specifies that the annual fee revenue amount is to be adjusted for inflation increases for FY 2020 and subsequent fiscal years, using two separate adjustments—one for personnel compensation and benefits (PC&B) and one for non-PC&B costs (21 U.S.C. 379j–12(c)(2)(A)(ii) and (iii)). The component of the inflation adjustment for payroll costs shall be one plus the average annual percent change in the cost of all PC&B paid per full-time equivalent position (FTE) at FDA for the first 3 of the 4 preceding fiscal years of available data, multiplied by the average proportion of PC&B costs to total FDA costs for the first 3 of the 4 preceding fiscal years. The data on total PC&B paid and numbers of FTE paid, from which the average cost per FTE can be derived, are published in FDA's Justification of Estimates for Appropriations Committees.

Table 1 summarizes that actual cost and FTE data for the specified fiscal years, and provides the percent change from the previous fiscal year and the average percent change over the first 3 of the 4 fiscal years preceding FY 2022. The 3-year average is 2.7383 percent.

TABLE 1—FDA PC&B EACH YEAR AND PERCENT CHANGE

Fiscal year	2018	2019	2020	3-Year average
Total PC&B	$2,690,678,000	$2,620,052,000	$2,875,592,000	.....
Total FTE	17,023	17,144	17,535	.....
PC&B per FTE	$158,061	$152,826	$163,992	.....
Percent Change from Previous Year	4.2206%	−3.3120%	7.3063%	2.7383%

The statute specifies that this 2.7383 percent should be multiplied by the proportion of PC&B costs to total FDA costs. Table 2 shows the amount of PC&B and the total amount obligated by FDA for the same 3 fiscal years.

TABLE 2—PC&B AS A PERCENT OF TOTAL COSTS AT FDA

Fiscal year	2018	2019	2020	3-Year average
Total PC&B	$2,690,678,000	$2,620,052,000	$2,875,592,000	.....
Total Costs	$5,370,935,000	$5,663,389,000	$6,039,321,000	.....
PC&B Percent	50.0970%	46.2630%	47.6145%	47.9915%

The portion of the inflation adjustment relating to payroll costs is 2.7383 percent multiplied by 47.9915 percent, or 1.3142 percent.

The statute specifies that the portion of the inflation adjustment for non-payroll costs is the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington-Baltimore, DC-MD-VA-WV; not seasonally adjusted; all items less food and energy; annual index) for the first 3 of the preceding 4 years of available data multiplied by the average proportion of all costs other than PC&B costs to total FDA costs for the first 3 of the 4 preceding fiscal years. As a result of a geographical revision made by the Bureau of Labor and Statistics in January 2018,[1] the ''Washington-Baltimore, DC-MD-VA-WV'' index was discontinued and replaced with two separate indices (*i.e.,* ''Washington-Arlington-Alexandria, DC-VA-MD-WV'' and ''Baltimore-Columbia-Towson, MD''). To continue applying a CPI that best reflects the geographic region in which FDA is headquartered and that provides the most current data available, FDA is using the Washington-Arlington-Alexandria less food and energy index when calculating the relevant adjustment factors for FY 2020 and subsequent years. Table 3 provides the summary data for the percent change in the specified CPI for the Washington-Arlington-Alexandria area. The data from the Bureau of Labor Statistics are shown in table 3.

[1] *https://www.bls.gov/cpi/additional-resources/geographic-revision-2018.htm.*

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN WASHINGTON-ARLINGTON-ALEXANDRIA AREA CPI LESS FOOD AND ENERGY

Year	2018	2019	2020	3-Year average
Annual CPI	272.414	275.841	278.437	.....
Annual Percent Change	2.0671%	1.2580%	0.9411%	1.4221%

To calculate the inflation adjustment for non-payroll costs, we multiply 1.4221 percent by the proportion of all costs other than PC&B to total FDA costs. Since 47.9915 percent was obligated for PC&B as shown in table 2, 52.0085 percent is the portion of costs other than PC&B (100 percent minus 47.9915 percent equals 52.0085 percent). The portion of the inflation adjustment relating to non-payroll costs is 1.4221 percent times 52.0085 percent, or 0.7396 percent.

Next, we add the payroll component (1.3142 percent) to the non-payroll component (0.7396 percent), for an inflation adjustment of 2.0538 percent for FY 2022.

ADUFA IV provides for the inflation adjustment to be compounded each fiscal year after FY 2020 (see 21 U.S.C. 379j–12(c)(2)(B)). The inflation adjustment for FY 2022 (2.0538 percent) is compounded by adding 1 and then multiplying by 1 plus the inflation adjustment factor for FY 2021 (3.5847 percent), as published in the **Federal Register** on August 3, 2020 (85 FR 46635), which equals 1.057121 (rounded) (1.020538×1.035847) for FY 2022. We then multiply the base revenue amount for FY 2022 ($29,931,240) by 1.057121, yielding an inflation adjusted amount of $31,640,942.

C. Workload Adjustment to Inflation Adjusted Fee Revenue Amount

The fee revenue amounts established in ADUFA IV for FY 2020 and subsequent fiscal years are also subject to adjustment to account for changes in FDA's review workload. A workload adjustment will be applied to the inflation adjusted fee revenue amount (21 U.S.C. 379j–12(c)(3)).

To determine whether a workload adjustment applies, FDA calculates the weighted average of the change in the total number of each of the five types of applications and submissions specified in the workload adjustment provision (animal drug applications, supplemental animal drug applications for which data with respect to safety or efficacy are required, manufacturing supplemental animal drug applications, investigational animal drug study submissions, and investigational animal drug protocol submissions) received over the 5-year period that ended on September 30, 2018 (the base years), and the average number of each of these types of applications and submissions over the most recent 5-year period that ended May 31, 2021.

The results of these calculations are presented in the first two columns of table 4. Column 3 reflects the percent change in workload over the two 5-year periods. Column 4 shows the weighting factor for each type of application/submissions, reflecting how much of the total FDA animal drug review workload was accounted for by each type of application or submission in the table during the most recent 5 years. Column 5 is the weighted percent change in each category of workload, which was derived by multiplying the weighting factor in each line in column 4 by the percent change from the base years in column 3. At the bottom right of the table the sum of the values in column 5 is added, reflecting a total change in workload of 0.6187 percent for FY 2022. This is the workload adjuster for FY 2022.

TABLE 4—WORKLOAD ADJUSTER CALCULATION

Application type	Column 1	Column 2	Column 3	Column 4	Column 5
	5-Year average (base years)	Latest 5-year average	Percent change (%)	Weighting factor	Weighted percent change (%)
New Animal Drug Applications (NADAs)	16.4	14.6	−10.9756	0.0442	−0.4852
Supplemental NADAs with Safety or Efficacy Data	11.6	9.0	−22.4138	0.0241	−0.5392
Manufacturing Supplements	353.2	382.4	8.2673	0.1826	1.5093
Investigational Study Submissions	183.2	175.2	−4.3668	0.5544	−2.4208
Investigational Protocol Submissions	236.4	267.4	13.1134	0.1948	2.5547
FY 2022 ADUFA IV Workload Adjuster	.....	.....	.....	.....	0.6187

Under no circumstances will the workload adjustment result in fee revenues that are less than the base fee revenues for that fiscal year as adjusted for inflation (21 U.S.C. 379j–12(c)(3)). FDA will not adjust the FY 2022 fee revenue amount for workload changes because the workload adjuster was less than 1 percent.[2]

D. Reduction of Workload-Based Increase by Amount of Certain Excess Collections

Under section 740(c)(3)(B) of the FD&C Act, for FYs 2021 through 2023, if application of the workload adjustment increases the amount of fee revenues established for the fiscal year, as adjusted for inflation, the fee revenue increase will be reduced by the amount of any excess collections for the second preceding fiscal year, up to the amount of the fee revenue increase for workload. Because there is no workload-based increase in FY 2022, this provision does not apply.

E. Recovery of Collection Shortfalls

Under section 740(g)(5)(A) of the FD&C Act, for FY 2022, the amount of fees otherwise authorized to be

[2] CVM increases the fee revenue amount established for the fiscal year to reflect changes in workload only if the workload adjuster is equal to or greater than 1 percent.

collected shall be increased by the amount, if any, by which the amount collected and appropriated for FY 2020 falls below the amount of fees authorized for FY 2020.

In FY 2020, the total revenue amount was $30,611,000 and the total amount of fees collected as of May 31, 2021, was $31,261,667. Because the amount of fees collected exceeded the total revenue amount, there was no collection shortfall in FY 2020 and therefore no increase in fees will be made under section 740(g)(5)(A).

F. Reduction of Shortfall-Based Fee Increase by Prior Year Excess Collections

Under section 740(g)(5)(B) of the FD&C Act, where FDA's calculations under section 740(g)(5)(A) result in a fee increase for that fiscal year to recover a collection shortfall, FDA must reduce the increase by the amount of any excess collections for preceding fiscal years (after FY 2018) that have not already been applied for purposes of reducing workload-based fee increases. Because FDA's calculations under section 740(g)(5)(A) do not result in a fee increase for FY 2022 to recover a collection shortfall, there will be no reduction of a shortfall-based increase under section 740(g)(5)(B).

G. FY 2022 Fee Revenue Amounts

The fee revenue amount for FY 2022, after considering the possible adjustments under sections 740(c) and (g)(5) of the FD&C Act, is $31,641,000 (rounded to the nearest thousand dollars). ADUFA IV specifies that this revenue amount is to be divided as follows: 20 Percent, or a total of $6,328,200, is to come from application fees; 27 percent, or a total of $8,543,070, is to come from product fees; 26 percent, or a total of $8,226,660 is to come from establishment fees; and 27 percent, or a total of $8,543,070 is to come from sponsor fees (21 U.S.C. 379j–12(b)).

III. Application Fee Calculations for FY 2022

A. Application Fee Revenues and Numbers of Fee-Paying Applications

Each person that submits an animal drug application or a supplemental animal drug application shall be subject to an application fee, with limited exceptions (see 21 U.S.C. 379j–12(a)(1)). The term ''animal drug application'' means an application for approval of any new animal drug submitted under section 512(b)(1) of the FD&C Act or an application for conditional approval of a new animal drug submitted under section 571 of the FD&C Act (21 U.S.C. 360ccc) (see section 739(1) of the FD&C Act (21 U.S.C. 379j–11(1))). As the expanded definition of ''animal drug application'' includes applications for conditional approval submitted under section 571 of the FD&C Act, such applications are now subject to ADUFA fees, except that fees may be waived if the drug is intended solely to provide for a minor use or minor species (MUMS) indication (see 21 U.S.C. 379j–12(d)(1)(D)).

Prior to ADUFA IV, FDA only had authority to grant conditional approval for drugs intended for a MUMS indication. Under amendments made to section 571 of the FD&C Act by ADUFA IV, FDA retains authority to grant conditional approval for drugs intended for MUMS indications but also will be able to grant conditional approval for certain drugs not intended for a MUMS indication provided certain criteria are met. Beginning with FY 2019, ADUFA IV provides an exception from application fees for animal drug applications submitted under section 512(b)(1) of the FD&C Act by a sponsor who previously applied for conditional approval under section 571 of the FD&C Act for the same product and paid an application fee at the time they applied for conditional approval. The purpose of this exception is to prevent sponsors of conditionally approved products from having to pay a second application fee at the time they apply for full approval of their products under section 512(b)(1) of the FD&C Act, provided the sponsor's application for full approval is filed consistent with the timeframes established in section 571(h) of the FD&C Act.

A ''supplemental animal drug application'' is defined as a request to the Secretary of Health and Human Services (Secretary) to approve a change in an animal drug application that has been approved, or a request to the Secretary to approve a change to an application approved under section 512(c)(2) of the FD&C Act for which data with respect to safety or effectiveness are required (21 U.S.C. 379j–11(2)). The application fees are to be set so that they will generate $6,328,200 in fee revenue for FY 2022. The fee for a supplemental animal drug application for which safety or effectiveness data are required and for an animal drug application subject to criteria set forth in section 512(d)(4) of the FD&C Act is to be set at 50 percent of the animal drug application fee (21 U.S.C. 379j–12(a)(1)(A)(ii)).

To set animal drug application fees and supplemental animal drug application fees to realize $6,328,200, FDA must first make some assumptions about the number of fee-paying applications and supplemental applications the Agency will receive in FY 2022.

The Agency knows the number of applications that have been submitted in previous years, which fluctuates annually. In estimating the fee revenue to be generated by animal drug application fees in FY 2022, FDA is assuming that the number of applications for which fees will be paid in FY 2022 will equal the average number of submissions over the 5 most recent completed fiscal years of the ADUFA program (FY 2016 to FY 2020).

Over the 5 most recent completed fiscal years, the average number of animal drug applications that would have been subject to the full fee was 6.4. Over this same period, the average number of supplemental applications for which safety or effectiveness data are required and applications subject to the criteria set forth in section 512(d)(4) of the FD&C Act that would have been subject to half of the full fee was 9.0.

B. Application Fee Rates for FY 2022

FDA must set the fee rates for FY 2022 so that the estimated 6.4 applications for which the full fee will be paid and the estimated 9.0 supplemental applications for which safety or effectiveness data are required and applications subject to the criteria set forth in section 512(d)(4) of the FD&C Act for which half of the full fee will be paid will generate a total of $6,328,200. To generate this amount, the fee for an animal drug application, rounded to the nearest dollar, will have to be $580,569, and the fee for a supplemental animal drug application for which safety or effectiveness data are required and for applications subject to the criteria set forth in section 512(d)(4) of the FD&C Act will have to be $290,284.

IV. Product Fee Calculations for FY 2022

A. Product Fee Revenues and Numbers of Fee-Paying Products

The animal drug product fee must be paid annually by the person named as the applicant in a new animal drug application or supplemental new animal drug application for an animal drug product submitted for listing under section 510 of the FD&C Act (21 U.S.C. 360) and who had an animal drug application or supplemental animal drug application pending at FDA after September 1, 2003 (21 U.S.C. 379j–12(a)(2)). The term ''animal drug product'' means each specific strength or potency of a particular active

ingredient or ingredients in final dosage form marketed by a particular manufacturer or distributor, which is uniquely identified by the labeler code and product code portions of the national drug code, and for which an animal drug application or a supplemental animal drug application has been approved (21 U.S.C. 379j–11(3)). The product fees are to be set so that they will generate $8,543,070 in fee revenue for FY 2022.

To set animal drug product fees to realize $8,543,070, FDA must make some assumptions about the number of products for which these fees will be paid in FY 2022. FDA developed data on all animal drug products that have been submitted for listing under section 510 of the FD&C Act and matched this to the list of all persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. As of May 2021, FDA estimates that there are a total of 808 products submitted for listing by persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. Based on this, FDA estimates that a total of 808 products will be subject to this fee in FY 2022.

In estimating the fee revenue to be generated by animal drug product fees in FY 2022, FDA is assuming that 2 percent of the products invoiced, or 16, will not pay fees in FY 2022 due to fee waivers and reductions. FDA has made this estimate at 2 percent this year, based on historical data over the past 5 completed fiscal years of the ADUFA program.

Accordingly, the Agency estimates that a total of 792 (808 minus 16) products will be subject to product fees in FY 2022.

B. Product Fee Rates for FY 2022

FDA must set the fee rates for FY 2022 so that the estimated 792 products for which fees are paid will generate a total of $8,543,070. To generate this amount will require the fee for an animal drug product, rounded to the nearest dollar, to be $10,787.

V. Establishment Fee Calculations for FY 2022

A. Establishment Fee Revenues and Numbers of Fee-Paying Establishments

The animal drug establishment fee must be paid annually by the person who: (1) Owns or operates, directly or through an affiliate, an animal drug establishment; (2) is named as the applicant in an animal drug application or supplemental animal drug application for an animal drug product submitted for listing under section 510 of the FD&C Act; (3) had an animal drug application or supplemental animal drug application pending at FDA after September 1, 2003; and (4) whose establishment engaged in the manufacture of the animal drug product during the fiscal year (see 21 U.S.C. 379j–12(a)(3)). An establishment subject to animal drug establishment fees is assessed only one such fee per fiscal year. The term ''animal drug establishment'' is defined as a foreign or domestic place of business at one general physical location, consisting of one or more buildings, all of which are within 5 miles of each other, at which one or more animal drug products are manufactured in final dosage form (21 U.S.C. 379j–11(4)). The establishment fees are to be set so that they will generate $8,226,660 in fee revenue for FY 2022.

To set animal drug establishment fees to realize $8,226,660, FDA must make some assumptions about the number of establishments for which these fees will be paid in FY 2022. FDA developed data on all animal drug establishments and matched this to the list of all persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. As of May 2021, FDA estimates that there are a total of 58 establishments owned or operated by persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. Based on this, FDA believes that 58 establishments will be subject to this fee in FY 2022.

In estimating the fee revenue to be generated by animal drug establishment fees in FY 2022, FDA is assuming that 8 percent of the establishments invoiced, or five, will not pay fees in FY 2022 due to fee waivers and reductions. FDA has made this estimate at 8 percent this year, based on historical data over the past 5 completed fiscal years.

Accordingly, the Agency estimates that a total of 53 establishments (58 minus 5) will be subject to establishment fees in FY 2022.

B. Establishment Fee Rates for FY 2022

FDA must set the fee rates for FY 2022 so that the fees paid for the estimated 53 establishments will generate a total of $8,226,660. To generate this amount will require the fee for an animal drug establishment, rounded to the nearest dollar, to be $155,220.

VI. Sponsor Fee Calculations for FY 2022

A. Sponsor Fee Revenues and Numbers of Fee-Paying Sponsors

The animal drug sponsor fee must be paid annually by each person who: (1) Is named as the applicant in an animal drug application, except for an approved application for which all subject products have been removed from listing under section 510 of the FD&C Act, or has submitted an investigational animal drug submission that has not been terminated or otherwise rendered inactive and (2) had an animal drug application, supplemental animal drug application, or investigational animal drug submission pending at FDA after September 1, 2003 (see 21 U.S.C. 379j–11(6) and 379j–12(a)(4)). An animal drug sponsor is subject to only one such fee each fiscal year (see 21 U.S.C. 379j–12(a)(4)). The sponsor fees are to be set so that they will generate $8,543,070 in fee revenue for FY 2022.

To set animal drug sponsor fees to realize $8,543,070, FDA must make some assumptions about the number of sponsors who will pay these fees in FY 2022. FDA estimates that a total of 187 sponsors will meet this definition in FY 2022.

In estimating the fee revenue to be generated by animal drug sponsor fees in FY 2022, FDA is assuming that 67 percent of the sponsors invoiced, or 125, will not pay sponsor fees in FY 2022 due to fee waivers and reductions. FDA has made this estimate at 67 percent this year, based on historical data over the past 5 completed fiscal years of the ADUFA program.

Accordingly, the Agency estimates that a total of 62 sponsors (187 minus 125) will be subject to and pay sponsor fees in FY 2022.

B. Sponsor Fee Rates for FY 2022

FDA must set the fee rates for FY 2022 so that the estimated 62 sponsors that pay fees will generate a total of $8,543,070. To generate this amount will require the fee for an animal drug sponsor, rounded to the nearest dollar, to be $137,791.

VII. Fee Schedule for FY 2022

The fee rates for FY 2022 are summarized in table 5.

TABLE 5—FY 2022 FEE RATES

Animal drug user fee category	Fee rate for FY 2022
Animal Drug Application Fees:	
Animal Drug Application	$580,569
Supplemental Animal Drug Application for Which Safety or Effectiveness Data are Required or Animal Drug Application Subject to the Criteria Set Forth in Section 512(d)(4) of the FD&C Act	290,284
Animal Drug Product Fee	10,787
Animal Drug Establishment Fee [1]	155,220
Animal Drug Sponsor Fee [2]	137,791

[1] An animal drug establishment is subject to only one such fee each fiscal year.
[2] An animal drug sponsor is subject to only one such fee each fiscal year.

VIII. Fee Waiver or Reduction; Exemption From Fees

A. Barrier to Innovation Waivers or Fee Reductions

Under section 740(d)(1)(A) of the FD&C Act, an animal drug applicant may qualify for a waiver or reduction of one or more ADUFA fees if the fee would present a significant barrier to innovation because of limited resources available to the applicant or other circumstances. CVM's guidance for industry (GFI) #170, entitled ''Animal Drug User Fees and Fee Waivers and Reductions,''[3] states that the Agency interprets this provision to mean that a waiver or reduction is appropriate when: (1) The product for which the waiver is being requested is innovative, or the requestor is otherwise pursuing innovative animal drug products or technology and (2) the fee would be a significant barrier to the applicant's ability to develop, manufacture, or market the innovative product or technology. Only applicants that meet both of these criteria will qualify for a waiver or reduction in user fees under this provision (see GFI #170 at pp. 6–8). For purposes of determining whether the second criterion would be met on the basis of limited financial resources available to the applicant, FDA has determined an applicant with financial resources of less than $20,000,000 (including the financial resources of the applicant's affiliates), adjusted annually for inflation, has limited resources available. Using the CPI for urban consumers (U.S. city average; not seasonally adjusted; all items; annual index), the inflation-adjusted level for FY 2022 will be $21,896,240; this level represents the financial resource ceiling that will be used to determine if there are limited resources available to an applicant requesting a Barrier to Innovation waiver on financial grounds for FY 2022. Requests for a waiver need to be submitted to FDA each fiscal year not later than 180 days from when the fees are due. A waiver granted on Barrier to Innovation grounds (or any of the other grounds listed in section 740(d)(1) of the FD&C Act) is only valid for one fiscal year. If a sponsor is not granted a waiver, they are liable for the fees.

B. Exemptions From Fees

The types of fee waivers and reductions that applied during ADUFA III still exist for FY 2022. In addition, ADUFA IV established two new exemptions and one new exception from fees, as described below:

If an animal drug application, supplemental animal drug application, or investigational submission involves the intentional genomic alteration of an animal that is intended to produce a human medical product, any person who is the named applicant or sponsor of that application or submission will not be subject to sponsor, product, or establishment fees under ADUFA based solely on that application or submission (21 U.S.C. 379j–12(d)(4)(B)).

Fees will not apply to any person who not later than September 30, 2023, submits to CVM a supplemental animal drug application relating to a new animal drug application approved under section 512 of the FD&C Act, solely to add the application number to the labeling of the drug in the manner specified in section 502(w)(3) of the FD&C Act (21 U.S.C. 352(w)(3)), if that person otherwise would be subject to user fees under ADUFA based only on the submission of the supplemental application (21 U.S.C. 379j–12(d)(4)(A)).

There is also an exception from application fees for animal drug applications submitted under section 512(b)(1) of the FD&C Act by a sponsor who previously applied for conditional approval under section 571 of the FD&C Act for the same product and paid an application fee at the time they applied for conditional approval, provided the sponsor has submitted the application under section 512(b)(1) of the FD&C Act within the timeframe specified in section 571(h) of the FD&C Act (21 U.S.C. 379j–12(a)(1)(C)(ii)).

IX. Procedures for Paying the FY 2022 Fees

A. Application Fees and Payment Instructions

The appropriate application fee established in the new fee schedule must be paid for an animal drug application or supplement subject to fees under ADUFA IV that is submitted on or after October 1, 2021. The payment must be made in U.S. currency by one of the following methods: Wire transfer, electronically, check, bank draft, or U.S. postal money order made payable to the Food and Drug Administration. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay,* or the *Pay.gov* payment option is available to you after you submit a cover sheet. (Note: only full payments are accepted. No partial payments can be made online.) Once you search for and find your invoice, select ''Pay Now'' to be redirected to *https://www.pay.gov/.* Electronic payment options are based on the balance due. Payment by credit card is available only for balances that are less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

When paying by check, bank draft, or U.S. postal money order, please write your application's unique Payment Identification Number (PIN), beginning with the letters AD, on the upper right-hand corner of your completed Animal Drug User Fee Cover Sheet. Also write the FDA post office box number (P.O. Box 979033) and PIN on the enclosed

[3] CVM's GFI #170 is located at: *https://www.fda.gov/downloads/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/UCM052494.pdf.*

check, bank draft, or money order. Mail the payment and a copy of the completed Animal Drug User Fee Cover Sheet to: Food and Drug Administration, P.O. Box 979033, St. Louis, MO 63197–9000. Note: in no case should the payment for the fee be submitted to FDA with the application.

When paying by wire transfer, the invoice number or PIN needs to be included; without the invoice number or PIN, the payment may not be applied and the invoice amount would be referred to collections. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required to add that amount to the payment to ensure that the invoice is paid in full.

Use the following account information when sending a payment by wire transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, FDA Deposit Account Number: 75060099, U.S. Department of the Treasury routing/transit number: 021030004, SWIFT Number: FRNYUS33.

To send a check by a courier such as Federal Express, the courier must deliver the check and printed copy of the cover sheet to: U.S. Bank, Attn: Government Lockbox 979033, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This address is for courier delivery only. If you have any questions concerning courier delivery, contact U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery.)

It is important that the fee arrives at the bank at least a day or two before the application arrives at CVM. FDA records the official application receipt date as the later of the following: The date the application was received by CVM, or the date U.S. Bank notifies FDA that your payment in the full amount has been received, or when the U.S. Treasury notifies FDA of receipt of an electronic or wire transfer payment. U.S. Bank and the U.S. Treasury are required to notify FDA within 1 working day, using the PIN described previously.

The tax identification number of FDA is 53–0196965.

B. Application Cover Sheet Procedures

Step One—Create a user account and password. Log on to the ADUFA website at *https://www.fda.gov/industry/animal-drug-user-fee-act-adufa/animal-drug-user-fee-cover-sheet* and, under Application Submission Information, click on ''Create ADUFA User Fee Cover Sheet.'' For security reasons, each firm submitting an application will be assigned an organization identification number, and each user will also be required to set up a user account and password the first time you use this site. Online instructions will walk you through this process.

Step Two—Create an Animal Drug User Fee Cover Sheet, transmit it to FDA, and print a copy. After logging into your account with your user name and password, complete the steps required to create an Animal Drug User Fee Cover Sheet. One cover sheet is needed for each animal drug application or supplement. Once you are satisfied that the data on the cover sheet are accurate and you have finalized the cover sheet, you will be able to transmit it electronically to FDA and you will be able to print a copy of your cover sheet showing your unique PIN.

Step Three—Send the payment for your application as described in section IX.A.

Step Four—Please submit your application and a copy of the completed Animal Drug User Fee Cover Sheet to the following address: Food and Drug Administration, Center for Veterinary Medicine, Document Control Unit (HFV–199), 7500 Standish Pl., Rockville, MD 20855.

C. Product, Establishment, and Sponsor Fees

By December 31, 2021, FDA will issue invoices and payment instructions for product, establishment, and sponsor fees for FY 2022 using this fee schedule. Payment will be due by January 31, 2022. FDA will issue invoices in November 2022 for any products, establishments, and sponsors subject to fees for FY 2022 that qualify for fees after the December 2021 billing.

Dated: July 20, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–16043 Filed 7–27–21; 8:45 am]

BILLING CODE 4164–01–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; Small Business: Biomedical Sensing, Measurement and Instrumentation.

Date: August 12, 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: Yordan V. Kostov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, 301–867–5309, *kostovyv@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 22, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–15990 Filed 7–27–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism. The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

A portion of 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 Advisory Council on Alcohol Abuse and Alcoholism.

Date: September 9, 2021.

Closed: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Open: 12:15 p.m. to 5:30 p.m.

Agenda: Presentations and other business of the Council.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Abraham P. Bautista, Ph.D., Executive Secretary, National Advisory Council, Director, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6700 B Rockledge Drive, Room 1458, MSC 6902, Bethesda, MD 20892, 301–443–9737, *bautista@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.niaaa.nih.gov/AboutNIAAA/AdvisoryCouncil/Pages/default.aspx*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: July 22, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–15992 Filed 7–27–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Glia and Alzheimer's disease progression.

Date: September 7, 2021.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Maurizio Grimaldi, MD, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, 301–496–9374, *grimaldim2@mail.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Oxidative Stress 1.

Date: October 21, 2021.

Time: 11:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging. Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Bita Nakhai, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Bldg., 2C212, 7201 Wisconsin Avenue Bethesda, MD 20892, 301–402–7701, *nakhaib@nia.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 23, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–16075 Filed 7–27–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory General Medical Sciences Council, September 09, 2021, 09:00 a.m. to September 09, 2021, 04:30 p.m., National Institutes of Health, Natcher Building, 6707 Democracy Boulevard, Bethesda, MD, 20892 which was published in the **Federal Register** on June 24, 2021, FR Doc 2021–13377, 86 FR 33322.

This notice is being amended to change the meeting location from National Institutes of Health, Natcher Building, 6707 Democracy Boulevard, Bethesda, MD, 20892 to National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 to a virtual meeting. The url link to this meeting is: *https://www.nigms.nih.gov/about-nigms/what-we-do/advisory-council.* Any member of the public may submit written comments no later than 15 days after the meeting. The meeting is partially Closed to the public.

Dated: July 23, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–16069 Filed 7–27–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel; Early AD Pathological Mechanisms.

Date: October 8, 2021.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Birgit Neuhuber, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, 301–480–1266 *neuhuber@ninds.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 23, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–16073 Filed 7–27–21; 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; Time-Sensitive Obesity Review.

Date: August 17, 2021.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 23, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–16079 Filed 7–27–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, NIAAA.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Alcohol Abuse and Alcoholism, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAAA.

Date: September 16–17, 2021.

Time: 8:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 5625 Fishers Lane, Rockville, MD 20852 (Virtual Meeting).

Contact Person: George Kunos, M.D., Ph.D., Scientific Director, Office of the Scientific Director, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5625 Fishers Lane, Room 2S–24A, Rockville, MD 20852, 301–443–2069, *gkunos@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: July 22, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–15989 Filed 7–27–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Alzheimer's Disease Drug Development.

Date: August 27, 2021.

Time: 12:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Alexander Parsadanian, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *parsadaniana@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Nextgen Discovery for Alzheimer's Disease.

Date: August 30, 2021.

Time: 1:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Alexander Parsadanian, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666 *parsadaniana@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 23, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–16072 Filed 7–27–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2014–0713]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–NEW

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval for the following collection of information: 1625–NEW, State Registration Data. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before September 27, 2021.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2014–0713] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, STOP 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2014–0713], and must be received by September 27, 2021.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

The Coast Guard previously published two, 60-day notices (79 FR 60483, October 7, 2014, and 81 FR 85987, November 29, 2016) and one, 30-day notice (83 FR 54128, October 26, 2018) required by 44 U.S.C. 3506(c)(2). Those three notices elicited ten public comment submissions. Following this paragraph, we list the specific concerns or questions raised in those ten submissions. We also list the comments and questions we received from Coast Guard staff that may be helpful to clarify for the public. Following the comment description, we provide our updated responses, including descriptions of any changes we made to the ICR and forms. The Coast Guard is publishing an additional 60-day notice for public commenting due to the significant time that has elapsed since the previous notices were published.

Comment (1): A requestor asks the Coast Guard to consider mandating to states that personal watercraft (PWC) data collection is separately maintained. This will ensure accuracy in the entirety of boat classification data collection and significantly aid PWC manufacturers in market assessment.

Answer: The Coast Guard is maintaining the personal watercraft category in our proposed data collection (see 33 CFR 174.19(a)(11)); we proposed to collect statistics on personal watercraft by length category.

Comment (2): A commenter stated that the Coast Guard's tabulation of State numbered vessels as a result of this Information Collection Request (ICR) cannot be used to measure risk as stated in the supplemental Paperwork Reduction Act submission that accompanies this ICR, especially since there are numerous recreational boating accidents and fatalities that occur in vessels not required to be numbered and not reflected in this collection of information.

Answer: Information in the proposed collection will be used to measure risk; Registration data frequently serves as the denominator of fatality rates (usually expressed in number of deaths per 100,000 registered vessels). The existence of registration data allows the Coast Guard to normalize data and provide meaningful statistics and recommendations for the National Recreational Boating Safety (RBS) Program. The revised collection proposed to break down registration by motorization so that an additional measure, motorized vessel fatality rate, could be used (number of deaths on motorized vessels per 100,000 motorized registered vessels). This measure would provide a much sounder denominator since all States do not collect registration data on non-motorized vessels.

Comment (3): A commenter noted that in accordance with 33 CFR 174.123, each State that has an approved numbering system must prepare and submit Coast Guard form CGHQ–3923,

Report of Certificates of Number Issued to Boats, to the Coast Guard. Although OMB No. 1625–NEW reflects the revised vessel type terminology resulting from the Coast Guard's 2012 issuance of the Final Rule on Canges to Standard Numbering System, Vessel Identification System, and Boating Accident Report Database (Docket No. USCG–2003–14963), it does not accurately reflect the CFR's terminology in its title or instructions (*i.e.,* all references to the approved numbering system, state numbered boats and certificates of number have been replaced with registrations and registered).

Answer: This is true. The proposed form focuses on registered vessels, which allows the Coast Guard to examine a larger scope of vessels that fall under the National Recreational Boating Safety Program. The Coast Guard will consider changes to the form title in 33 CFR 174.123 to more accurately reflect the data collection under this Information Collection Request.

Comment (4): A commenter noted that OMB No. 1625–NEW is dated June 2014, inferring that is already in use (or may be required for use). Because States are currently in various stages of implementation of the Final Rule (with final implementation required by January 1, 2017), States cannot be compelled to begin using OMB No. 1625–NEW prior to January 1, 2017. Any required deviation from the use of CGHQ–3923 prior to January 1, 2017 will result in additional (and in some cases, significant) burden and cost to the States.

Answer: The June 2014 date was filled in as a placeholder. The form was drafted and sent for comment early so that the public could comment on the proposed content, and the States could prepare for changes after the data collection is finalized. The Coast Guard has accepted but not required a State's use of this form.

Comment (5): At this time, the state of Ohio is still in the process of transitioning to the new requirements cited in 33 CFR 174.19 (which we are required to implement by January 1, 2017). That being the case, what are the Coast Guard's intentions with regard to the version of the reporting form we will need to use to make our annual reporting in 2015 and beyond? Will we have the option to use the ''older'' version of the reporting form until such time that we have transitioned to the new requirements? And, if required to use the new form prior to that transition, how will the Coast Guard view any incomplete data that might not be able to be generated in the new format prior to completion of the transition?

Answer: The Coast Guard has accepted but not required a State's use of this form.

Comment (6): Knowing that hull type, and more importantly engine drive information can be important details in better identifying and understanding the boating demographics within a state, what is the rationale for omitting this information in this revised collection form?

Answer: The Coast Guard has not used the hull material or engine information collected in prior registration collections. Because we have not used the data, we removed it from the form so as to reduce the burden of data reporting on the States.

Comment (7): Do the estimates of the form completion burden account for any initial burden in transitioning to this revised reporting scheme? What is the basis for estimates of burden in items 12 and 13 of the Supporting Statement for the collection?

Answer: No. The burden estimate took into account the collection of information, which is based on the number of respondents, frequency of form submission and an estimate of the time taken to fill out the form.

Comment (8) is: Is there any relationship between this revision and anticipated efforts to bring CFR into agreement with the Uniform Certificate of Titling Act for Vessels (UCOTA–V)?

Answer: There is not a relationship between this revision and the UCOTA–V efforts.

Comment (9): Under Puerto Rico law, a Ship or vessel means any system of transportation on water that has a motor installed, including, but without been limited to jet skis, motorized rafts, power sailboats, motor boats, or powered driven boats of any sort, including homemade vessels powered by motor, but excluding hydroplanes. A watercraft means a mode of transportation which does not have a motor installed, such as rowboats, canoes, kayaks, sailboats with or without oars, water skis, surfboards with or without sail, rafts, inflatable systems, and any device that moves on the surface of the water without being propelled by a motor, although it could be fit for installation or adaptation of some type of motor. Therefore, the proposed change creates an overburden of conflicting definitions or wording to deal with in this case. Also, the removal of the proposed definitions leaves the accident investigation protocol without proper wording to aid in the determination of felonies, infractions, or misdemeanors committed.

Answer: This comment is outside the scope of the Notice requesting comments on this information collection. Please use the definitions in 33 CFR 173.3 for this information collection.

Comment (10): SS173.57: Same comment as in the previous paragraph. Mainly, when evaluating marine events involving either vessels, watercrafts, or both. It may also affect the terms and conditions of the memorandum of Agreement between the Government of the Commonwealth of Puerto Rico and the USCG under 14 U.S.C. SS2,89,141; 46 CFR SS13109 and 33 CFR SS100.01 as to comply with 46 U.S.C. 13103(c)(2) on the matter of marine events and boat accident reports procedures.

Answer: This collection of information does not relate to marine events or boat accident report procedures. Therefore, this comment is outside the scope of the Notice requesting comments on the collection.

Comment (11): The definitions in 33 CFR 181.3 do not include the manufacturing of handmade vessels and is inconsistent with SS181.23(b). It should include person engaged in the manufacture of a boat for his or her own use (operation) and not for sale.

Answer: This collection of information is for all registered vessels. If a homemade vessel is registered, it should be included in the statistics.

Comment (12): If a state has already transitioned—or will soon transition—its numbering system and the content of the certificates of number over to the requirements cited in 33 CFR 174.19 (*i.e.,* before the Jan. 1, 2017 implementation deadline), what version of the form is it suppose to use? If, as a result of the ICR, the OMB formally approves the collection and issues an OMB Control Number to this revised form 3923 before the Jan. 1, 2017 deadline for states to implement the new requirements, will a state that does not make the transition until the deadline be able to submit its data on the ''old'' version of the form?

Answer: States would be asked to submit information on the historic form. If a State has already transitioned to the new terms ahead of the January 1, 2017 deadline, the Coast Guard will accept registration data on either form.

Comment (13): If there are variations in the version of the forms employed by the states and submitted to the Coast Guard, how will the Coast Guard reconcile those differences in the computation and report-out of registration data?

Answer: The Coast Guard will merge datasets if both the historic and proposed forms are used.

In addition to the above comments submitted to the docket, the following comments and questions were received by Coast Guard program staff members:

Comment (14): Is this just the periodic request to approve the continuation of the collection of registration data?

Answer: Yes.

Comment (15): Has the Notice been issued primarily (at this time) as part of the process to get OMB to issue a control number?

Answer: Yes.

Comment (16): Is this in preparation for collection of registration data under the ''new'' vessel terms authorized by the Final Rule on State Numbering System (SNS), Vessel Identification System (VIS), and Boating Accident Report Database (BARD) (eff. Jan 2017)?

Answer: Yes. This form makes use of the ''primary operation'' and ''vessel type'' in 33 Code of Federal Regulation 174.19.

Comment (17): Is there a revised collection form that will accompany it?

Answer: Yes. There is a revised collection form that is greatly simplified. The proposed revision provides instructions, a breakdown of recreational vessel types by motorization and length category, a breakdown of commercial vessel types, and an administration section.

Comment (18): Will there be any other supporting documentation posted to regulations.gov for this Notice?

Answer: Yes. The Coast Guard posted additional files to docket USCG–2014–0173, including the proposed registration form and supporting statement.

Comment (19): A commenter questioned the Coast Guard's response to previously submitted comment (6) in which the Coast Guard noted a reduced reporting burden with the revised form. The commenter noted that the burden is not reduced since collecting aspects of vessels such as hull material and engine type are already required under 33 CFR 174 even if statistics regarding these aspects are not required on form CGHQ–3923.

Answer: The burden of filling out the revised form is reduced. On the previous version of CGHQ–3923, the Coast Guard required statistics on over 150 data points whereas the proposed version of the form requires only 69. The previous version requested information on five variables (vessel type, hull material, length, engine type, and use) whereas the proposed version requires only three variables (vessel type, length, primary operation). The Coast Guard expects a reduced burden as the proposed form will require fewer queries and fewer data point checks to complete it.

Comment (20): A commenter questioned why aspects of vessels such as hull material and engine type are necessary in 33 CFR 174 since they are not required elements to be reported on form CGHQ–3923.

Answer: Various aspects of vessels are required to be collected for law enforcement purposes. Even though various vessel aspects such as hull material and engine type are not on the proposed form CGHQ–3923, they are used in accident, theft, and fraud investigations. Using common terminology facilitates common understanding.

Comment (21): A commenter noted that hull material and engine type are of interest to sectors and should be on form CGHQ–3923 since information on them cannot be obtained outside of CGHQ–3923.

Answer: The Coast Guard works with various sectors including government, industry, non-profits, and researchers. If a party requested information other than what is available on CGHQ–3923, the Coast Guard would direct the user to a more appropriate contact.

Comment (22): A commenter provided a recommended version of CGHQ–3923 that is a modification of the previous CGHQ–3923. It includes additional hull material entries, an additional engine type, and changes the names of some categories.

Answer: The Coast Guard thanks the commenter for the suggested form but maintains a desire to have a simplified form for use by the States. The Coast Guard has not used the hull material or engine information collected previously. Because we have not used the data, we removed it from the form so as to reduce the burden of data reporting on the States.

Information Collection Request

Title: State Registration Data.

OMB Control Number: 1625–NEW.

Summary: This Notice provides information on the collection of registration data from the State reporting authorities.

Need: Title 46 U.S.C. 12302 and 33 CFR 174.123 authorizes the collection of this information.

Forms: CG–3923, State Registration Data.

Respondents: 56 State reporting authorities respond.

Frequency: Annually.

Hour Burden Estimate: This is a new information collection request. The estimated burden is 42 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: July 22, 2021.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2021–15987 Filed 7–27–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2021–0010]

Cybersecurity and Infrastructure Security Agency; Notice of President's National Security Telecommunications Advisory Committee Meeting

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security.

ACTION: Notice of *Federal Advisory Committee Act* (FACA) meeting; request for comments.

SUMMARY: CISA is publishing this notice to announce the following President's National Security Telecommunications Advisory Committee (NSTAC) meeting. This meeting will be open to the public.

DATES:

Meeting Registration: Registration to attend the meeting is required and must be received no later than 5:00 p.m. Eastern Time (ET) on August 10, 2021. For more information on how to participate, please contact *NSTAC@cisa.dhs.gov.*

Speaker Registration: Registration to speak during the meeting's public comment period must be received no later than 5:00 p.m. ET on August 10, 2021.

Written Comments: Written comments must be received no later than 5:00 p.m. ET on August 10, 2021.

Meeting Date: The NSTAC will meet on August 17, 2021, from 2:00 p.m. to 3:00 p.m. ET. The meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held via conference call. For access to the conference call bridge, information on services for individuals with disabilities, or to request special assistance, please email *NSTAC@cisa.dhs.gov* by 5:00 p.m. ET on August 10, 2021.

Comments: Members of the public are invited to provide comment on the issues that will be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated materials that may be discussed during the meeting will be

made available for review at *https://www.cisa.gov/nstac* on August 2, 2021. Comments may be submitted by 5:00 p.m. ET on August 10, 2021 and must be identified by Docket Number CISA–2021–0010. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Please follow the instructions for submitting written comments.
- *Email: NSTAC@cisa.dhs.gov.* Include the Docket Number CISA–2021–0010 in the subject line of the email.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the Docket Number for this action. Comments received will be posted without alteration to *www.regulations.gov,* including any personal information provided.

Docket: For access to the docket and comments received by the NSTAC, please go to *www.regulations.gov* and enter docket number CISA–2021–0010.

A public comment period is scheduled to be held during the meeting from 2:25 p.m. to 2:35 p.m. ET. Speakers who wish to participate in the public comment period must email *NSTAC@cisa.dhs.gov* to register. Speakers should limit their comments to three minutes and will speak in order of registration. Please note that the public comment period may end before the time indicated, following the last request for comments.

FOR FURTHER INFORMATION CONTACT: Sandra Benevides, 202–603–1225, *NSTAC@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: The NSTAC was established by Executive Order (E.O.) 12382, 47 FR 40531 (September 13, 1982), as amended and continued under the authority of E.O. 13889, dated September 27, 2019. Notice of this meeting is given under FACA, 5 U.S.C. appendix (Pub. L. 92–463). The NSTAC advises the President on matters related to national security and emergency preparedness (NS/EP) telecommunications and cybersecurity policy.

Agenda: The NSTAC will hold a conference call on Tuesday, August 17, 2021, to discuss current NSTAC activities and the Government's ongoing cybersecurity and NS/EP communications initiatives. This meeting is open to the public and will include: (1) Remarks from the Administration and CISA leadership on salient NS/EP and cybersecurity efforts; (2) a status update from the NSTAC Software Assurance Subcommittee; and (3) a discussion of the provisions outlined in E.O. 14028, *Improving the Nation's Cybersecurity,* with a particular focus on its implications for public-private partnerships and the NSTAC's study of enhancing internet resilience in 2021 and beyond.

Sandra J. Benevides,

Designated Federal Officer, NSTAC, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2021–16040 Filed 7–27–21; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0091]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Application for Replacement Naturalization/ Citizenship Document

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until August 27, 2021.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2006–0052. All submissions received must include the OMB Control Number 1615–0091 in the body of the letter, the agency name and Docket ID USCIS–2006–0052.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, Telephone number (240) 721–3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on April 22, 2021, at 86 FR 21340, allowing for a 60-day public comment period. USCIS did not receive any comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2006–0052 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Replacement Naturalization/Citizenship Document.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–565; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. U.S. Citizenship and Immigration Services (USCIS) uses Form N–565 to determine the applicant's eligibility for a replacement document. An applicant may file for a replacement if they were issued one of the documents described above and it was lost, mutilated, or destroyed; if the document is incorrect due to a typographical or clerical error by USCIS; if the applicant's name was changed by a marriage, divorce, annulment, or court order after the document was issued and the applicant now seeks a document in the new name; or if the applicant is seeking a change of the gender listed on their document after obtaining a court order, a government-issued document, or a letter from a licensed health care professional recognizing that the applicant's gender is different from that listed on their current document. The only document that can be replaced on the basis of a change to the applicant's date of birth, as evidenced by a court order or a document issued by the U.S. government or the government of a U.S. state, is the Certificate of Citizenship. If the applicant is a naturalized citizen who desires to obtain recognition as a citizen of the United States by a foreign country, he or she may apply for a special certificate for that purpose.

USCIS may request that applicants who reside within the United States attend an appointment at a USCIS Application Support Center to have a photograph taken. USCIS may also require applicants to submit additional biometrics under 8 CFR 103.2(b)(9).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection N–565 (paper-filed) is 13,270 and the estimated hour burden per response is 1.33 hours; the estimated total number of respondents for the information collection N–565 (filed online) is 13,270 and the estimated hour burden per response is 0.917 hours; the estimated total number of respondents for the photograph appointment is 26,340 (accounts for an estimated 200 respondents that file from overseas and do not need to attend a photo appointment) and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 60,635 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $3,417,025.

Dated: July 23, 2021.

Samantha L Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2021–16038 Filed 7–27–21; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0003]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application To Extend/Change Nonimmigrant Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until September 27, 2021.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0003 in the body of the letter, the agency name and Docket ID USCIS–2007–0038. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2007–0038.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2007–0038 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application to Extend/Change Nonimmigrant Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–539 and I–539A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form will be used for nonimmigrants to apply for an extension of stay, for a change to another nonimmigrant classification, or for obtaining V nonimmigrant classification.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–539 (paper) is 174,289 and the estimated hour burden per response is 2.00 hours, the estimated total number of respondents for the information collection I–539 (electronic) is 74,696 and the estimated hour burden per response is 1.083 hours; and the estimated total number of respondents for the information collection I–539A is 54,375 and the estimated hour burden per response is 0.5 hours; biometrics processing is 186,738 total respondents requiring an estimated 1.17 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 675,145 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $42,700,928.

Dated: July 23, 2021.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2021–16035 Filed 7–27–21; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0136]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application for Significant Public Benefit Entrepreneur Parole and Instructions for Biographic Information for Entrepreneur Parole Dependents

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until September 27, 2021.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0136 in the body of the letter, the agency name and Docket ID USCIS–2016–0005. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2016–0005. USCIS is limiting communications for this Notice as a result of USCIS' COVID–19 response actions.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2016–0005 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Significant Public Benefit Entrepreneur Parole and Instructions for Biographic Information for Entrepreneur Parole Dependents.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–941; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Entrepreneurs can use this form to make an initial request for parole based upon significant public benefit; make a subsequent request for parole for an additional period; or file an amended application to notify USCIS of a material change.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–941 is 2,940 and the estimated hour burden per response is 4.7 hours. The estimated total number of respondents for the biometric processing is 2,940 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 17,258 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $1,440,600.

Dated: July 23, 2021.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2021–16036 Filed 7–27–21; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket Number: FR–7046–N–02]

Privacy Act of 1974; Matching Program

AGENCY: Office of Administration, Housing and Urban Development (HUD).

ACTION: Notice of a re-established matching program.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, as amended, HUD is providing notice of its intent to execute a new computer matching agreement with HHS for a recurring matching program with HUD's Office of Public and Indian Housing (PIH) and Office of Housing, involving comparisons of information provided by participants in any authorized HUD rental housing assistance program with the independent sources of income information available through the National Directory of New Hires (NDNH) maintained by HHS. HUD will obtain HHS data and make the results available to: Program administrators such as public housing agencies (PHAs) and private owners and management agents (O/As) (collectively referred to as POAs) to enable them to verify the accuracy of income reported by the tenants (participants) of HUD rental assistance programs and contract administrators (CAs) overseeing and monitoring O/A operations as well as independent public auditors (IPAs) that audit both PHAs and O/As. The most recent renewal of the current matching agreement expires on July 27, 2021.

DATES:

Comments Due Date: August 27, 2021.

Applicability Date: The applicability date of this matching program shall be July 27, 2021, or 30 days from the date that the Computer Matching Agreement, signed by HUD and HHS Date Integrity Boards, are sent to OMB and Congress, whichever is later, provided no comments that would cause a contrary determination are received. The matching program will continue for 18 months after the applicable date and may be extended for an additional 12 months, if the respective agency Data Integrity Boards (DIBs) determine that the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

ADDRESSES: Interested persons are invited to submit comments regarding this notice at *www.regulations.gov* or to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10110, Washington, DC 20410. Communications should refer to the above docket number. A copy of each communication submitted will be available for public inspection and copying between 8:00 a.m. and 5:00 p.m. weekdays at the above address. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Contact the Recipient Agency Nancy Corsiglia, Senior Agency Official for Privacy, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6204, Washington, DC 20410, telephone number (202) 402–4025. [This is not a toll-free number.] A telecommunication device for hearing- and speech-impaired individuals (TTY) is available at (800) 877–8339 (Federal Relay Service).

SUPPLEMENTARY INFORMATION: Pursuant to the Computer Matching and Privacy Protection Act (CMPPA) of 1988, as amended; OMB's guidance on this statute entitled, ''Final Guidance Interpreting the Provisions of Public Law 100–503''; OMB Circular No. A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act;'' and OMB Circular No. A–130, ''Managing Information as a Strategic Resource''; HUD is providing the public with notice of a new computer matching agreement with HHS (previous notice of a computer matching program between HUD and HHS was previously published at 83 FR 67334 on December 28, 2018). The first HUD–HHS computer matching program was conducted in September 2005, with HUD's Office of Public and Indian Housing. The scope of the HUD–HHS computer matching program was extended to include HUD's Office of Housing in December 2007, and the participants of HUD's DHAP in January 2011.

The matching program will be carried out only to the extent necessary to: (1) Verify the employment and income of participants in certain rental assistance programs to correctly determine the amount of their rent and assistance, (2) identify, prevent, and recover improper payments made on behalf of tenants, and (3) after removal of personal identifiers, to conduct analyses of the employment and income reporting of individuals participating in any HUD authorized rental housing assistance program.

HUD will make the results of the computer matching program available to public housing agencies (PHAs), private housing owners and management agents (O/As) administering HUD rental assistance programs to enable them to verify employment and income and correctly determine the rent and assistance levels for individuals participating in those programs, and contract administrators (CAs) overseeing and monitoring O/A operations. This information also may be disclosed to the HUD Office of Inspector General (HUD/OIG) and the United States Attorney

General in detecting and investigating potential cases of fraud, waste, and abuse within HUD rental assistance programs.

In addition to the above noted information disclosures, limited redisclosure of reports containing NDNH information may be redisclosed to the following persons and/or entities: (1) Independent auditors for the sole purpose of performing an audit of whether these HUD authorized entities verified tenants' employment and/or income and calculated the subsidy and rent correctly; and (2) entities and/or individuals associated with grievance procedures and judicial proceedings (*i.e.,* lawyers, court personnel, agency personnel, grievance hearing officers, etc.) relating to independently verified unreported income identified through this matching program.

HUD and its third-party administrators (PHAs, O/As, and CAs) will use this matching authority to identify, reduce or eliminate improper payments in HUD's rental housing assistance programs, while continuing to ensure that HUD rental housing assistance programs serve and are accessible by its intended program beneficiaries.

Participating Agencies

Department of Housing and Urban Development and the Department of Health and Human Services.

Authority for Conducting the Matching Program

This matching program is being conducted pursuant to Section 217 of the Consolidated Appropriation Act of 2004 (Pub. L. 108–199, Approved January 23, 2004), which amended Section 453(j) of the Social Security Act (42 U.S.C. 653(j)), Sections 3003 and 13403 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, approved August 10, 1993); Section 542(b) of the 1998 Appropriations Act (Pub. L. 105–65); Section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, as amended by Section 239 of HUD's 2009 Appropriations, effective March 11, 2009 (42 U.S.C. 3544); Section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543); the National Housing Act (12 U.S.C. 1701–1750g); the United States Housing Act of 1937 (42 U.S.C. 1437–1437z); Section 101 of the Housing and Community Development Act of 1965 (12 U.S.C. 1701s); the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*); and the Quality Housing and Work Responsibility Act of 1998 (42 U.S.C. 1437a(f)).

The Housing and Community Development Act of 1987 authorizes HUD to require applicants and participants (as well as members of their household 6 years of age and older) in HUD-administered programs involving rental housing assistance to disclose to HUD their Social Security Numbers (SSNs) as a condition of initial or continuing eligibility for participation in the programs. Effective January 31, 2010, all applicants and participants under the age of 6, are required to disclose their SSN to HUD, in accordance with regulatory revisions made to 24 CFR 5.216, as published at 74 FR 68924, on December 29, 2009.

Section 217 of the Consolidated Appropriations Act of 2004 (Pub. L. 108–199, approved January 23, 2004) authorizes HUD to provide to HHS information on persons participating in any programs authorized by:

(i) The United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*);

(ii) Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);

(iii) Section 221(d)(3), 221(d)(5) or 236 of the National Housing Act (12 U.S.C. 17151(d) and 1715z–1); (iv) Section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013); or (v) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s);

The Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of the Enterprise Income Verification (EIV) System—Amendments; Final rule published at 74 FR 68924 on December 29, 2009, requires program administrators to use HUD's EIV system to verify tenant employment and income information during mandatory re-examinations or recertifications of family composition and income and reduce administrative and subsidy payment errors in accordance with HUD administrative guidance (HUD regulation at 24 CFR 5.233).

This matching program also assists HUD in complying with the following Federal laws, requirements, and guidance related to identifying and reducing improper payments:

1. Improper Payments Elimination and Recovery Act of 2010 (IPERA) (Pub. L. 111–204) (July 22, 2010);

2. Presidential Memorandum on Enhancing Payment Accuracy Through a ''Do Not Pay List'' (June 18, 2010);

3. Office of Management and Budget M–18–20, Transmittal of Appendix C to OMB Circular A–123, Requirements for Payment Integrity Improvement'' (June 26, 2018);

4. Presidential Memorandum on Finding and Recapturing Improper Payments (March 10, 2010);

5. Reducing Improper Payments and Eliminating Waste in Federal Programs (Executive Order 13520, November 2009);

6. Improper Payments Information Act of 2002 (Pub. L. 107–300);

7. Office of Management and Budget M–03–13, Improper Payments Information Act of 2002;

8. Improper Payments Elimination and Recovery Improvement Act (IPERIA) of 2012, (Pub. L. 112–248) (January 10, 2013); and

9. Office of Management and Budget M–13–20, Protecting Privacy while Reducing Improper Payments with the Do Not Pay Initiative (August 16, 2013).

This matching program is also authorized by subsections 453(j)(7)(A), (C)(i), and (D)(i) of the Social Security Act (as amended and authorized by Section 217 of the Consolidated Appropriations Act of 2004 (Pub. L. 108–199)). Specifically, the aforementioned law authorizes HHS to compare information provided by HUD with data contained in the NDNH and report the results of the data match to HUD. The Social Security Act gives HUD the authority to disclose this information to CAs, O/As, and PHAs for the purpose of verifying the employment and income of individuals receiving benefits in the above programs. HUD shall not seek, use or disclose information relating to an individual without the prior written consent of that individual, and HUD has the authority to require consent as a condition of participating in HUD rental housing assistance programs.

The NDNH contains new hire, quarterly wage, and unemployment insurance information furnished by state and Federal agencies and is maintained by HHS' Office of Child Support Enforcement (OCSE) in its system of records ''OCSE National Directory of New Hires,'' No. 09–80–0381, published in the **Federal Register** at 80 FR 17894 (specifically pages 17906–17909) on April 2, 2015. The aforementioned published system of records notice authorizes disclosure of NDNH information to HUD pursuant to Routine Use (12) ''for the purpose of verifying the employment and income of the individuals and, after removal of personal identifiers, for the purpose of conducting analyses of the employment and income reporting of such individuals.''

The HUD records used in the information comparison are retrieved

from the Tenant Rental Assistance Certification System (TRACS) covered under HUD's Tenant Rental Assistance Certification System (HSNG/MF.HTS.02), published on August 22, 2016 (81 FR 56684); and the Inventory Management System (IMS), also known as the Public and Indian Housing (PIH) Information Center (PIC) (HUD/PIH.01), published on April 13, 2012 (77 FR 22337). The results of the information comparison are maintained within, the HUD system of records, Enterprise Income Verification System (EIV), No. HUD/PIH–5, last published in the **Federal Register** at 71 FR 45066 on August 8, 2006, and updated on September 1, 2009, at 74 FR 45235. Routine use (1) of the system of records authorizes disclosure of HUD records to HHS.

Purpose(s)

HUD's primary objective of the computer matching program is to verify the employment and income of participants in certain rental assistance programs to determine the appropriate level of rental assistance, and to detect, deter and correct fraud, waste, and abuse in rental housing assistance programs. In meeting these objectives, HUD also is carrying out a responsibility under 42 U.S.C. 1437f(K) to ensure that income data provided to PHAs, and O/As, by household members is complete and accurate. HUD's various rental housing assistance programs require that participants meet certain income and other criteria to be eligible for rental assistance. In addition, tenants generally are required to report and recertify the amounts and sources of their income at least annually. However, under the Quality Housing and Work Responsibility Act (QHWRA) of 1998, PHAs operating Public Housing programs may offer tenants the option to pay a flat rent, or an income-based rent. Those tenants who select a flat rent will be required to recertify income at least every three years. In addition, the changes to the Admissions and Occupancy final rule (March 29, 2000 (65 FR 16692)) specified that household composition must be recertified annually for tenants who select a flat rent or income-based rent.

Categories of Individuals

Covered Programs

This notice of computer matching program applies to individuals receiving services from the following rental assistance programs:

A. Disaster Housing Assistance Program (DHAP)
B. Public Housing
C. Section 8 Housing Choice Vouchers (HCV)
D. Project-Based Vouchers
E. Section 8 Moderate Rehabilitation
F. Project-Based Section 8
  1. New Construction
  2. State Agency Financed
  3. Substantial Rehabilitation
  4. Sections 202/8
  5. Rural Housing Services Section 515/8
  6. Loan Management Set-Aside (LMSA)
  7. Property Disposition Set-Aside (PDSA)
G. Section 101 Rent Supplement
H. Section 202/162 Project Assistance Contract (PAC)
I. Section 202 Project Rental Assistance Contract (PRAC)
J. Section 811 Project Rental Assistance Contract (PRAC)
K. Section 236 Rental Assistance Program
L. Section 221(d)(3) Below Market Interest Rate (BMIR)

Note: This notice does not apply to the Low-Income Housing Tax Credit (LIHTC) or the Rural Housing Services Section 515 without Section 8 programs.

Categories of Records

The following are the categories of record in this matching agreement:

HUD Input File

- First name
- Last name
- Date of birth
- Social Security number

HHS New Hire File

- New hire processed date
- Employee name
- Employee address
- Employee date of hire
- Employee state of hire
- Federal Employer Identification Number
- State Employer Identification Number
- Department of Defense status code
- Employer name
- Employer address
- Transmitter agency code
- Transmitter state code
- Transmitter state or agency name

HHS Quarterly Wage File

- Quarterly wage processed date
- Employee name
- Federal Employer Identification Number
- State Employer Identification Number
- Department of Defense code
- Employer name
- Employer address
- Employee wage amount
- Quarterly wage reporting period
- Transmitter agency code
- Transmitter state code
- Transmitter state or agency name

HHS Unemployment Insurance File

- Unemployment insurance processed date
- Claimant name
- Claimant address
- Claimant benefit amount
- Unemployment insurance reporting period
- Transmitter state code
- Transmitter state or agency name

System(s) of Records

OCSE NDNH contains new hire, quarterly wage, and unemployment insurance information furnished by state and federal agencies and is maintained by OCSE in its system of records ''OCSE National Directory of New Hires,'' No. 09–80–0381, published in the **Federal Register** at 80 FR 17906 on April 2, 2015, and updated on February 14, 2018, at 83 FR 6591. The disclosure of NDNH information by OCSE to HUD constitutes a ''routine use,'' as defined by the Privacy Act. 5 U.S.C. 552a(b)(3). Routine use (12) of the system of records authorizes the disclosure of NDNH information to HUD. 80 FR 17906, 17907 (April 2, 2015).

The HUD records used in the information comparison are retrieved from, and the results of the information comparison are maintained within, the HUD system of records ''Enterprise Income Verification'' (EIV), No. HUD/PIH–5, last published in the **Federal Register** at 71 FR 45066 on August 8, 2006, and updated on September 1, 2009, at 74 FR 45235. Routine use (1) of the system of records authorizes disclosure of HUD records to OCSE.

Dated: July 23, 2021.

Nancy Corsiglia,

Senior Agency Official for Privacy.

[FR Doc. 2021–16098 Filed 7–26–21; 11:15 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2021–N168; FXES11130100000–212–FF01E00000]

Endangered Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received

applications for permits to conduct activities intended to enhance the propagation and survival of endangered species under the Endangered Species Act of 1973, as amended. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before August 27, 2021.

ADDRESSES: *Document availability and comment submission:* Submit a request for a copy of the application and related documents and submit any comments by one of the following methods. All requests and comments should specify the applicant name and application number (*e.g.,* Dana Ross TE–08964A–2):

- *Email: permitsR1ES@fws.gov.*
- *U.S. Mail:* Marilet Zablan, Program Manager, Restoration and Endangered Species Classification, Ecological Services, U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181.

FOR FURTHER INFORMATION CONTACT: Colleen Henson, Regional Recovery Permit Coordinator, Ecological Services, (503) 231–6131 (phone); *permitsR1ES@fws.gov* (email). Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes such activities as pursuing, harassing, trapping, capturing, or collecting, in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
PER0008917 ...	Institute for Applied Ecology, Corvallis, OR.	Fender's blue butterfly (*Icaricia icarioides fenderi*).	Oregon	Harass by pursuit, capture, handle, identify, release, translocate, and salvage.	Amend.
PER0007997 ...	University of Washington Botanic Gardens, Seattle, WA.	*Hackelia venusta (Showy stickseed)Sidalcea oregana* var. *calva* (Wenatchee Mountains checkermallow).	Washington	Remove/reduce to possession—collect seeds, propagate, outplant, and monitor.	New.
PER0010212 ...	Idaho Department of Fish and Game, Coeur d'Alene, ID.	Kootenai River white sturgeon (*Acipenser transmontanus*).	Idaho, Montana	Harass by survey, capture, handle, mark, collect biological samples, tag, attach transmitters, sacrifice, cull, and release.	Renew.
PER0010269 ...	H.T. Harvey and Associates, Los Gatos, CA.	Hawaiian hoary bat (*Lasiurus cinereus semotus*).	Hawaii	Harass by capture, handle, measure, band, collect biological samples, tag, attach transmitters and light emitting diodes, release, and salvage.	Renew.
PER0009546 ...	Washington State University, Vancouver, WA.	Fender's blue butterfly (*Icaricia icarioides fenderi*).	Oregon	Harass by survey, monitor, capture, handle, mark, release, track, and salvage.	Renew and Amend.
PER0007886 ...	Assured Bio Labs, LLC, Oak Ridge, TN.	*Bidens amplectens* (Ko'oko'olau).	Hawaii	Remove/reduce to possession—collect leaves, flowering portions, stems, and herbarium specimens.	Renew.
PER0010822 ...	Ecostudies Institute, Olympia, WA.	Taylor's checkerspot butterfly (*Euphydryas editha taylori*).	Oregon, Washington	Harass by habitat monitoring.	New.
PER0011956 ...	U.S. Army Corps of Engineers, Lowell, OR.	Fender's blue butterfly (*Icaricia icarioides fenderi*) *Erigeron decumbens* (Willamette daisy).	Oregon	Harass by survey, capture, and release. Remove/reduce to possession—collect propagules, propagate, outplant, and monitor.	Renew.

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
PER0012586 ...	Hawaii Division of Forestry and Wildlife, Honolulu, HI.	Akekee (*Loxops caeruleirostris*) Akikiki (*Oreomystis bairdi*). Maui parrotbill or kiwikiu (*Pseudonestor xanthophrys*) Palila or honeycreeper (*Loxioides bailleui*) Small Kauai thrush or puaiohi (*Myadestes palmeri*) Laysan duck (*Anas laysanensis*).	Hawaiian Archipelago and the Pacific Islands Region.	Forest birds: Harass by survey, monitor, capture, handle, collect eggs, nestlings, subadults, and/or adults, captive propagate, band, release, and salvage. Laysan duck: Harass by survey, monitor, capture, handle, band, vaccinate, translocate, release, supplemental feed, and salvage.	Amend.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue a permit to an applicant listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Katherine Norman,

Assistant Regional Director–Ecological Services, Pacific Region.

[FR Doc. 2021–16010 Filed 7–27–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R8–ES–2021–0047; FXES11130800000–212–FF08ENVS00]

Enhancement of Survival Permit Application and Draft Safe Harbor Agreement, Nye, Esmeralda, Lincoln and Clark Counties, Nevada

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the proposed draft safe harbor agreement and NEPA compliance documentation; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the receipt and availability of an application for an enhancement of survival permit (permit) under the Endangered Species Act (ESA) and an associated draft programmatic Safe Harbor Agreement (SHA). Additionally, consistent with the requirements of the National Environmental Policy Act (NEPA), we have prepared a draft environmental action statement supporting our preliminary determination that the proposed permit action qualifies for a categorical exclusion under NEPA. The Nevada Department of Wildlife (applicant) has applied for a permit under the ESA for the enhancement activities within the SHA, which will contribute to the recovery of the Pahrump poolfish (*Empetrichthys latos*). The permit would authorize the take of one species incidental to the enhancement and restoration of private and public lands. We invite the public and local, State, Tribal, and Federal agencies to comment on the proposed SHA, and NEPA categorical exclusion determination documentation. Before issuing the requested permit, we will take into consideration any information that we receive during the public comment period.

DATES: Written comments must be received on or before August 27, 2021.

ADDRESSES: *Obtaining Documents:* The documents this notice announces, as well as any comments and other materials that we receive, will be available for public inspection in Docket No. FWS–R8–ES–2021–0047 at *http://www.regulations.gov.*

Submitting Comments: To send written comments, please use one of the following methods and identify to which document your comments are in reference—the draft SHA or NEPA compliance documentation.

- *Internet:* Submit comments at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2021–0047.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–R8–ES–2021–0047; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comments and Public Availability of Comments under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Glen W. Knowles, Field Supervisor, Southern Nevada Fish and Wildlife Office, by phone at 702–515–5244 or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the receipt of a permit application from the Nevada Department of Wildlife (applicant), for a 50-year enhancement of survival permit under section 10(a)(1)(A) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). Application for the permit requires the preparation of a programmatic safe harbor agreement (SHA) between the applicant and Service. The SHA provides for voluntary habitat restoration, maintenance, or enhancement activities that will contribute to the recovery of the Pahrump poolfish (*Empetrichthys latos*).

Service consideration of issuing a permit also requires evaluation of its potential impacts on the natural and human environment in accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). The Service has prepared a draft environmental action statement, which includes a draft categorical exclusion (CatEx) pursuant to NEPA and its implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 1501.4, to preliminarily determine if the proposed SHA is eligible for a categorical exclusion.

Background

Except for permitted exceptions, section 9 of the ESA (16 U.S.C. 1538 *et seq.*) prohibits the taking of fish and wildlife species listed as endangered under section 4 of the ESA; by regulation, take of certain species listed as threatened is also prohibited (16 U.S.C. 1533(d); 50 CFR 17.31). Regulations governing the permitted exception for allowable incidental take of endangered and threatened species are at 50 CFR 17.22 and 17.32. For more about the Federal SHA program, go to: *https://www.fws.gov/endangered/esa-library/pdf/harborqa.pdf, https://www.fws.gov/endangered/landowners/safe-harbor-agreements.html.*

National Environmental Policy Act Compliance

The proposed permit issuance triggers the need for compliance with the NEPA. The draft categorical exclusion (CatEx) was prepared to determine if issuance of a permit, based on the draft SHA, would individually or cumulatively have a minor or negligible effect on the species covered, and would therefore be eligible for a CatEx from further environmental analysis under NEPA.

Proposed Action

Under the proposed action, the Service would issue a permit to the applicant for a period of 50 years for covered activities (described below) benefitting the Pahrump poolfish by relieving landowners from any additional section 9 liability under the ESA (16 U.S.C. 1531 *et seq.*). Landowners who have suitable habitat for Pahrump poolfish may be enrolled by the applicant under the SHA. Landowners would receive a certificate of inclusion when they sign a cooperative agreement. Thus, the landowners will be authorized to take Pahrump poolfish when the number of species has increased above the baseline established in the SHA and cooperative agreement as a result of the landowner's covered activities. Although the permit and SHA will authorize incidental take of Pahrump poolfish associated with returning the enrolled property to its agreed-upon baseline condition, the Service anticipates that this level of take will not negatively impact the recovery of the species. It is not anticipated that cooperators will continuously seek to return to baseline during the pendency of their cooperative agreements; and during such time, the agreements will create short, mid-range, and long-term benefits for the recovery of the Pahrump poolfish. The applicant has requested a permit for one species, the Pahrump poolfish (*Empetrichthys latos*), which was, and remains as listed under the ESA as endangered in March 1967.

Safe Harbor Agreement Area

The geographic scope of this SHA encompasses suitable private and non-Federal lands within Nye, Esmeralda, Lincoln, and Clark Counties, Nevada.

Covered Activities

The proposed section 10(a) permit would allow incidental take of one covered species from covered activities in the proposed SHA area. The applicant is requesting incidental take authorization for covered activities, including but not limited to operation of vehicles and maintenance equipment, building or fence construction, gardening, hunting, recreational fishing, farming, mining, mowing, maintenance of landscaping and recreational facility infrastructure including irrigation facilities, commercial and non-commercial recreational activities, or cultivation of agricultural crops. As long as enrolled landowners allow the agreed-upon conservation measures to be completed on their property, and agree to maintain their baseline responsibilities, they may make any other lawful use of the property during the term of the cooperative agreement, even if such use results in the take of individual Pahrump poolfish or harm to their habitat. Some of the conservation measures that will be used to achieve this include restoration of springpool and springbrook habitats to approximate historical conditions, removal of aquatic nonnative species, control of invasive weed and plant species, modification of livestock grazing practices, and maintenance of seasonal flooding and soil moisture through pasture irrigation management strategies.

Public Comments

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on the draft SHA and associated documents. If you wish to comment, you may submit comments by any of the methods in **ADDRESSES**.

Public Availability of Comments

Any comments we receive will become part of the decision record associated with this action. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

Issuance of a permit is a Federal proposed action subject to compliance with NEPA and section 7 of the ESA. We will evaluate the permit application, the SHA, associated documents, and any public comments we receive during the comment period to determine whether the application meets the requirements of section 10(a) of the ESA. If we determine that those requirements are met, we will conduct an intra-Service consultation under section 7 of the ESA for the Federal action and for the potential issuance of an enhancement of survival permit. If the intra-Service consultation confirms issuance of the permit will not jeopardize the continued existence of any endangered or threatened species, or destroy or adversely modify critical habitat, we will issue a permit to the applicant for the incidental take of the covered species.

Authority

We provide this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1539(c) and its implementing regulations (50 CFR 17.32), and NEPA (42 U.S.C. 4371 *et seq.*) and NEPA implementing regulations (40 CFR 1501.4).

Glen W. Knowles,

Field Supervisor, Southern Nevada Fish and Wildlife Office, U.S. Fish and Wildlife Service, Las Vegas, Nevada.

[FR Doc. 2021–16061 Filed 7–27–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–ES–2020–N045; FXES11140700000–212–FF07CAFB00]

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Review of the Eskimo curlew (Numenius borealis)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce our intention to conduct a 5-year status review under the Endangered Species Act of 1973, as amended, for the Eskimo curlew. A 5-year status review is based on the best scientific and commercial data available at the time of the review. We are requesting submission of any new information that has become available since the last review of the species in 2016.

DATES: To ensure consideration, we must receive your comments and information by September 27, 2021. However, we will accept information about the species at any time.

ADDRESSES: Please submit your information by one of the following methods:

- *Email: Daniel_Rizzolo@fws.gov;* or
- *U.S. mail:* U.S. Fish and Wildlife Service, Attention: Dan Rizzolo, Fisheries and Ecological Services, 101 12th Avenue, Fairbanks, Alaska 99701.

For more about submitting information, see Request for Information in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Dan Rizzolo, by telephone at 907–456–0227. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We are initiating a 5-year status review under the ESA for the Eskimo curlew (*Numenius borealis*). A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any new information on this species that has become available since the last 5-year review was conducted in 2016.

Why do we conduct 5-year reviews?

Under the ESA, we maintain Lists of Endangered and Threatened Wildlife and Plants (which we collectively refer to as the List) in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the ESA requires us to review each listed species' status at least once every 5 years. Further, our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species under active review. For additional information about 5-year reviews, go to *http://www.fws.gov/endangered/what-we-do/recovery-overview.html.*

What information do we consider in our reviews?

In conducting these reviews, we consider the best scientific and commercial data that have become available since the listing determination or most recent status review, such as:

(1) The biology of the species, including but not limited to population trends, distribution, abundance, demographics, and genetics;

(2) Habitat conditions, including but not limited to amount, distribution, and suitability;

(3) Conservation measures that have been implemented that benefit the species;

(4) Threat status and trends in relation to the five listing factors (as defined in section 4(a)(1) of the ESA); and

(5) Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Any new information will be considered during the 5-year review and will also be useful in evaluating the ongoing recovery programs for the species.

In the case of the Eskimo curlew, we concluded in our 2016 5-year review that the probability that the species remained extant was extremely low based on the scarcity of recent sightings and the length of time that has passed since the last sighting that was confirmed with physical evidence. We will therefore focus this 5-year review upon reported sightings or other recent information on the species' possible existence. Thus, we ask, in particular, for information on recent sightings, including indication as to whether corroborating evidence (such as photographs) is available.

Species Under Review

Entity listed: Eskimo curlew (*Numenius borealis*).

- *Where listed:* Wherever found.
- *Classification:* Endangered.
- *Date listed (publication date for final listing rule):* March 11, 1967, under the Endangered Species Preservation Act of 1966.
- ***Federal Register*** *citation for final listing rule:* 32 FR 4001.

Request for Information

To ensure that a 5-year review is complete and based on the best available scientific and commercial information, we request new information from all sources. See What Information Do We Consider in Our Review? for specific criteria. If you submit information, please support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comments, 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.

Completed and Active Reviews

A list of all completed and currently active 5-year status reviews addressing species for which the Alaska Region of the Service has the lead responsibility is available at *https://www.fws.gov/alaska/pages/endangered-species-program/recovery-endangered-species.*

Authority

This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Peter Fasbender,

Assistant Regional Director, Fisheries and Ecological Services, Alaska Region.

[FR Doc. 2021–16076 Filed 7–27–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/A0A501010.999900 253G; OMB Control Number 1076–0169]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Probate of Indian Estates, Except for Members of the Osage Nation and Five Civilized Tribes

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Affairs (BIA), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before August 27, 2021.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to Ms. Charlene Toledo, Bureau of Indian Affairs, Office of Trust Services, Division of Probate Services 1001 Indian School Road MS 44, Albuquerque NM 87104: or email to *Charlene.Toledo@bia.gov.* Please reference OMB Control Number 1076–0169 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Ms. Charlene Toledo by telephone at (505) 563–3371. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on April 19, 2021 (86 FR 20402). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Secretary of the Interior probates the estates of individual Indians owning trust or restricted property in accordance with 25 U.S.C. 372–373. In order to compile the probate file, the BIA must obtain the family heirship data regarding the deceased from individuals and the tribe. This section contains the procedures that the Secretary of the Interior follows to initiate the probate of the trust estate for a deceased person who owns an interest in trust or restricted property. The Secretary must perform the necessary research of family heirship data collection requests in this part to obtain the information necessary to compile an accurate and complete probate file. This file will be forwarded to the Office of Hearing and Appeals (OHA) for disposition. Responses to these information collection requests are required to create a probate file for the decedent's estate so that OHA can determine the heirs of the decedent and order distribution of the trust assets in the decedent's estate.

Title of Collection: Probate of Indian Estates, Except for Members of the Osage Nation and Five Civilized Tribes.

OMB Control Number: 1076–0169.

Form Number: None.

Type of Review: Extension without change of currently approved collection.

Respondents/Affected Public: Indians, businesses, and tribal authorities.

Total Estimated Number of Annual Respondents: 36,906 per year.

Total Estimated Number of Annual Responses: 41,139 per year.

Estimated Completion Time per Response: Varies from 0.5 hours to 45 hours.

Total Estimated Number of Annual Burden Hours: 617,486 per year.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: Once per respondent per year.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2021–15977 Filed 7–27–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/A0A501010.999900253G]

Indian Gaming; Approval of Tribal-State Class III Gaming Compact in the State of Louisiana

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of the Amendment to the Tribal-State Compact for the Conduct of Class III Gaming between the Coushatta Tribe of Louisiana (Tribe) and the State of Louisiana (State).

DATES: The compact takes effect on July 28, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, *paula.hart@bia.gov,* (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Compact extends the term of the compact to 30 years, with automatic renewals, and increases the licensing threshold for non-gaming vendors to $500,000. The Compact is approved.

Bryan Newland,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2021–16042 Filed 7–27–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/A0A501010.999900253G]

Indian Gaming; Extension of Tribal-State Class III Gaming Compact (Pyramid Lake Paiute Tribe of the Pyramid Reservation and the State of Nevada)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces the extension of the Class III gaming compact between the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation and the State of Nevada.

DATES: The extension takes effect on July 28, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: An extension to an existing tribal-state Class III gaming compact does not require approval by the Secretary if the extension does not modify any other terms of the compact. 25 CFR 293.5. The Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation and the State of Nevada have reached an agreement to extend the expiration date of their existing Tribal-State Class III gaming compact to February 23, 2023. This publishes notice of the new expiration date of the compact.

Bryan Newland,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2021–16041 Filed 7–27–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[21XLLAKA01000 L1440000.EQ0000.241A; AA–095705]

Notice of Realty Action: Proposed Non-Competitive Lease of Public Land in the Nome Census Area, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM), Anchorage Field Office proposes to offer a non-competitive lease of a 5.1 acre-parcel of public land in the Nome Census Area, Alaska, for commercial purposes. The lease would resolve an inadvertent, unauthorized use on the subject public land under the Federal Land Policy and Management Act of 1976 (FLPMA). The BLM Kobuk Seward Peninsula Resource Management Plan, approved in September 2008, does not exclude the subject parcel from the authorized officer's discretion to consider lease proposals in the subject area. If approved, the lease would be valid for twenty years.

DATES: Written comments may be submitted to the address in the **ADDRESSES** section. The BLM must receive your comments on or before August 27, 2021.

ADDRESSES: Send written comments concerning the lease to: Field Manager, Anchorage Field Office, 4700 BLM Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Thomas Sparks, Associate Field Manager, Bureau of Land Management, Anchorage Field Office at 907–443–2177. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM has determined that the parcel of land described below is suitable for consideration as a commercial lease under Section 302 of the FLPMA (43 U.S.C. 1732) and the implementing regulations at 43 CFR 2920.

The BLM proposes to offer a non-competitive lease of the parcel for $710.00 a year to Mr. Charles J. Reader for continued commercial operation of the Safety Sound Roadhouse. The subject parcel was inadvertently developed by the proposed lessee's father who believed his establishment was on an adjacent private parcel. The area has a long history of commercial occupancy and the lease would provide BLM with a reasonable option to resolve the use of the affected public lands. The land use rental is determined by the Appraisal and Valuation Service Office's (previously known as the Office of Valuation Services) minimum rental fee schedules for remote parcels of land in Alaska, dated April 1, 2015. The lands are validly selected by the State of Alaska under the Alaska Statehood Act. In accordance with Sec. 906(k) of the Alaska National Lands Conservation Act of December 2, 1980, the BLM has sought and received concurrence from the State of Alaska in the issuance of a proposed lease.

The subject parcel is situated in section 7, township 12 south, range 30 west, Kateel River Meridian, Alaska, approximately 21 miles east of Nome, Alaska, more particularly described as follows:

COMMENCING at corner No. 1, U.S. Survey No. 480, Alaska, a meander corner, as described in the Field Notes of the Dependent Resurvey of U.S. Survey No. 480, Alaska, officially filed on August 14, 2007;

THENCE, South 47°57′ East, on line 1–2, U.S. Survey No. 480, Alaska, a distance of 500.15 feet to a point not monumented, on the southerly right-of-way boundary of the Nome-Council Highway, identical, in part, with the northwest boundary of The Port Safety Roadhouse Trade Site, as shown on an unrecorded plat, signed on January 31, 2005, by George Krier, Registered Alaska Land Surveyor, LS–7323, and the POINT OF BEGINNING of the herein described parcel. From said POINT OF BEGINNING, the northerly corner of The Port Safety Roadhouse Trade Site, monumented with a 5/8 inch diameter rebar with aluminum cap, set by Krier in 2004, bears North 42°55′ East, a distance of 118.95 feet;

THENCE, South 47°57′ East, continuing on line 1–2, U.S. Survey No. 480, Alaska, a distance of 434.41 feet to corner No. 2, U.S. Survey No. 480, Alaska, as described in the Field Notes of the Dependent Resurvey of U.S. Survey No. 480, Alaska, officially filed on August 14, 2007;

THENCE, South 47°57′ East, a distance of 67.32 feet to a point not monumented on the southeast boundary of The Port Safety Roadhouse Trade Site. From this point, the easterly corner of The Port Safety Roadhouse Trade Site, monumented with a 5/8 inch diameter rebar with aluminum cap, set by Krier in 2004, bears North 45°00′ East, a distance of 46.56 feet;

THENCE, South 45°00′ West, on the southeast boundary of The Port Safety Roadhouse Trade Site, a distance of 221.44 feet to a 5/8 inch diameter rebar with aluminum cap, set by Michael T. Mowrer, Registered Alaska Land Surveyor, LS–6529, in 1988, as shown on the Record of Survey for Stan Sobocienski, recorded as Plat No. 89–7RS in the Cape Nome Recording District, Alaska, on October 5, 1989;

THENCE, South 45°00′ West, continuing on the southeast boundary of The Port Safety Roadhouse Trade Site, a distance of 262.67 feet to the southerly corner of The Port Safety Roadhouse Trade Site, monumented with a 5/8 inch

diameter rebar with aluminum cap, set by Krier in 2004;

THENCE, North 39°45′ West, on the southwest boundary of The Port Safety Roadhouse Trade Site, a distance of 488.08 feet to the westerly corner of The Port Safety Roadhouse Trade Site, on the southerly right-of-way boundary of the Nome-Council Highway monumented with a ⅝ inch diameter rebar with aluminum cap, set by Krier in 2004;

THENCE, North 42°55′ East, on the southerly right-of-way boundary of the Nome-Council Highway, identical, in part, with the northwest boundary of The Port Safety Roadhouse Trade Site, a distance of 413.85 feet to the POINT OF BEGINNING containing 5.09 acres of land.

BASIS OF BEARINGS—South 47°57′ East, being the bearing from corner No. 1, U.S. Survey No. 480, Alaska, a meander corner, to corner No. 2, U.S. Survey No. 480, Alaska, referenced to the true meridian.

Based on the past use of the subject parcel for a commercial establishment by Mr. Charles J. Reader and his late father, it is the authorized officer's decision to offer the proposed commercial lease with appropriate terms and conditions to Mr. Charles J. Reader on a non-competitive basis because competitive bidding would represent an unfair competitive and economic disadvantage to Mr. Charles J. Reader. As noted above, the use of this parcel constitutes an inadvertent trespass that was discovered by BLM in 2005, along with an encroachment into the Alaska Department of Transportation (ADOT) road right-of-way. The Reader family has since worked with BLM to settle the trespass and entered into short term permits for their occupation of public lands, including the stipulation requiring the permit holder obtain an encroachment permit from ADOT. Subsequent to the BLM's receipt of a proposal to lease public lands by Mr. Charles J. Reader that complies with all applicable requirements set forth at 43 CFR 2920.5, processing of the proposed lease will take place in accordance with 43 CFR 2920.6 and other applicable regulations.

Information and documentation regarding processing of the lease proposal is available as described in **ADDRESSES**, and reference should be made to the National Environmental Policy Act (NEPA) analysis to be conducted under Environmental Assessment DOI–BLM–AK–A010–2020–0013–EA. The BLM will not make a final decision on the lease until all required analyses are completed. If authorized, the lease would be subject to provisions of the FLPMA, all applicable regulations of the Secretary of the Interior, including, but not limited to, 43 CFR part 2920, and to valid existing rights. The proposed lease would also be subject to the applicant obtaining an encroachment permit from the ADOT for the term of the lease, or written documentation from ADOT stating it concurs with the lease term. The land use permit and establishment of a land lease are consistent with the Kobuk Seward Peninsula Resource Management Plan approved in September 2008.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for leasing under the mineral leasing laws, and disposals under the mineral material disposal laws.

Classification Comments: Interested persons may submit comments on the establishment of a land lease interest in these public lands. Comments on the classification is restricted to whether the lands are physically suited for the establishment of a land lease for commercial activities, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Interested persons may submit comments regarding the establishment of a land lease and whether the BLM followed proper administrative procedures in reaching the establishment of a land lease interest.

Only written comments submitted by postal service or overnight mail addressed to ''Field Manager, BLM Anchorage Field Office, 4700 BLM Road, Anchorage, Alaska 99507'' will be considered properly filed. Electronic mail, facsimile, or telephone comments will not be considered properly filed.

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.

Any adverse comments will be reviewed by the BLM Alaska State Director, who may sustain, vacate, or modify these realty actions. In the absence of any adverse comments, the decision will become effective August 27, 2021.

(Authority: 43 CFR 2920)

Chad B. Padgett,

State Director.

[FR Doc. 2021–16008 Filed 7–27–21; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–32344; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before July 17, 2021, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by August 12, 2021.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State≤.'' If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before July 17, 2021. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

Nominations submitted by State or Tribal Historic Preservation Officers:

INDIANA

Allen County

Coca-Cola Bottling Plant, 1631 Pontiac St., Fort Wayne, SG100006841

Harrison Hill Historic District, (Park and Boulevard System of Fort Wayne, Indiana MPS), Roughly bounded by West Rudisill Blvd., South Calhoun St., South Cornell Cir., Pasadena Dr., Hoagland Ave., and Webster St., Fort Wayne, MP100006844

Dubois County

Maple Grove Campground, 6685 Cty. Rd. 585 West, Huntingburg vicinity, SG100006845

Fayette County

Newkirk Mansion, 321 Western Ave., Connersville, SG100006847

Grant County

Stephenson, Joseph W. and Edith M., House, 917 South Adams St., Marion, SG100006848

Lake County

North Gleason Park Community Building, 301 West 30th Ave., Gary, SG100006843

Monroe County

McDoel Historic District, Roughly bounded by West Wylie St., South Morton St., Patterson Dr., and Clear Cr., Bloomington, SG100006846

Vermillion County

Elder-Pyle House, 120 Briarwood Ave., Dana, SG100006842

NORTH CAROLINA

Carteret County

Earle W. Webb, Jr. Memorial Civic Center and Library, 812 Evans St., Morehead City, SG100006852

Forsyth County

Gray, Elizabeth and Bowman, Jr. House, 5909 Brookberry Farm Rd., Lewisville vicinity, SG100006853

Rowan County

Cannon, Ella Brown, House, 202 South Fulton St., Salisbury, SG100006854

Surry County

Pilot Hosiery Mill, 224 East Main St., Pilot Mountain, SG100006855

OHIO

Cuyahoga County

Consolidated Fruit Auction Company Building, 601 Stone's Levee, Cleveland, SG100006833

Hamilton County

South Crescent Arms, The, (Apartment Buildings in Ohio Urban Centers, 1870–1970 MPS), 3700 Reading Rd., Cincinnati, MP100006851

PENNSYLVANIA

Northampton County

Lehigh Water Gap Chain Bridge Toll House and East Bridge Abutment, 1309 Riverview Dr., Lehigh Township, SG100006837

TEXAS

Caldwell County

Martindale Central Historic District, Roughly bounded by Farm-to-Market Rd. 1979, San Marcos R., Madison Ln., and, Crockett St., Martindale, SG100006859

Kimble County

Kimble County Courthouse, 501 Main St., Junction, SG100006858

Washington County

Baylor University Female Department, 8415 Old Baylor College Rd., Independence, SG100006856

Baylor University Male Department, (Monuments and Buildings of the Texas Centennial MPS), 10060 Sam Houston Rd., Independence, MP100006857

VIRGINIA

Bedford County

Bedford Training School, 310 South Bridge St., Bedford, SG100006838

Susie G. Gibson High School, 600 Edmund St., Bedford, SG100006839

Campbell County

Grove, The, 151 Closeburn Manor Dr., Lynchburg vicinity, SG100006849

Rockbridge County

Taylor-Kinnear Farm, 1364 Forest Grove Rd., Lexington vicinity, SG100006850

WISCONSIN

Milwaukee County

Fifteenth District School, 2001 West Vliet St., Milwaukee, SG100006834

An additional documentation has been received for the following resources:

MASSACHUSETTS

Essex County

Rocky Neck Historic District (Additional Documentation), 1–5 Eastern Point Rd., 285 East Main St., Bickford Way, Clarendon, Fremont, Horton, Rackliffe Wiley and Wonson Sts., Gloucester, AD100001502

OHIO

Richland County

Kingwood Center (Additional Documentation), 900 Park Ave. West, Mansfield, AD76001523

Authority: Section 60.13 of 36 CFR part 60.

Dated: July 20, 2021.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2021–15996 Filed 7–27–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2021–0018]

Research Lease Issuance for Marine Hydrokinetic Energy on the Pacific Outer Continental Shelf Offshore Oregon

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of lease issuance.

SUMMARY: This notice informs the public of the Bureau of Ocean Energy Management's (BOEM's) issuance of an executed, noncompetitive lease, Renewable Energy Lease No. OCS–P 0560, to Oregon State University for marine hydrokinetic research activities offshore Oregon and defines the size of the lease area. This notice is issued under BOEM's regulations.

FOR FURTHER INFORMATION CONTACT: Dr. Whitney Hauer, BOEM Pacific Region, Office of Strategic Resources, 760 Paseo Camarillo (Suite 102), Camarillo, California 93010, (805) 384–6263 or *whitney.hauer@boem.gov*.

SUPPLEMENTARY INFORMATION: On March 24, 2014, BOEM published in the **Federal Register** a public notice of an unsolicited request for an Outer Continental Shelf renewable energy research lease submitted by Oregon State University (OSU) for marine hydrokinetic (MHK) research activities. 79 FR 16050 (Mar. 24, 2014). The public notice included a request for competitive interest (RFCI) and a request for public comment.

After evaluating the comments received in response to the RFCI, on June 20, 2014, BOEM published in the **Federal Register** its determination that there was no competitive interest in the area requested by OSU. 79 FR 35377 (June 20, 2014). On February 16, 2021, BOEM issued a lease for MHK research activities to OSU for the PacWave South project, a proposed open ocean wave energy test center, to be located approximately 6 nautical miles offshore Newport, Oregon.

The total acreage of the lease area is approximately 4,270 acres. The lease area is comprised of 12 aliquots (*i.e.,* sub-blocks) within Official Protraction Diagram Newport Valley NL10–10 Blocks 6481 and 6531. The project easement is a 200-foot-wide corridor on which five cables will be located within Official Protraction Diagrams Newport Valley NL 10–10 Block 6531 and Salem NL 10–11 Blocks 6501 and 6551.

Lease issuance by BOEM is a prerequisite for a license from the

Federal Energy Regulatory Commission, which is the Federal agency that would approve project construction and operations. The lease and supporting documentation, including required environmental compliance documentation and the notices that solicited competitive interest, can be found online at: *https://www.boem.gov/renewable-energy/state-activities/pacwave-south-project.*

Authority: 43 U.S.C. 1337(p); 30 CFR 585.238(f) and 30 CFR 585.206(a).

Amanda Lefton,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2021–15998 Filed 7–27–21; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Care Point Pharmacy, Inc.; Decision and Order

On November 20, 2019, the Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause (hereinafter, OSC) to Care Point Pharmacy, Inc. (hereinafter, Registrant). Government's Request for Final Agency Action (hereinafter, RFAA) Exhibit (hereinafter, RFAAX) 1 (OSC). The OSC proposed to revoke Registrant's DEA Certificate of Registration Number BH9966904 (hereinafter, registration) and to deny any pending applications for renewal or modification of the registration, pursuant to 21 U.S.C. 824(a)(4) and 823(f), because Registrant's ''continued registration is inconsistent with the public interest.'' *Id.* (citing 21 U.S.C. 824(a)(4) and 823(f)).

The OSC alleged that Registrant is licensed as a community pharmacy in the State of Florida. *Id.* at 2. It further alleged that Ekaette Isemin is Registrant's sole corporate officer, and that she is licensed as a pharmacist in Florida. *Id.*

The OSC alleged that ''[o]n six occasions, [Registrant] dispensed controlled substances to a DEA confidential source pursuant to fraudulent prescriptions, despite clear evidence of diversion.'' *Id.* at 2. The OSC further alleged that ''[Registrant's] dispensing of controlled substances in the face of clear evidence of diversion violated federal and state law.'' *Id.* at 5 (citing 21 CFR 1306.06, 1306.04(a); Fla. Stat. §§ 893.04(2)(a), 465.016(1)(i), 456.072(1)(m); Fla. Admin. Code. Ann. r. 64B16–27.831, 64B16–27.810).

The OSC notified Registrant of its right to request a hearing on the allegations or to submit a written statement while waiving its right to a hearing, the procedures for electing either option, and the consequence of failing to elect either option. *Id.* at 5–6 (citing 21 CFR 1301.43).

In response to the OSC, Ekaette Isemin filed a timely request for an administrative hearing on Registrant's behalf, and requested that all future notices and mailings be mailed to her. RFAAX 2 (Request for Hearing). On December 26, 2019, the Chief Administrative Law Judge (hereinafter, Chief ALJ) established a schedule for the filing of prehearing statements. RFAAX 3 (Order for Prehearing Statements). The Government filed a timely prehearing statement on January 6, 2020,[1] but Registrant failed to file any prehearing statement by the deadline. RFAAX 4 (Order Terminating Proceedings), at 1–2.

On January 21, 2020, the Chief ALJ issued an Order Directing Compliance and Postponing Prehearing Conference, which afforded Registrant until February 5, 2020, to file its prehearing statement and to show good cause for the delay. *Id.* at 2. The Order Directing Compliance and the Order for Prehearing Statements were sent to Ms. Isemin via first class mail, and neither document was returned as undeliverable. *Id.* Neither Registrant nor Ms. Isemin filed a showing of good cause for the delay or a prehearing statement by the deadline set forth in the Order Directing Compliance.[2] *Id.* Therefore, the Chief ALJ determined that Registrant had ''effectively waived its right to a hearing,'' and he terminated the proceedings on February 6, 2020. *Id.*[3] I agree with the Chief ALJ that Registrant waived its right to a hearing by failing to comply with the Chief ALJ's order.[4]

On February 19, 2020, the Government forwarded an RFAA, along with the evidentiary record for this matter, to my office. Having considered the record in its entirety, I find that the record establishes, by substantial evidence, that Registrant committed acts rendering its continued registration inconsistent with the public interest. Additionally, I find that Registrant lacks authority to handle controlled substances in the State of Florida, the state where it is registered with DEA. Accordingly, I conclude that the appropriate sanction is for Registrant's DEA registration to be revoked.

I. Findings of Fact

A. Registrant's DEA Registration

Registrant is registered with DEA as a retail pharmacy in Schedules II through V under DEA registration number BH9966904, at the registered address of 1400 Hand Avenue, Suite 0, Ormond Beach, Florida 32174. RFAAX 5 (DEA Certificate of Registration). This registration expires on August 31, 2021. *Id.*

B. The Status of Registrant's State Authority

Registrant was previously licensed as a community pharmacy in the State of Florida under license number PH22199. RFAAX 6 Appendix (hereinafter, App'x) B (Division of Corporations Printout), at 1. Registrant's sole corporate officer was Ekaette Isemin, *id.,* who was previously registered as a pharmacist in Florida under license number PS28851. App'x A, at 1.

On August 20, 2018, the Florida Department of Health (hereinafter, Florida DOH) ordered the emergency suspension of Ms. Isemin's pharmacy license, based on its determination that ''Ms. Isemin's continued practice as a pharmacist constitutes an immediate, serious danger to the health, safety, and welfare of the public . . . .'' *Id.* at 18. The order concluded that Ms. Isemin repeatedly violated state law over the course of approximately sixteen months by dispensing controlled substances to a

[1] The Government notified Registrant in its prehearing statement that Registrant's DEA registration was subject to revocation on the additional ground that Registrant lacked authority to handle controlled substances in Florida, the state in which it is registered with the DEA. *See* 21 U.S.C. 824(a)(3). The Prehearing Statement was mailed to Ms. Isemin at the address that Ms. Isemin designated for future filings in her December 20, 2019 request for hearing. *See* RFAAX 2, at 2.

[2] The Order Terminating Proceedings noted that Registrant was not currently represented by counsel and ''it appear[ed] that Ms. Isemin [was] appearing on the [Registrant's] behalf.'' RFAAX 4, at 1 (citing 21 CFR 1316.50).

[3] In the Order Terminating Proceedings, the Chief ALJ stated that ''Agency precedent is clear that the unwillingness or inability of a party to comply with the directives of the [ALJ] may support an implied waiver of that party's right to a hearing.'' *Id.* (citing *Robert M Brodkin, D.P.M,* 77 FR 73,678, 73,679 (2012); *Kamir Garces-Mejias, M.D.,* 72 FR 54,931, 54,932 (2007); *Andrew Desonia, M.D.,* 72 FR 54,293, 54,294 (2007); *Alan R. Schankman, M.D.,* 63 FR 45,260, 45,260 (1998)).

[4] *See* 21 CFR 1301.43(d) (''If any person entitled to a hearing or to participate in a hearing pursuant to § 1301.32 or §§ 1301.34–1301.36 . . . files [a request for a hearing] and fails to appear at the hearing, such person shall be deemed to have waived the opportunity for a hearing or to participate in the hearing, unless such person shows good cause for such failure''); *see also* RFAAX 3, at 3–4 (notifying Registrant that ''[f]ailure to timely file a prehearing statement that complies with the directions provided [therein] may result in a sanction, including (but not limited to) a waiver of hearing and an implied withdrawal of a request for hearing'').

DEA Confidential Source (hereinafter, DEA CS), despite the DEA CS's repeated statements that he was diverting the controlled substances that Registrant dispensed. *Id.* at 14–18.

Approximately sixteen months later, on December 12, 2019, the Florida DOH ordered the emergency suspension of Registrant's license to operate as a community pharmacy in Florida. App'x D (Order of Emergency Suspension of Permit). The suspension was primarily based on the fact that Registrant had continued to order and dispense controlled substances for approximately one year while Ms. Isemin's license was suspended. *Id.* at 9–10. The Florida DOH concluded that ''[Registrant's] continued operation as a community pharmacy presents an immediate, serious danger to the health, safety, and welfare of the public, and that this danger is likely to continue.'' *Id.* at 9. The Florida DOH noted that ''[r]estricting [Registrant's] permit would not adequately protect the public because any operation as a pharmacy would allow [Registrant] to continue engaging in the same illegal and dangerous conduct set forth above.'' *Id.*

According to Florida's online records, of which I take official notice,[5] Registrant's Florida pharmacy license is ''revoked.'' Therefore, I find that Registrant does not possess authority to handle controlled substances in Florida, the state in which Registrant is registered with DEA.

C. Government's Allegation That Registrant Dispensed Controlled Substances Unlawfully

In its RFAA, the Government alleged that Registrant violated federal and state law by dispensing controlled substances to a DEA CS on six occasions in the face of clear evidence of diversion. OSC, at 2, 5. To support this allegation, the Government submitted a declaration of the DEA Diversion Investigator (hereinafter, DI), who was assigned to the investigation of Registrant. RFAAX 6 (Declaration of DI). DI has been a DI for approximately 30 years and is currently assigned to the Orlando District Office of the Miami Field Division. *Id.* at 1. DI's declaration summarizes DEA's investigation, including the details of six undercover visits conducted by the DEA CS at Registrant between June 8, 2017, and March 6, 2018. In addition to DI's declaration, the Government submitted copies of controlled substance prescriptions that the DEA CS sought to fill at Registrant, along with the corresponding fill stickers. App'x E, I, M, Q, U, Y. The Government also submitted audio and video recordings of each undercover visit, as well as transcripts of the recordings. App'x F, G, J, K, N, O, R, S, V, W, ZA, AB (recordings); App'x H, L, P, T, X, ZC (transcripts).

1. The Undercover Visits

The DEA CS visited Registrant in an undercover capacity on six separate occasions using the fake identity D.S. RFAAX 6, at 2. At each visit, the DEA CS sought to fill a prescription for controlled substances that had been issued to D.S.[6] or to A.D., the fake identity of the CS's girlfriend. *Id.* at 2–8. DI's declaration states that each prescription that D.S. sought to fill at Registrant was ''fraudulent and [] not valid.'' [7] *Id.* At each recorded undercover visit, D.S. admitted that he had diverted, or intended to divert, the controlled substances that Registrant dispensed to him.

a. June 8, 2017 Undercover Visit

On June 8, 2017, the DEA CS visited Registrant in an undercover capacity, posing as D.S. *Id.* at 3. The DEA CS sought to fill a controlled substance prescription that had been issued to his girlfriend's fake identity, A.D., for one hundred eight-milligram tablets of hydromorphone.[8] *Id.* at 3; App'x E (May 19, 2017 Prescription).[9] Prior to this visit, D.S. had filled hydromorphone prescriptions at Registrant, while acting in an undercover capacity.[10] At this visit, D.S. told Ms. Isemin that he had given half of the hydromorphone prescription that he had previously filled at Registrant to his girlfriend, and some to a friend, so that he could afford Registrant's high prices. App'x H, at 1. D.S. told Ms. Isemin that he would be ''splitting these again,'' so that he could ''get ready for the next time [he] come[s].'' *Id.* at 2. Registrant dispensed one hundred eight-milligram tablets of hydromorphone to D.S. in exchange for $1,000 in cash.[11] App'x E, at 2–4; RFAAX 6, at 3.

b. July 28, 2017 Undercover Visit

The DEA CS visited Registrant again in an undercover capacity on July 28, 2017, posing as D.S. RFAAX 6, at 3–4. The DEA CS presented Registrant with a controlled substance prescription that had been issued to D.S. for one hundred eight-milligram tablets of hydromorphone. *Id.*[12] At this visit, D.S. again admitted to Ms. Isemin that he was diverting some of the hydromorphone that Registrant dispensed to him. App'x L, at 5–6. He said that he only takes a few tablets himself, because they make him ''woozy,'' and he sells the rest to his employee. *Id.* at 6. D.S. told Ms. Isemin that he was going back to the doctor in a couple of weeks and he was ''gonna try to get him to up 'em, so [he] [could] sell a few more.'' *Id.* at 6. Ms. Isemin advised D.S. not to obtain more than one hundred and thirty or one hundred and fifty tablets, because ''they are checking.'' [13] *Id.*

Registrant dispensed one hundred eight-milligram tablets of hydromorphone to D.S. at this visit and charged D.S. $1,000.84. App'x I; RFAAX 6, at 4. D.S. paid Registrant $1,020, and explained to Ms. Isemin that the extra money could cover what D.S owed

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[5] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' Accordingly, Registrant may dispute my finding by filing a properly supported motion for reconsideration of finding of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to the Office of the Administrator, Drug Enforcement Administration, at *dea.addo.attorneys@dea.usdoj.gov.*

[6] The DEA CS and D.S. are used interchangeably herein.

[7] DI's declaration does not provide factual support for the conclusion that the prescriptions were fraudulent and not valid. Presumably, these prescriptions were fraudulent and not valid because they were issued to fake identities. However, I do not find that it is necessary for me to determine whether the prescriptions were fraudulent or invalid, because Registrant clearly violated federal and state law by repeatedly dispensing controlled substances to D.S. with actual knowledge that D.S. intended to divert the controlled substances that Registrant dispensed, based on the recorded conversations. *See infra* II.A.2.

[8] Hydromorphone is a Schedule II controlled substance. *See* 21 CFR 1308.12(b)(1)(vii) (2017).

[9] The photocopy of the May 19, 2017 prescription is difficult to read. *See* App'x E, at 1. However, the fill sticker that was generated during this transaction shows the strength and quantity of hydromorphone that was dispensed, and it is consistent with DI's representation of the prescription that D.S. presented to Registrant at this visit. *Compare* App'x E, at 4 *with* GX 6, at 3.

[10] *See* App'x A, at 3 (stating that D.S. first filled a prescription at Registrant on December 12, 2016).

[11] The receipt from the transaction shows that Registrant charged D.S. $1,000.84, App'x E, at 2, 4, but D.S. paid Registrant $1,000 in cash. RFAAX 6, at 3.

[12] The Government did not include a copy of the prescription that D.S. presented to Registrant on this date, but the Government provided a copy of the fill sticker, which is consistent with DI's representation of the prescription that D.S. presented to Registrant at this visit. *Compare* App'x I *with* RFAAX 6, at 3.

[13] Presumably, Ms. Isemin was referring to enforcement efforts by the state or federal government.

Registrant for the other prescriptions that Registrant had filled. RFAAX 6, at 4; App'x L, at 6. D.S. said, ''That way I don't owe you anything, cuz I don't want you to one day be like, Hey, this guy owes me, so I'm not going to fill you, I'll fill somebody else's.'' App'x L, at 6; App'x K, at 11:12:11–20.

c. October 17, 2017 Undercover Visit

The DEA CS visited Registrant again in an undercover capacity on October 17, 2017, posing as D.S. RFAAX 6, at 4. The DEA CS presented Registrant with two controlled substance prescriptions—one that was issued to D.S. and one that was issued to A.D. *Id.* Each prescription was for one hundred and fifty eight-milligram tablets of hydromorphone. App'x M, at 1 (October 12, 2017 Prescriptions). At this visit, D.S. again admitted to Ms. Isemin that he was diverting some of the hydromorphone that Registrant dispensed to him. App'x P, at 2. Ms. Isemin warned D.S. not to get caught, and D.S. assured her that he would not. *Id.* D.S. told Ms. Isemin that they have ''a very short window of catching [him],'' because ''[t]hey'll be gone as fast as [he] get[s] them from [her], except for the ones [he] take[s].'' *Id.* Registrant dispensed three hundred eight-milligram tablets of hydromorphone to D.S. and charged D.S. $3,000. App'x M, at 3, 5. D.S. paid Registrant $3,020 in cash. RFAAX 6, at 5.

d. December 18, 2017 Undercover Visit

The DEA CS visited Registrant in an undercover capacity again on December 18, 2017, posing as D.S. RFAAX 6, at 5. The DEA CS sought to fill two controlled substance prescriptions—one that was issued to D.S. and one that was issued to A.D. *Id.* Each prescription was for one hundred and fifty eight-milligram tablets of hydromorphone. App'x Q (December 15, 2017 Prescriptions). At this visit, Registrant dispensed three hundred eight-milligram tablets of hydromorphone to D.S. and charged D.S. $3,000. App'x Q at 3, 5. D.S. paid Registrant $3,200, explaining that the extra $200 was a ''Christmas bonus.'' App'x T, at 2–3. D.S. said that he had fired the guy who had purchased the hydromorphone from him last time, but he found somebody else to buy the hydromorphone at higher prices. *Id.* at 2. Ms. Isemin asked D.S. if he was sure he wanted to give her a bonus, and he replied, ''I'm positive, Christmas bonus. . . . I'm making pretty good now, so we good.'' *Id.* at 3.

e. January 23, 2018 Undercover Visit

The DEA CS visited Registrant again in an undercover capacity on January 23, 2018, posing as D.S. RFAAX 6, at 6. The DEA CS presented Registrant with a controlled substance prescription issued to D.S. for one hundred and fifty eight-milligram tablets of hydromorphone. *Id.;* App'x U (January 22, 2018 Prescription). Ms. Isemin told D.S. that she did not have enough eight-milligram tablets to fill the prescription, so D.S. asked if she could provide four-milligram tablets. App'x X, at 1–2. Ms. Isemin agreed, and dispensed two bottles of hydromorphone to D.S.—each containing a mixture of four and eight-milligram tablets. RFAAX 6, at 6. One bottle contained one hundred tablets and the other contained eighty-eight tablets. *Id.* The fill sticker generated by Registrant for this transaction falsely shows that Registrant dispensed one hundred and fifty eight-milligram tablets of hydromorphone to D.S. App'x U, at 3.

Ms. Isemin again warned D.S. not to get caught by the police. App'x X, at 7. D.S. assured her that he is ''pretty good, all safe,'' when he sells the hydromorphone. *Id.* Ms. Isemin told D.S. that ''if they catch [the purchaser] they'll find out where he's getting it from.'' *Id.* D.S. laughed and told Ms. Isemin that they would not find out if he does not tell the purchaser where the tablets come from. *Id.* Ms. Isemin charged D.S. $1,410 for the prescription, but D.S. paid Ms. Isemin $1,500, explaining that ''[t]hat way [he] can just pick them up'' the next time, and joking that the extra money was so that Ms. Isemin did not ''forget [him].'' *Id.* at 8. Ms. Isemin told D.S. that she would owe him nine tablets at the next visit. *Id.* at 6.

f. March 6, 2018 Undercover Visit

The DEA CS visited Registrant in an undercover capacity again on March 6, 2018, posing as D.S. RFAAX 6 at 7. The DEA CS presented Registrant with a controlled substance prescription issued to D.S. for one hundred thirty-milligram tablets of oxycodone.[14] *Id.;* App'x Y (March 5, 2018 Prescription). D.S. asked Ms. Isemin if she was going to get more tablets in stock, because the lack of stock was ''killing [his] business.'' App'x ZC, at 1–2. Ms. Isemin explained that she was trying to get more tablets in stock. *Id.* at 2. Registrant dispensed one hundred thirty-milligram tablets of oxycodone to D.S. and charged him $1,100 for the prescription, which D.S. paid in cash. RFAAX 6, at 7; App'x Y at 3.

Registrant also dispensed nine twenty-milligram tablets of oxycodone to D.S., although D.S. did not present a prescription for twenty-milligram tablets. RFAAX 6, at 8; App'x Z (Photograph of the Oxycodone Dispensed). Ms. Isemin confirmed that Registrant owed D.S. these tablets from a prior visit. App'x ZC, at 2. As discussed above, *see supra* I.C.1.e, Ms. Isemin had explained to D.S. at the previous visit on January 23, 2018, that she owed him nine tablets of hydromorphone, because she was unable to completely fill D.S.'s prescriptions for one hundred and fifty tablets of hydromorphone on that day. App'x X, at 6. At this visit, Ms. Isemin substituted nine tablets of oxycodone for nine tablets of hydromorphone, even though D.S.'s previous prescription had been for hydromorphone. There was no corresponding prescription for the nine tablets of oxycodone that Ms. Isemin dispensed to D.S.

II. Discussion

A. Registrant's Registration is Inconsistent With the Public Interest

The Government alleged that Registrant's DEA registration should be revoked because Registrant committed acts that would render its registration inconsistent with the public interest as provided in 21 U.S.C. 823(f). The Government's case centers on six recorded undercover visits, during which Registrant repeatedly dispensed controlled substances to a DEA CS, notwithstanding the CS's recurring statements that he was diverting the controlled substances that Registrant dispensed.

Under the Controlled Substances Act (hereinafter, the CSA), ''[a] registration . . . to . . . dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a)(4). In the case of a ''practitioner,'' which is defined in 21 U.S.C. 802(21) to include a pharmacy, Congress directed the Attorney General to consider the following factors in making the public interest determination:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The [registrant]'s experience in dispensing . . . controlled substances.

(3) The [registrant]'s conviction record under Federal or State laws relating to the . . . distribution[ ] or dispensing of controlled substances.

[14] Oxycodone is a Schedule II controlled substance. *See* 21 CFR 1308.12(b)(1)(xiii) (2017).

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(f). These factors are considered in the disjunctive. *Robert A. Leslie, M.D.,* 68 FR 15,227, 15,230 (2003).

According to Agency decisions, I ''may rely on any one or a combination of factors and may give each factor the weight [I] deem[ ] appropriate in determining whether'' to revoke a registration. *Id.; see also Jones Total Health Care Pharm., LLC* v. *Drug Enf't Admin.,* 881 F.3d 823, 830 (11th Cir. 2018) (citing *Akhtar-Zaidi* v. *Drug Enf't Admin.,* 841 F.3d 707, 711 (6th Cir. 2016); *MacKay* v. *Drug Enf't Admin.,* 664 F.3d 808, 816 (10th Cir. 2011); *Volkman* v. *Drug Enf't Admin.,* 567 F.3d 215, 222 (6th Cir. 2009); *Hoxie* v. *Drug Enf't Admin.,* 419 F.3d 477, 482 (6th Cir. 2005). Moreover, while I am required to consider each of the factors, I ''need not make explicit findings as to each one.'' *MacKay,* 664 F.3d at 816 (quoting *Volkman,* 567 F.3d at 222); *see also Hoxie,* 419 F.3d at 482. ''In short, . . . the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest; what matters is the seriousness of the registrant's misconduct.'' *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 462 (2009). Accordingly, findings under a single factor can support the revocation of a registration. *MacKay,* 664 F.3d at 821.

The Government has the burden of proving that the requirements for revocation of a DEA registration in 21 U.S.C. 824(a) are satisfied. 21 CFR 1301.44(e). When the Government has met its *prima facie* case, the burden then shifts to the registrant to show that revoking its registration would not be appropriate, given the totality of the facts and circumstances on the record. *Med. Shoppe-Jonesborough,* 73 FR 364, 387 (2008).

In this matter, while I have considered all of the factors, the Government's evidence in support of its *prima facie* case is most appropriately considered under Factors One, Two, and Four.[15] I find that the Government has satisfied its *prima facie* burden of showing that Registrant's continued registration would be ''inconsistent with the public interest.'' 21 U.S.C. 824(a)(4).

1. Factor One—The Recommendation of the Appropriate State Licensing Board or Professional Disciplinary Authority

In determining the public interest under Factor One, the ''recommendation of the appropriate State licensing board or professional disciplinary authority . . . shall be considered.'' 21 U.S.C. 823(f)(1). ''Two forms of recommendations appear in Agency decisions: (1) A recommendation to DEA directly from a state licensing board or professional disciplinary authority . . ., which explicitly addresses the granting or retention of a DEA COR; and (2) the appropriate state entity's action regarding the licensure under its jurisdiction on the same matter that is the basis for the DEA OSC.'' *John O. Dimowo,* 85 FR 15,800, 15,809 (2020); *see also Kenneth Harold Bull, M.D.,* 78 FR 62,666, 62,672 (2013) (''DEA . . . thus considers disciplinary actions taken by a state board as relevant in the public interest determination when they result in a loss of state authority, or are based on findings establishing that a registrant diverted controlled substances . . . .'').

Florida, the state in which Registrant is registered with DEA, immediately suspended Ms. Isemin's pharmacy license on August 20, 2018. *See supra* I.b. The suspension was primarily based on Registrant's unlawful dispensing of controlled substances to the DEA CS—the same misconduct that is at issue in this proceeding. *Id.* According to Florida's online records, Registrant's Florida pharmacy license has been ''revoked.'' *Id.* Because the ''appropriate State licensing board'' has revoked Registrant's state authority based on Registrant's unlawful dispensing of controlled substances, I find that Factor One weighs strongly in favor of revocation.[16]

2. Factors Two and Four—The Registrant's Experience in Dispensing Controlled Substances and Compliance With Applicable Laws Related to Controlled Substances

In determining the public interest under Factors Two and Four, I am to consider evidence of Registrant's compliance (or non-compliance) with laws related to controlled substances and Registrant's experience dispensing controlled substances. The Government's case relies primarily on the actions of Registrant's sole corporate owner, Ms. Isemin. ''Agency precedent has consistently held that the registration of a pharmacy may be revoked as the result of the unlawful activity of the pharmacy's owners, majority shareholders, officers, managing pharmacist, or other key employee.'' *Perry Cty. Food & Drug,* 80 FR 70,084, 70,109 (2015) (citing *EZRX, LLC,* 69 FR 63,178, 63,181 (1988); *Plaza Pharmacy,* 53 FR 36,910, 36,911 (1988)).

The Government alleged that Registrant violated several federal and state laws related to controlled substances by dispensing controlled substances to a DEA CS in the face of clear evidence of diversion. OSC, at 2, 5 (citing violations of 21 CFR 1306.06 and 1306.04(a); Fla. Stat. §§ 893.04(2)(a) and 465.016(1)(i); and Fla. Admin. Code. Ann. r. 64B16–27.831 and 64B16–27.810).[17] The Government also alleged that Registrant violated federal and state law by dispensing a Schedule II controlled substance without a written prescription. *Id.* at 5 (citing 21 U.S.C. 829(a); Fla. Stat. § 465.015(2)(c); Fla. Stat. § 465.016(1)(i)).

(a) Violations of Federal Law

According to the CSA's implementing regulations, a lawful controlled substance order or prescription is one that is ''issued for a legitimate medical

[15] As to Factor Three, although the record contains evidence that Registrant's sole corporate officer, Ms. Isemin, was arrested and charged with eight felony counts of drug trafficking, *see* App'x A, at 11; RFAAX 6 at 2, there is no evidence that Registrant has had a ''conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.'' 21 U.S.C. 823(f)(3). However, as Agency cases have noted, there are a number of reasons why a person who has engaged in criminal misconduct may never have been convicted of an offense under this factor, let alone prosecuted for one. *Dewey C. MacKay, M.D.,* 75 FR 49,956, 49,973 (2010). Agency cases have therefore held that ''the absence of such a conviction is of considerably less consequence in the public interest inquiry'' and is therefore not dispositive. *Id.; see also David D. Moon, D.O.,* 82 FR 19,385, 19,389 n.9 (finding that Factor Three was not dispositive where the registrant had been arrested for controlled substance-related charges, but there was no evidence of a conviction).

[16] Additionally, because Florida revoked Registrant's pharmacy license, I must revoke Registrant's DEA registration because Registrant is not ''authorized to dispense . . . controlled substances under the laws of the State in which [it] practices.'' *See infra* II.B (citing 21 U.S.C. 823(f)); *see also Kenneth Harold Bull,* 78 FR at 62,672 (noting in its Factor One analysis that where a state board takes action to restrict a practitioner's authority to dispense controlled substances, ''at a minimum, a practitioner's [DEA] registration must be limited to authorize the dispensing of only those controlled substances, which he can lawfully dispense under state law''); *David W. Bailey, M.D.,* 81 FR 6045, 6046 n.2 (2016) (''As for Factor One, while the State has not made a recommendation to the Agency, the State has revoked Respondent's medical license and thus, he no longer meets the CSA's requirement that he is authorized to dispense controlled substances in the State where he is registered.'').

[17] The Government also alleged in the OSC that registrant violated Fla. Stat. § 456.072(1)(m), which prevents the use of ''trick[s] or scheme[s] in or related to the practice of a profession.'' OSC, at 3, 5. Because the Government did not reference this statute in the RFAA, or argue its applicability, I will not consider this allegation.

purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR1306.04(a). While the ''responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, . . . a corresponding responsibility rests with the pharmacist who fills the prescription.'' *Id.* The regulations establish the parameters of the pharmacy's corresponding responsibility:

> An order purporting to be a prescription issued not in the usual course of professional treatment . . . is not a prescription within the meaning and intent of . . . 21 U.S.C. 829 . . . and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.

Id. ''The language in 21 CFR [§] 1306.04 and relevant caselaw could not be more explicit. A pharmacist has his own responsibility to ensure that controlled substances are not dispensed for non-medical reasons.'' *Ralph J. Bertolino, d/b/a Ralph J. Bertolino Pharmacy,* 55 FR 4729, 4730 (1990) (citing *United States* v. *Hayes,* 595 F.2d 258 (5th Cir. 1979), cert. denied, 444 U.S. 866 (1979); *United States* v. *Henry,* 727 F.2d 1373 (5th Cir. 1984) (reversed on other grounds)). As the Supreme Court explained in the context of the CSA's requirement that schedule II controlled substances may be dispensed only by written prescription, ''the prescription requirement . . . ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse . . . [and] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales* v. *Oregon,* 546 U.S. 243, 274 (2006).

To prove that a pharmacist violated his corresponding responsibility, the Government must show that the pharmacist acted with the requisite degree of scienter. *See* 21 CFR 1306.04(a) (''[T]he person *knowingly* filling [a prescription issued not in the usual course of professional treatment] . . . shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.'') (emphasis added). DEA has also consistently interpreted the corresponding responsibility regulation such that ''[w]hen prescriptions are clearly not issued for legitimate medical purposes, a pharmacist may not intentionally close his eyes and thereby avoid [actual] knowledge of the real purpose of the prescription.'' *Bertolino,* 55 FR at 4730 (citations omitted); *see also JM Pharmacy Group, Inc. d/b/a Pharmacia Nueva and Best Pharmacy Corp.,* 80 FR 28,667, 28,670–72 (2015) (applying the standard of willful blindness in assessing whether a pharmacist acted with the requisite scienter). Pursuant to their corresponding responsibility, pharmacists must exercise ''common sense and professional judgment'' when filling a prescription issued by a physician. *Bertolino,* 55 FR at 4730.

In this matter, the Government alleges that Registrant engaged in blatant drug dealing by dispensing controlled substances to a DEA CS, who ''exhibited clear and unambiguous signs of diversion.'' RFAA, at 21. The Government asserts that in cases involving blatant drug dealing, ''this Agency has found that a pharmacy's registration [is] inconsistent with the public interest under Factors Two and Four, even without the benefit of any expert opinion.'' *Id.* at 20–21 (citing *Lincoln Pharmacy,* 75 FR 65,667, 65,668 (2010) (revoking respondent's registration and labeling its dispensing as ''blatant drug dealing,'' where a cooperating source told respondent's pharmacist that he was selling the dispensed drugs); *S & S Pharmacy, Inc., d/b/a Platinum Pharmacy & Compounding,* 78 FR 57,656, 57,660 (2013) (affirming immediate suspension of registration and labeling respondent's dispensing as a ''blatant drug deal,'' where respondent's pharmacist dispensed drugs pursuant to prescriptions that he knew were fictitious).

I agree with the Government that this case involves blatant drug dealing, and I find that the Government has proven by substantial evidence that Registrant filled prescriptions for controlled substances that it knew were illegitimate, in violation of its corresponding responsibility under 21 CFR1306.04(a),[18] and that Registrant filled these prescriptions outside the usual course of the professional practice of pharmacy in Florida, in violation of 21 CFR 1306.06.[19] At each undercover visit, the DEA CS told Ms. Isemin that he was planning to divert, or already had diverted, the controlled substances that Registrant dispensed. *See supra* I.c.1. Ms. Isemin clearly understood that the DEA CS intended to divert the drugs, because she warned the DEA CS on several occasions not to get caught. *Id.* Ms. Isemin even accepted a cash tip from D.S. on several occasions, *id.,* which further evidences her knowledge that she was engaging in blatant drug dealing. Respondent's flagrant violations of federal law weigh strongly against a finding that Registrant's continued registration is consistent with the public interest.

(b) Violations of State Law

In addition to alleging that Registrant violated 21 CFR 1306.04(a) and 1306.06, the Government alleges that Registrant violated Florida state law by: (1) Failing to ''exercis[e] sound professional judgment'' and ''work with the patient and the prescriber to assist in determining the validity of the prescription'';[20] (2) failing to review each prescription for potential problems, such as ''[o]ver utilization or under-utilization'' and ''[c]linical abuse/misuse,'' and failing to ''take appropriate steps to avoid or resolve the potential problems'';[21] and (3) dispensing Schedule II controlled substances to a patient ''without first determining, in the exercise of her or his professional judgment, that the prescription is valid.''[22] The Government also alleges that Registrant violated Florida and federal law on March 6, 2018, when it dispensed a Schedule II controlled substance without a written prescription of a practitioner.[23]

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[18] *See Ralph J. Bertolino Pharmacy,* 55 FR at 4730 (noting that a pharmacist's corresponding responsibility requires him ''to ensure that controlled substances are not dispensed for non-medical reasons'') (internal citations omitted); *S & S Pharmacy, Inc.,* 78 FR at 57,660 (finding that respondent violated 21 U.S.C. 841(a)(1) and 21 CFR 1306.04 by exchanging controlled substances for cash, knowing that the prescriptions provided by the DEA's confidential source were fictitious).

[19] In relevant part, section 1306.06 provides that ''[a] prescription for a controlled substance may only be filled by a pharmacist, acting in the usual course of his professional practice.'' In order to prove a violation of this regulation, the Government must ''establish what the standards of pharmacy practice require, through either expert testimony or by reference to federal or state laws, pharmacy board or Agency regulations, or decisional law (whether of administrative bodies or the courts).'' *Farmacia Yani,* 80 FR 29,053, 29,062 (2015). I find below that the Government has proven by substantial evidence that Registrant violated several Florida laws related to the proper dispensing of controlled substances. *See infra* II.A.2.b.

[20] *See* Fla. Admin. Code. r. 64B16–27.831 (2015). This rule was amended in 2018, after the relevant misconduct in this case took place; however, there were no relevant, substantive modifications to this regulation in 2018.

[21] *See* Fla. Admin. Code. r. 64B16–27.810.

[22] *See* Fla. Stat. § 893.04(2)(a) (2016). This statute was amended in 2018, after the relevant misconduct in this case took place; however, there were no relevant, substantive modifications to this regulation in 2018.

[23] *See* 21 U.S.C. 829(a); Fla. Stat. § 465.015(2)(c) (prohibiting the dispensing of ''drugs as defined in [Fla. Stat. §] 465.003(8) without first being furnished with a prescription''); *see also* Fla. Stat. § 465.003(8) (defining ''[m]edicinal drugs or drugs'' as ''those substances or preparations commonly

Continued

I find that the Government has provided substantial evidence that Registrant violated these federal and state laws by dispensing controlled substances to the DEA CS on the six occasions outlined above. Ms. Isemin clearly did not ''exercise[e] sound professional judgment'' [24] or ''work with the patient and the prescriber to assist in determining the validity of the prescription,'' as required by Fla. Admin. Code. r. 64B16–27.831.[25] The DEA CS told Ms. Isemin that he intended to divert the controlled substances that she dispensed, and she simply warned him not to get caught. *See supra* I.c.1. Ms. Isemin also failed to identify and respond to factors that indicated a lack of ''therapeutic appropriateness'' of the drugs dispensed, as outlined in Fla. Admin. Code. r. 64B16–27.810. Rather, Ms. Isemin knew that the controlled substances that Registrant dispensed would not be used for legitimate medical purposes, but she dispensed them anyway. In fact, the DEA CS told Ms. Isemin on one occasion that he does not take many of the pills himself because they make him ''woozy.'' *See supra* I.c.1.b. Finally, I found above that Registrant dispensed nine tablets of oxycodone, a Schedule II controlled substance, on March 6, 2018, without a written prescription of a practitioner. *Id.* Therefore, Registrant violated federal and state law. *See* 21 U.S.C. 829(a); Fla. Stat. § 465.015(2)(c) (2016).

In light of Registrant's egregious conduct that has no resemblance to the professional practice of pharmacy, I conclude that Factors One, Two, and Four overwhelmingly demonstrate that Registrant ''has committed such acts as would render [its] registration . . . inconsistent with the public interest.'' 21 U.S.C. 824(a)(4). I further conclude that Registrant has not rebutted the Government's *prima facie* case.

B. Registrant Lacks Authority To Handle Controlled Substances

The Government alternatively alleged that Registrant's DEA registration should be revoked because Registrant does not possess the requisite authority to dispense controlled substances in the State of Florida, where it is registered with DEA. RFAA, at 22.

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the CSA ''upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, the Agency has long stated that the possession of authority to dispense controlled substances under the laws of the state in which the practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.,* 76 FR 71,371 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner'' to mean ''a pharmacy . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which . . . [it] practices . . ., to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the Agency has repeatedly stated that revocation of a practitioner's registration is the appropriate sanction whenever it is no longer authorized to dispense controlled substances under the laws of the state in which she practices. *See, e.g., James L. Hooper, M.D.,* 76 FR at 71,371–72; *Sheran Arden Yeates, M.D.,* 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.,* 53 FR 11,919, 11,920 (1988); *Frederick Marsh Blanton, M.D.,* 43 FR at 27,617.

According to Florida statute, ''It is unlawful for any person to own, operate, maintain, open, establish, conduct, or have charge of . . . a pharmacy . . . [w]hich is not registered under the professions of [Chapter 465].'' Fla. Stat. Ann. § 465.015(1)(a) (West, current with chapters from the 2021 First Regular Session of the Twenty-Seventh Legislature in effect through June 22, 2021). Further, ''It is unlawful for any person . . . [t]o fill, compound, or dispense prescriptions or to dispense medicinal drugs if such person does not hold an active license as a pharmacist in [Florida] . . . .'' Fla. Stat. Ann. § 465.015(2)(b).[26] Accordingly, holding a permit issued by the Florida Board of Pharmacy is a prerequisite to operating a pharmacy and dispensing a controlled substance in Florida.

Here, the undisputed evidence in the record is that Registrant currently lacks authority to operate a pharmacy in Florida. As such, Registrant is not qualified to dispense controlled substances in Florida. Accordingly, I will order that Registrant's DEA registration be revoked.

III. Sanction

Where, as here, the Government has met its *prima facie* burden of showing that Registrant's continued registration is inconsistent with the public interest, the burden shifts to the Registrant to show why it can be entrusted with a registration. *Garrett Howard Smith, M.D.,* 83 FR 18,882, 18,910 (2018) (collecting cases).

The CSA authorizes the Attorney General to ''promulgate and enforce any rules, regulations, and procedures which he may deem necessary and appropriate for the efficient execution of his functions under this subchapter.'' 21 U.S.C. 871(b). This authority specifically relates ''to 'registration' and 'control,' and 'for the efficient execution of his functions' under the statute.'' *Gonzales,* 546 U.S. at 259. ''Because 'past performance is the best predictor of future performance, *ALRA Labs, Inc.* v. *Drug Enf't Admin.,* 54 F.3d 450, 452 (7th Cir. 1995), [the Agency] has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must

known as prescription or legend drugs which are required by federal or state law to be dispensed only on a prescription'') (internal quotations omitted).

[24] In the emergency order suspending Ms. Isemin's state license, the Florida DOH concluded that Ms. Isemin ''lacks the good judgment needed to practice as a pharmacist in the State of Florida,'' because of her ''repeated failure to require patient identification from D.S. or to verify whether D.S.' prescriptions were valid prior to dispensing controlled substances; her continued sale of controlled substances to D.S., despite being informed on several occasions that he was selling them to unauthorized individuals; and her acceptance of a 'bonus' for assisting D.S. in his illegal sale of controlled substances . . . .'' App'x A, at 12. The order also concluded that Ms. Isemin violated Fla. Stat. §§ 893.04(1) and (2)(a), in part, because she ''[k]nowingly dispens[ed] controlled substances to a patient who stated he was selling the controlled substances to unauthorized persons.'' *Id.* at 17.

[25] *See also* Fla. Stat. § 893.04(2)(a) (prohibiting pharmacists from dispensing Schedule II controlled substances to a patient ''without first determining, in the exercise of her or his professional judgment, that the prescription is valid'').

[26] *See also* Fla. Stat. Ann. § 465.015(1)(b) (''It is unlawful for any person to own, operate, maintain, open, establish, conduct, or have charge of . . . a pharmacy . . . [i]n which a person not licensed as a pharmacist in this state . . . fills, compounds, or dispenses any prescription or dispenses medicinal drugs.)

accept responsibility for [the registrant's] actions and demonstrate that [registrant] will not engage in future misconduct.''' *Jayam Krishna-Iyer,* 74 FR at 463 (quoting *Med. Shoppe,* 73 FR 364, 387 (2008)); *see also Samuel S. Jackson,* 72 FR 23,848, 23,853 (2007); *John H. Kennnedy, M.D.,* 71 FR 35,705, 35,709 (2006); *Prince George Daniels, D.D.S.,* 60 FR 62,884, 62,887 (1995). The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual registrant; therefore, the Agency looks at factors, such as the acceptance of responsibility, and the credibility of that acceptance as it relates to the probability of repeat violations or behavior, and the nature of the misconduct that forms the basis for sanction, while also considering the Agency's interest in deterring similar acts. *See Arvinder Singh, M.D.,* 81 FR 8247, 8248 (2016).

Here the Registrant did not avail itself of the opportunity to refute the Government's case. In light of Registrant's egregious violations, which go to the heart of the CSA's purpose of ''prevent[ing] addiction and recreational abuse'' of controlled substances,[27] Registrant's silence weighs against the Registrant's continued registration. *Zvi H. Perper, M.D.,* 77 FR at 64,142 (citing *Med. Shoppe,* 73 FR at 387); *see also Jackson,* 72 FR at 23,853.

Accordingly, I find that the factors weigh in favor of revocation, and I shall order the sanctions that the Government requested, as contained in the Order below.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration BH9966904 issued to Care Point Pharmacy, Inc. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending application of Care Point Pharmacy, Inc. to renew or modify this registration. This order is effective August 27, 2021.

Anne Milgram,

Administrator.

[FR Doc. 2021–16005 Filed 7–27–21; 8:45 am]

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[27] *Gonzales* v. *Oregon,* 546 U.S. at 274.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Creekbend Community Pharmacy; Decision and Order

On May 29, 2019, a former Assistant Administrator of the Drug Enforcement Administration (hereinafter, DEA or Government) issued an Order to Show Cause (hereinafter, OSC) to Creekbend Community Pharmacy (hereinafter, Respondent Pharmacy). Government's Request for Final Agency Action Exhibit (hereinafter, RFAAX) 2 (OSC), at 1. The OSC proposed to revoke Respondent Pharmacy's DEA Certificate of Registration Number FL4375730 (hereinafter, registration) and to deny any pending applications for renewal or modification of the registration, pursuant to 21 U.S.C. 824(a)(4) and 823(f), because Respondent Pharmacy's ''continued registration is inconsistent with the public interest.'' *Id.* (citing 21 U.S.C. 824(a)(4) and 823(f)).

I. Procedural History

The OSC alleged that Respondent Pharmacy committed a number of record keeping violations. *Id.* at 2–4. Specifically, the OSC alleged failures in Respondent Pharmacy's inventory documentation in violation of 21 CFR 1304.11(a) and (c) and 1304.04(h)(1); failures to properly complete and execute DEA Form 222s in violation of 21 CFR 1305.12(a)–(e); failures to record the receipt date on invoices in violation of 21 CFR 1304.21(a), (d), and 1304.22(a)(2)(iv) and (c); and failure to maintain complete and accurate records of invoices, returns, and controlled substance transactions in violation of 1304.21(a). *Id.* The OSC further alleged that Respondent Pharmacy lacked candor by failing to be candid and truthful in the DEA investigation. *Id.* at 4–6. In particular, the OSC alleged that Respondent Pharmacy lacked candor with regard to its filling of fraudulent prescriptions and its hiding of controlled substances. *Id.*

The OSC notified Registrant of the right to either request a hearing on the allegations or submit a written statement in lieu of exercising the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. OSC, at 7 (citing 21 CFR 1301.43). The OSC also notified Registrant of the opportunity to submit a corrective action plan. *Id.* at 8 (citing 21 U.S.C. 824(c)(2)(C)).

Following service of the OSC,[1] Respondent Pharmacy sent a letter to the Government which appears to be a written response to the OSC, dated June 25, 2019. RFAAX 3. The letter was not signed and the author was not explicitly identified; however, it appears to have been written by or from the perspective of Respondent Pharmacy's owner, Binta Barry. RFAAX 3; RFAAX 1, at 1; RFAAX 47 (Declaration of Diversion Investigator), at 1–2. The letter did not state that Respondent Pharmacy intended to request an administrative hearing, and the Government did not otherwise receive a hearing request. RFAAX 3; RFAAX 5 (correspondence from the hearing clerk), at 1. The letter was accompanied by a document titled ''Corrective Action Plan,'' which the Government submitted into the record. RFAAX 4. The Corrective Action Plan proposed nine changes and improvements to Respondent's Pharmacy's policies and practice.[2] Then, Respondent Pharmacy's Owner sent a signed letter dated July 29, 2019, stating that she would not ''fight [her] case with the D.E.A.'' and that she was planning to ''sell [her] business.'' [3] RFAAX 5, at 2 (hereinafter, RFAAX 3 and RFAAX 5, at 2 are collectively referred to as the ''written response'').

On September 10, 2019, the Government forwarded a Request for Final Agency Action, along with the evidentiary record for this matter, to my office. Having considered the record in its entirety, I find that the record establishes, by substantial evidence, that Respondent Pharmacy committed acts rendering its continued registration inconsistent with the public interest. Accordingly, I conclude that the appropriate sanction is for Respondent Pharmacy's DEA registration to be revoked.

II. Findings of Fact

A. DEA Registration

Respondent Pharmacy is registered with the DEA as a retail pharmacy authorized to handle controlled substances in schedules II–V under DEA Registration number FL4375730 at 8103

[1] I find that the Government's service of the OSC was adequate.

[2] Respondent Pharmacy's proposed corrective action plan proposed, among other things, that Respondent Pharmacy put into place three new policies that would reflect requirements that already exist in law, enforce compliance with two existing policies that reflect requirements that already exist in law (without explaining how those policies would be enforced), and would stop working with the Pharmacist-in-charge (hereinafter, PIC) involved in this case. RFAAX 4. Additionally, the corrective action plan explained that the Respondent Pharmacy was trying to move to a ''close door pharmacy'' model, and proposed putting in place policies saying that it no longer accepted walk-in prescriptions and would only accept ''e-scripts'' for controlled substances. *Id.*

[3] I find that Respondent waived her right to a hearing in this matter.

Creekbend Drive, Suite G, Houston, Texas 77071. RFAAX 1, at 6 (Certificate of Registration). According to the Certificate of Registration, the Registration expired on August 31, 2020.[4] *Id.*

B. Government's Case

The Government attached to the RFAA forty-eight exhibits (over 850 pages) consisting primarily of records from Respondent Pharmacy including, but not limited to, inventory records, DEA Form 222s (hereinafter, 222 Form), prescription logs, and invoices; and records related to DEA's investigation and inspection including, but not limited to, audit records, a Texas Prescription Monitoring Profile Report, notices of inspection, and pictures. RFAAX 1–48. The Government also included declarations from a DEA Diversion Investigator (hereinafter, DI) and a Texas State Board of Pharmacy (hereinafter, State Board) Investigator (hereinafter, SI). RFAAX 47–48.

DI's declaration explained that she entered the DI training school in 2017, and that she was employed in the DEA Houston Division Office. RFAAX 47, at 1. As a Diversion Investigator, DI stated that her work includes investigations of DEA registered pharmacies to ''ensure compliance with all applicable DEA regulations.'' *Id.* DI stated that her investigation revealed that Binta Barry was one of Respondent Pharmacy's owners, and that Ms. Barry was also employed as one of Respondent Pharmacy's pharmacy technicians. *Id.* at 2. Additionally, DI explained that ''[t]he Pharmacist-in-charge [was] Yucabeth Kumenda.'' *Id.*

On November 1, 2017, DEA conducted its first on-site inspection of Respondent Pharmacy. RFAAX 47, at 2; RFAAX 7 (Notice of November 1, 2017 Inspection). PIC Kumenda signed the notice of inspection and participated in the inspection process; Ms. Barry was present and met with DEA only briefly during the inspection. RFAAX 47, at 2; RFAAX 7. As part of the inspection, DEA conducted a closing inventory of Respondent Pharmacy's controlled substances, interviewed responsible management, and took custody of original controlled substance records including prescriptions and inventories. RFAAX 47, at 2.

On May 24, 2018, DEA conducted its first on-site follow-up inspection of Respondent Pharmacy. RFAAX 47, at 5; RFAAX 33 (Notice of May 24, 2018 Inspection). Ms. Barry signed the notice of inspection and both Ms. Barry and PIC Kumenda were present for and participated in the inspection process. RFAAX 47, at 5; RFAAX 33; RFAAX 48, at 1. The State Board investigator, SI, was also present during the follow-up investigation. RFAAX 47, at 5; RFAAX 48, at 1. As part of the inspection, DEA requested and received updated prescriptions,[5] purchase records, and dispensing logs. RFAAX 47, at 5; RFAAX 35 (DEA–12, Receipt for Cash or Other Items dated May 24, 2018); RFAAX 48, at 1.

On April 3, 2019, DEA conducted its second on-site follow-up inspection of Respondent Pharmacy. RFAAX 47, at 6; RFAAX 36 (Notice of April 3, 2019 Inspection). PIC Kumenda signed the notice of inspection, RFAAX 36, and, according to DI, called Ms. Barry to tell her that DEA was there to conduct an inspection. RFAAX 47, at 6. According to DI, Ms. Barry said ''she was sick'' but came into the pharmacy for the inspection. RFAAX 47, at 6; *see also* RFAAX 3, at 2. DI stated that following each of the three inspections, she audited and assessed the documents DEA had received to determine Respondent Pharmacy's compliance with all applicable DEA regulations. RFAAX 47, at 1, 9–16.

SI's declaration explained that he had been an investigator with the State Board since October 2008. RFAAX 48, at 1. As an investigator, SI conducted ''investigations and audits for the [State Board] regarding matters that concern diversion or any other violations of the Texas pharmacy act.'' *Id.* SI stated that he was assigned to investigate Respondent Pharmacy in April 2018, and he participated in DEA's May 24, 2018 inspection of Respondent Pharmacy. *Id.* SI's declaration also provided information about the Texas Prescription Monitoring Program (Texas PMP), and about prescriptions he obtained from Respondent Pharmacy following the May 24, 2018 inspection. *Id.* at 2.

C. Respondent Pharmacy's Case

Respondent Pharmacy presented its case through its written response consisting of an unsigned, unsworn letter, a second letter signed by Ms. Barry, and no supporting documentation or evidence. RFAAX 3; RFAAX 5, at 2. Some of the factual assertions contained in the written response, though lacking in detail, align with the investigatory timeline and with DI's declaration and the record as a whole. *Compare* RFAAX 3 and RFAAX 5 *with* RFAAX 47. For example, the written response states that the Respondent Pharmacy's license was renewed in February 2018, which is consistent with the certificate of registration. RFAAX 3, at 2; RFAAX 1, at 6. The written response also states that DEA conducted inspections on May 24, 2018, and April 3, 2019, and contains factual assertions regarding those inspections that are consistent with the record as a whole. RFAAX 3, at 2; *infra* Section, II.D.2. The written response contains no facts and no evidence contradicting the allegations in the OSC and does not diminish the record evidence presented by the Government.

Instead, the written response questions DEA's motive in investigating

[4] Pursuant to DEA's online registration database, Respondent Pharmacy's registration did expire on August 31, 2020, and DEA records show that Respondent Pharmacy is ''out of business.'' Under, 21 CFR 1301.52, a registration of any entity ''shall terminate, without any further action by the Administration, if and when such [entity] . . . discontinues business. . . .'' However, the Agency has discretion to adjudicate this Order to Show Cause to finality. *See Jeffrey D. Olsen, M.D.,* 84 FR 68,474, 68,479 (2019) (declining to dismiss an immediate suspension order as moot when the registrant allowed the subject registration to expire before final adjudication); *Steven M. Kotsonis, M.D.,* 85 FR 85,667, 85,668–69 (2020) (concluding that termination of a DEA registration under 21 CFR 1301.52 does not preclude DEA from issuing a final decision on an order to show cause against that registration and stated that the Agency would assess such matters on a case-by-case basis to determine if a final adjudication is warranted or if the matter should be dismissed); *The Pharmacy Place,* 86 FR 21,008, 21,008–09 (2021) (adjudicating to finality a registration terminated under 21 CFR 1301.52 in order to create a final record of allegations and evidence related to the matter).

As in *The Pharmacy Place,* I have evaluated the particular circumstances of this matter and determined that the matter should be adjudicated to finality. 86 FR at 21,008–09. As my predecessor identified in *Olsen,* ''[b]ecause nothing in the CSA prohibits an individual or an entity from applying for a registration even when there is . . . a history of having a registration suspended or revoked.* . . . having a final, official record of allegations, evidence, and the Administrator's decisions regarding those allegations and evidence, assists and supports future interactions between the Agency and the registrant or applicant.'' 84 FR at 68,479. Here, absent a final adjudication, there would be no final record of the allegations and evidence from this matter. (*Contrast with Kotsonis* in which the plea agreement and judgment from the respondent's concurrent criminal case provided a final record on which the Agency could rely in any future interactions with the respondent. 85 FR at 85,667). Adjudicating this matter to finality will create an official record the Agency can use in any future interactions with Respondent Pharmacy's owners, employees, or other persons who were associated with Respondent. Moreover, as in *The Pharmacy Place,* ''adjudicating this matter to finality will create a public record to educate current and prospective registrants about the Agency's expectations regarding the responsibilities of registrant pharmacies under the CSA and allow stakeholders to provide feedback regarding the Agency's enforcement priorities and practices.'' 86 FR 21,008–09 (*applying Olsen,* 84 FR 68,479).

[5] SI took physical custody of the original prescription records and provided scanned copies to DI thereafter. RFAAX 48, at 1.

the Respondent Pharmacy.[6] RFAAX 3; RFAAX 5, at 2. The written response states that DEA had ''an intent of closing [Respondent Pharmacy] and thus subject [sic] the pharmacy to various harassments and false accusations.'' RFAAX 3, at 3. The written response also alleged that the DEA investigation was a ''witch hunt . . . by an agent who [did not] hesitate to show her hatred and Might [sic] to the owner.'' *Id.* at 2. I cannot find any evidence in the record that supports Respondent Pharmacy's allegations of threats and bias. Instead the substantial evidence in the record validates each of the accusations. *Infra* Section, II.D.

D. The Inspection and Audit of Respondent Pharmacy

1. Respondent Pharmacy's Recordkeeping

a. Inventory Documentation Failures

As part of the November 1, 2017 inspection, DI obtained copies of Respondent Pharmacy's biennial inventory, dated May 25, 2016 (RFAAX 9), and of its most recent physical inventory dated October 24, 2017, at beginning of business (RFAAX 10). RFAAX 47, at 2. The OSC alleged that the biennial inventory failed to identify whether it was conducted at the beginning or end of the business day, and alleged that both inventories failed to separate Schedule II controlled substances from Schedule III through V controlled substances. OSC, at 2. I have reviewed the inventories at issue and agree with DI's findings.

According to DI, Respondent Pharmacy ''failed to record on its biennial inventory (May 25, 2016) . . . whether the inventory was conducted at the beginning or end of the business day . . . .'' RAAX 47, at 9. DI stated that Respondent Pharmacy ''failed to separate on its biennial inventory . . . and on its October 24, 2016 inventory . . . Schedule II controlled substances from Schedule III through V controlled substances.'' [7] *Id.* On both inventories, DI states, ''a Schedule II controlled substance, hydrocodone, [was] listed with Schedule III–V controlled substance[s], including alprazolam and carisoprodol.'' *Id.* at 9–10. Respondent Pharmacy offered no evidence to contest these facts. *See* RFAAX 3.

b. Improperly Completed 222 Forms

During the inspection, DI collected records related to Respondent Pharmacy's purchases of controlled substances, including DEA Form 222s and invoices. The OSC alleges that Respondent ''[f]ailed to properly complete and execute multiple DEA Form 222 order forms.'' OSC at 2. Respondent Pharmacy broadly contests these allegations, stating in its response ''[c]ontrary to what [DEA] said, most of our D.E.A. forms are filled and signed.'' RFAAX 3, at 2. I have reviewed all of the 222 Forms and largely agree with DI's findings.

First, according to DI, Respondent Pharmacy ''failed to properly include information to be filled in by [the] purchaser, including the number of packages, size of package, and name of item, on four (4) DEA Form 222 order forms. . . .'' RFAAX 47, at 10. Specifically, DI identified these failures in RFAAX 13 (222 Forms for Supplier Cochran), at pages 1, 24, and 56; and in RFAAX 14 (222 Forms for Supplier Nationwide), at page 3. I have reviewed these four Form 222s and agree with DI that each of the four forms has one or more blanks in the ''No. of Packages,'' ''Size of Package,'' and ''Name of Item'' sections on lines that have other sections, namely ''No. of Packages Received'' and ''Date Received,'' completed. RFAAX 13, at 1, 24, 56; RFAAX 14, at 3.

Second, according to DI, Respondent Pharmacy ''failed to properly include the last line on a DEA Form 222 order form, specifically from [RFAAX 13, at 3].'' RFAAX 47, at 10. I agree with DI that the section ''Last Line Completed'' was left blank on the 222 Form at issue. *Id.* Third, DI states that the 222 Form at RFAAX 13, at 1,[8] ''failed to properly include the name and address of a supplier. . . .'' RFAAX 47, at 10. I agree with the DI that the ''To: (Name of Supplier),'' and corresponding sections for the supplier's address were left blank on the 222 Form at issue. RFAAX 13, at 1. Fourth, according to DI, Respondent Pharmacy ''failed to properly sign and/or date a DEA Form 222 order form'' at RFAAX 13, at 4. RFAAX 47, at 10–11. I agree with the DI that the ''Signature of Purchaser or Attorney or Agent'' section was left blank. RFAAX 13, at 4.

Finally, according to DI, Respondent Pharmacy ''failed to properly include the number of packages received and the date received on eleven (11)[9] DEA Form 222 order forms.'' RFAAX 47, at 11. Specifically, DI identified these failures on RFAAX 12 (Invoices and Forms 222 for Supplier Apotheca, Inc.), at pages 4, 6, 10, 16, 18, and 20; RFAAX 13, at pages 2, 5, 30, and 34; and RFAAX 15 (Forms 222 for Supplier QK Healthcare), at page 1. RFAAX 47, at 11. I agree with DI that each of these eleven 222 Forms have otherwise completed lines with blanks for ''No. of Packages Received'' and ''Date Received.'' RFAAX 12, at 4, 6, 10, 16, 18, 20; RFAAX 13, at 2, 5, 30, 34; RFAAX 15, at 1. DI also identified corresponding invoices obtained either from Respondent Pharmacy showing that Respondent Pharmacy received the controlled substances, or from Respondent Pharmacy's suppliers showing that the controlled substances were invoiced and shipped to Respondent Pharmacy to establish that the items were received by Respondent Pharmacy. RFAAX 47, at 11. The Government established Respondent Pharmacy's receipt of the controlled substances, and therefore established Respondent Pharmacy's obligation to complete the ''No. of Packages Received'' and ''Date Received'' sections, for ten of the 222 Forms at issue. *See* RFAAX 12, at 3, 5, 9, 15, 17, 19; RFAAX 22, at 5, 6; RFAAX 29 (Invoices from Supplier Cochran), at 5, 9, 136, 140–44, 146, 148–53. However, I was not able to find invoices or other evidence that Respondent Pharmacy actually received the items identified on lines 4–8 of the eleventh Form 222,[10] and accordingly, the Government has not demonstrated that the eleventh

[6] The evidence on the record provides no indication of any sort of improper motive in commencing the investigation, and in fact, the evidence demonstrates that such an investigation is routine. On August 2017, Respondent Pharmacy submitted an application to renew its registration. RFAAX 47, at 2. In the application, Respondent Pharmacy answered ''yes'' when asked ''has the applicant ever surrendered (for cause) or had a federal controlled substance registration revoked, suspended, restricted or denied, or is any such action pending?'' *Id.* This prompted DEA to initiate an investigation into Respondent Pharmacy. *Id.* at 1–2. It is routine for DEA to initiate investigations based on affirmative answers to the liability questions on the application. *See e.g. Daniel A. Glick, D.D.S.,* 80 FR 74,800, 74,802 (2015) (including testimony that when a registrant answers yes to a liability question the file is assigned for further investigation); *Barry H. Brooks, M.D.,* 66 FR 18,305, 18,306 (2001).

[7] The DI stated that, as relevant to this case, Hydrocodone is a Schedule II controlled substance, and Alprazolam and Carisoprodol are Schedule III–V controlled substances. RFAAX 47, at 9.

[8] I found this 222 Form, RFAAX 13, at 1, to be deficient in the preceding paragraph. *Supra.* While I find RFAAX 13, at 1, to have multiple deficiencies representing multiple regulatory violations, *infra,* I have only included it once in my total count of deficient Form 222s.

[9] The OSC alleged that there were thirteen DEA Form 222s missing information for the number of packages received and the date received. RFAAX 2, at 2. The RFAA only seeks final agency action as to eleven of the 222 Forms. RFAA, at 9.

[10] The controlled substances identified in lines 1–3 on Form 222 No. 170706317, RFAAX 15, at 1, are supported by invoices or records. RFAAX 25 (Invoices from Supplier QK Healthcare), at 1–3; and RFAAX 31 (QK Healthcare Controlled Substance History Report), at 5. And Respondent Pharmacy properly completed the corresponding ''No. of Packages Received'' and ''Date Received'' sections for those lines. RFAAX 15, at 1.

Form 222 was incomplete. RFAAX 15, at 1.

In total, I find the substantial evidence in the record establishes that Respondent Pharmacy failed to properly complete and execute sixteen Form 222s: RFAAX 12, at 4, 6, 10, 16, 18, 20; RFAAX 13, at 1 (multiple deficiencies), 2, 3, 4, 5, 24, 30, 34, 56; and RFAAX 14, at 3.

c. Records of Receipt Date

As part of the November 1, 2017 inspection, DI obtained copies of Respondent Pharmacy's invoices for Schedule III through V controlled substances. RFAAX 47, at 3, 12. The OSC alleged that Respondent Pharmacy ''failed to record the receipt date on nine (9) invoices for Schedule III through V controlled substances.'' OSC, at 2.

According to DI, Respondent Pharmacy ''failed to properly record the receipt date'' on these nine invoices: RFAAX 22 (Respondent Pharmacy's Copy of Cochran Invoices), at 89; RFAAX 26 (Respondent Pharmacy's Copy of QK Healthcare Invoices), at 78, 79, 81, 86, and 90; RFAAX 27 (Respondent Pharmacy's Copy of RXChange Invoices), at 2; RFAAX 28 (Respondent Pharmacy's Copy of VitaRX Invoices), at 5 and 7. RAAX 47, at 12. I have reviewed the nine invoices identified by DI and agree with DI that they do not contain a receipt date. However, the undated VitaRX invoice located at RFAAX 28, at 7, is accompanied by a packing slip that is signed and dated with the receipt date and contains the same substantive information that the invoice contained. *Compare* RFAAX 28, at 7 *with* at 6. Respondent Pharmacy offered no evidence to contest these facts. *See* RFAAX 3.

Accordingly, I find that the substantial evidence in the record establishes that the Respondent Pharmacy failed to properly record the receipt date on eight invoices.

d. Improper Maintenance of Records Including Invoices and Returns

DI declared that following the November 1, 2017 inspection and the April 3, 2019 second follow-up inspection, she ''conducted accountability audits that revealed that Creekbend failed to keep complete and accurate records of controlled substances maintained.'' [11] RFAAX 47, at 13. DI's audit revealed that Respondent Pharmacy's had a surplus of some controlled substances on hand, and a shortfall of others.[12] RFAAX 47, at 14–15. DI also found variances during the audit conducted after the April 3, 2019 second follow-up inspection, which looked at the records between May 24, 2018, and April 3, 2019.[13] RFAAX 47, at 15. According to DI, ''[the] variances demonstrate that [Respondent Pharmacy] clearly failed to keep complete and accurate records of controlled substances maintained.'' *Id.* at 16. While Respondent Pharmacy, in its response, generally asserted that it ''would be impossible'' for the audit counts to be off, it provided no evidence to support the assertion. RFAAX 3, at 3. I find that the audit results and record as a whole clearly identify surpluses and shortfalls in Respondent Pharmacy's controlled substances and clearly demonstrate that Respondent Pharmacy was not maintaining adequate records.

To better understand the variances uncovered during the initial audit, DI verified all of the controlled substances transactions between Respondent Pharmacy and its suppliers from January 1, 2016, to November 1, 2017. RFAAX 47, at 12. To do so, DI ''cross-verified records maintained by [Respondent Pharmacy] ([RFAAX] 20–28) with those obtained from the various suppliers ([RFAAX] 29–32). *Id.* As a result of DI's efforts, the OSC alleged that Respondent Pharmacy ''failed to provide and maintain [certain] invoices and a record of returns.'' OSC, at 2.

Specifically, DI determined that Respondent Pharmacy ''failed to properly provide and maintain [eight] invoices.'' RFAAX 47, at 12. The invoices at issue are numbers I029975 and I029976 from Nationwide Medical, located at RFAAX 30, at 1–2; numbers 3427858 and 3831964 from QK Healthcare located at RFAAX 31, at 3, and 5; numbers 0019035–IN, 0022273–IN, 0025288–IN, and 0025702–IN from Cochran located at RFAAX 29, at 85, 109, 145, and 150–51. RFAAX 47, at 12–13. I have reviewed Respondent Pharmacy's records and agree that its records did not contain these eight invoices, which were obtained from Respondent Pharmacy's suppliers. However, one of the invoices in question, Nationwide Medical Number I029976, reflected only the purchase of hydrocodone/acetaminophen, a Schedule II substance. RFAAX 30, at 2; *supra* note 7. In contrast to schedules III–V, pharmacies must record the necessary purchase and receipt information regarding schedule II substances on either the 222 Form or in the electronic Controlled Substances Ordering System, whichever was used to order the drugs. *See supra* Section II.D.1.b*; infra* Section, III.A.2. I did not see any purchase orders or other records containing the information that would have otherwise been reflected on the invoices for the remaining seven invoices at issue. Respondent Pharmacy

[11] In conducting the audit, DI stated that she determined the number of applicable controlled substances that Respondent Pharmacy was accountable for by adding the controlled substances listed in Respondent Pharmacy's October 24, 2016 inventory, found in RFAAX 10, to the total number of applicable controlled substances received from suppliers (according to invoices received from Respondent Pharmacy and from its suppliers), found in RFAAX 20–32. RFAAX 47, at 13. DI then determined the number of applicable controlled substances that Respondent Pharmacy had accounted for by adding the controlled substances on hand during Respondent Pharmacy's November 1, 2017 inventory, RFAAX 11, to the sum of the applicable controlled substances distributed by Respondent Pharmacy, RFAAX 16–19 (Respondent Pharmacy's prescription logs). RFAAX 47, at 14. DI then subtracted the total controlled substances Respondent Pharmacy was accountable for from the total controlled substances accounted for to determine the ''Total Difference.'' According to DI, ''[i]f the registrant's record keeping is accurate, the results of the ''Total Difference'' column for each controlled substance should be zero, as that would demonstrate that all accountable controlled substances are accounted for in registrant's records and physical inventory.'' RFAAX 47, at 14. She further explained that ''[a] positive difference indicated that the registrant's records show it has more controlled substances on hand and distributed than what its initial inventory and invoices show it has received, which means at the very least that the registrant's record keeping is not accurate.'' *Id.* ''A negative difference indicates the opposite, that the registrant's records show it has received more controlled substances than it now has on hand or has distributed, which also means that the registrant's record keeping is not accurate. Moreover, it likely demonstrated that diversion has occurred, as the registrant cannot account for all of the controlled substances it has received.'' *Id.*

[12] Based on the record evidence and using on the methodology provided by the DI in the affidavit, I was able to confirm the presence of variances. RFAAX 47, at 14–15. The extent of the variances I calculated differed from the DI's, sometimes significantly, and it is unclear to me why the numbers were so variable. But what is clear to me, is that there were shortfalls and surpluses that clearly demonstrate that Respondent Pharmacy was not maintaining adequate records. This finding is further supported by the fact that Registrant was missing invoices and did not properly complete the DEA Form 222s. *See supra,* II.D.1.

[13] According to DI, the April 3, 2019 audit was conducted in the same manner as the November 2, 2017 audit. *Id.* at 15–16. She first determined the number of applicable controlled substances that Respondent Pharmacy was accountable for by adding the controlled substances listed in Respondent Pharmacy's May 24, 2018 inventory, found in RFAAX 34, to the total number of applicable controlled substances received from suppliers, which according to Respondent Pharmacy's owner and PIC was zero because they ''had not received any controlled substances since the May 24, 2018 inspection.'' *Id.* at 15. DI then determined the number of applicable controlled substances that Respondent Pharmacy had accounted for by adding the controlled substances on hand during Respondent Pharmacy's April 3, 2019 inventory, RFAAX 40, to the sum of the applicable controlled substances distributed by Respondent Pharmacy, RFAAX 42 (Respondent Pharmacy's Dispensing Log from May 24, 2018 to April 3, 2019)[13]. RFAAX 47, at 15–16. DI then calculated the ''Total Difference,'' *see* RFAAX 46, which again revealed variances. RFAAX 47, at 16.

offered no evidence to contest these facts. *See* RFAAX 3.

DI also determined that Respondent Pharmacy failed to maintain one record of return. RFAAX 47, at 12. According to DI, Respondent Pharmacy ''maintained an invoice that had a handwritten note that indicated that these controlled substances were received on September 5, 2017, as set forth in [RFAAX] 26, [at] 2.'' *Id.* However, QK Healthcare Inc., verified that the product was initially lost in transit[, and] [w]hen it was finally found and delivered, [Respondent Pharmacy] no longer wanted it and it was returned to QK Healthcare Inc.'' *Id.; see also* RFAAX 32 (QK Healthcare Records of Return from Respondent Pharmacy). I reviewed the Respondent's records and agree with DI's determination. Respondent Pharmacy offered no evidence to contest these facts. *See* RFAAX 3.

Based on the evidence in the record, I find that Respondent Pharmacy generally maintained incomplete and/or inaccurate controlled substance records between October 24, 2016, and April 3, 2019, and specifically failed to properly maintain seven invoices and one return record.

2. Respondent Pharmacy's Candor During the Investigation

The Government has alleged that Respondent Pharmacy lacked candor during the course of DEA's investigation regarding its filling of fraudulent prescriptions and regarding various controlled substances hidden throughout the pharmacy.

a. Lack of Candor Regarding Filled Fraudulent Prescriptions

During the November 1, 2017 Inspection, DEA obtained a number of prescriptions that had been filled by Respondent Pharmacy and determined that they were fraudulent. RFAAX 47, at 5. In making that determination, DI interviewed Dr. C.K. regarding fifty-seven prescriptions issued in his name that DI obtained from Respondent Pharmacy during the inspection. *Id.* According to DI, ''Dr. [C.K.] reviewed the prescriptions and verified that they were not issued by him and that all were fraudulent.'' *Id.* According to DI, the ''prescriptions contained handwritten notes indicating that they had been verified by 'Donna Lavender' or 'Gloria.' '' *Id.* Dr. C.K. stated that ''he had no idea who Donna Lavender was,'' and that ''a woman named 'Gloria' worked in this office, . . . [but] she had not verified the prescriptions.'' *Id.* Based on this interview, DI determined that Respondent Pharmacy ''was filling fraudulent prescriptions that had been issued in Dr. [C.K.'s] name.'' *Id.*

During the May 24, 2018, follow-up inspection, DI ''observed a customer in the waiting area who was acting suspicious,'' while waiting for a prescription purportedly issued by Dr. S.S. to be filled. *Id.* Specifically, DI observed that the customer ''kept coming in and out of the pharmacy to ask about the status of her prescription'' and when she left the pharmacy, ''she would drive her car to the back of the parking lot and talk to someone in a black tinted Lincoln MKX with temporary tags.'' *Id.* at 5–6. DEA asked PIC Kumenda to demonstrate how she verified the validity of the customer's prescription. *Id.* at 6. According to DI, PIC Kumenda stated, that ''[s]he called the [phone] number on the prescription and talked with a person named 'Melissa,' who verified the prescription.'' *Id.* DEA then ''told PIC Kumenda to take additional steps to verify the contact information for the doctor, such as by looking at the Texas Medical Board . . . Website or doing a Google search.'' *Id.* According to DI, PIC Kumenda found a different phone number for Dr. S.S., and the doctor's office ''verified that the customer was not a patient and that no one named Melissa worked there.'' *Id.* DI and another diversion investigator then approached the customer in the waiting area and reported that the customer ''could not provide the exact location where Dr. S.S.'s office was located.'' *Id.* The customer then left the pharmacy and drove off, and ''[a] few minutes later, the black Lincoln also drove off.'' *Id.*

Also during the May 24, 2018, follow-up inspection, DI ''saw prescriptions allegedly issued by Dr. [C.K.].'' *Id.* Again, PIC Kumenda stated to DI, that ''she verified the prescriptions by the phone number on the prescription.'' *Id.* Again, PIC Kumenda did a Google search for Dr. C.K. and called the resulting phone number. *Id.* And, like before, Dr. C.K.'s office ''told PIC Kumenda that the prescriptions she had were fraudulent.'' *Id.*

According to DI, DEA then ''informed PIC Kumenda and Ms. Barry that [Respondent Pharmacy] was filling fraudulent prescriptions.'' *Id.* I find, that as of May 24, 2018, Respondent Pharmacy knew that it had been presented with and had filled fraudulent prescriptions that purported to be issued by Dr. C.K. *See* RFAAX 47, at 18. I further find that as of May 24, 2018, Respondent Pharmacy was aware of the correct phone number for Dr. C.K. to verify future prescriptions. *See Id.*

According to the Texas Prescription Monitoring Program (Texas PMP), Respondent Pharmacy went on to fill eight controlled substances prescriptions purportedly issued by Dr. C.K. on May 25, 2018 and May 26, 2018. *Id.* at 2–3. However, during the April 4, 2019 second follow-up inspection, PIC Kumenda informed DI, and Ms. Barry later confirmed, that Respondent Pharmacy had not ordered or dispensed controlled substances since the DEA inspection on May 24, 2018. RFAAX 47, at 6 and 8. I find that these statements lacked candor. After these representations, DI ''asked Ms. Barry to print out a dispensing log from May 24, 2018, to April 3, 2019.'' *Id.* at 8. According to DI, Ms. Barry then printed out a blank dispensing log that began on May 28, 2018. *Id.; see also* RFAAX 41. I find that in providing an incomplete dispensing log, Respondent Pharmacy lacked candor. DI stated that she noticed that the ''dispensing report was not for the complete date range'' and again requested and finally received a dispensing log starting May 24, 2018. RFAAX 47, at 8. This dispensing log showed that Respondent Pharmacy dispensed controlled substances for eight fraudulent [14] prescriptions purportedly issued by Dr. C.K. in the hours following DEA's last inspection. *Id.; see also* RFAAX 42.

However, contrary to the information contained in the Texas PMP and Respondent Pharmacy's own dispensing log, Ms. Barry informed DI that ''[SI] had returned to the pharmacy after the May 24, 2018 inspection and had taken the prescriptions[;] . . . the prescriptions were logged into the system, but were never filled.'' [15] RFAAX 47, at 8. I find that this statement lacked candor.

According to SI, his actions did not in any way interfere with Respondent Pharmacy's ability to fill the eight controlled substance prescriptions that Respondent Pharmacy reported to the Texas PMP that it filled. RFAAX 48, at

[14] DI contacted Dr. C.K. who stated that, with regard to the eight prescriptions purporting to have been issued by Dr. C.K. and presented to Respondent Pharmacy on May 25 and 26, 2018, none of the individuals were patients of his. *See* RFAAX 47, at 18; RFAAX 44. I agree with DI's determination that these eight prescriptions were fraudulent. *See* RFAAX 47, at 18. Respondent Pharmacy has not been charged with any violations related to dispensing these fraudulent prescriptions; however, the fact that the substantial evidence in the record shows these prescriptions were fraudulent, as Respondent Pharmacy no doubt knew or was willfully blind to, is relevant to my determination that Respondent Pharmacy lacked candor and impeded the investigation in a way that threatened public health and safety.

[15] Respondent Pharmacy repeated this assertion in its written response. RFAAX 3, at 2.

1–2. He also stated that shortly after the May 24, 2018 follow-up inspection, he was contacted by PIC Kumenda who asked him to ''pick up a handful of prescriptions that had been filled after the inspection.'' *Id.* at 2. SI retrieved prescriptions [16] from Respondent Pharmacy on May 31, 2018. *Id.* at 2. SI reported that on August 13, 2018, he returned to Respondent Pharmacy and, while there, obtained a dispensing record from Respondent Pharmacy, which reflected that the eight prescriptions purportedly issued by Dr. C.K. as discussed above ''had been filled.'' *Id.* at 2, 5.

I find that substantial evidence in the record establishes that Respondent Pharmacy lacked candor during DEA's investigation with regard to its filling of fraudulent prescriptions on May 25–26, 2018. Specifically, I find Respondent Pharmacy lacked candor first when it stated that it had not dispensed any controlled substances since May 24, 2018, then when it printed out a dispensing log that did not include the controlled substances dispensed from May 24 to May 26, 2018 (the exact dates on which the controlled substances at issue were dispensed), and finally when it represented that it did not fill the prescriptions logged in the dispensing log between May 24 and May 26, 2018.

b. Lack of Candor Regarding Hidden Controlled Substances

During the April 3, 2019 second follow-up inspection, DI requested that PIC Kumenda show the investigators all of the controlled substances at the pharmacy. *Id.* According to DI, PIC Kumenda took them to the back room where DI saw ''two hydrocodone 10/325 bottles on a black garbage bag that was spread out on the floor.'' *Id.* PIC Kumenda told DI that ''she had taken the hydrocodone bottles out because she was going to take an inventory.'' *Id.* DEA asked PIC Kumenda if those two bottles of hydrocodone ''were the only controlled substances on the premises, and she answered yes.'' *Id.* at 6–7. PIC Kumenda also showed DI two safes; DI ''looked in and confirmed that there were no drugs in the smaller of the two safes.'' *Id.* at 7. PIC Kumenda, unable to open the larger one, ''represented there were no drugs inside.'' *Id.* Everyone returned to the front of the pharmacy where DEA instructed Respondent Pharmacy to conduct a closing inventory of all controlled substances. *Id.* According to DI, PIC Kumenda then walked to the back of the pharmacy again.

When DI returned to the back room, she observed ''there now were three bottles of carisoprodol placed on the floor next to the hydrocodone.'' *Id.* DEA asked ''from where the carisoprodol bottles had come, [and] PIC Kumenda would not answer.'' *Id.* DEA asked PIC Kumenda ''if these were the only controlled substances at the pharmacy, and she affirmed that they were.'' [17] *Id.* Ms. Barry and Respondent Pharmacy's attorney arrived during the count. *Id.*

When PIC Kumenda finished counting, DEA compared her counts to the closing inventory from the prior inspection on May 24, 2018. *Id.* According to DI, ''[s]ince PIC Kumenda had confirmed to us that [Respondent Pharmacy] had not filled any controlled substances since that inspection, the counts should have matched up. They did not.'' *Id.* According to DI, ''Ms. Barry then informed [the DIs] that PIC Kumenda hides drugs in the pharmacy to avoid thefts, and instructed her to go back and find more drugs.'' [18] *Id.* PIC Kumenda returned with plastic sandwich bags containing alprazolam 2mg. *Id.* Thereafter, ''PIC Kumenda again affirmed'' that those ''were the only drugs on the premise.'' *Id.*

According to DI, the inventory was still short, so Ms. Barry ''again told PIC Kumenda to go and search for drugs in the back of the pharmacy.'' *Id.*[19] DI states that she ''witnessed PIC Kumenda pulling plastic sandwich bags containing drugs from various hiding places, including taped underneath the sink and inside of plastic bins mixed under papers/records.'' [20] *Id.* DI reports that PIC Kumenda ''went to the back of the pharmacy about four times, and each time came back out with additional drugs that she had hidden.'' *Id.* Eventually, PIC Kumenda completed the closing inventory. *Id.;* RFAAX 40 (Closing Inventory dated April 3, 2019).

I find that substantial evidence in the record establishes that Respondent Pharmacy lacked candor during DEA's investigation with regard to identifying the location of and quantity of the controlled substances it had on hand.

III. Discussion

The Government alleged that Respondent Pharmacy's registration should be revoked because Respondent Pharmacy committed acts, as detailed above, that would render its registration inconsistent with the public interest as defined in 21 U.S.C. 823(f). OSC, at 1. The gravamen of the Government's allegations and evidence in this case focuses on whether Respondent Pharmacy violated federal laws relating to controlled substances when it failed to properly complete and maintain certain records. *Id.* at 2–4. The Government also alleged that Respondent Pharmacy's representations to the DEA investigators during the investigation lacked candor in a way that impeded the investigation and threatened public safety. *Id.* at 4–7.

Section 304(a) of the Controlled Substances Act (hereinafter, CSA) provides that ''[a] registration . . . to . . . dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render [its] registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a). In the case of a practitioner, which includes a pharmacy, the CSA requires the Agency consider the following factors in determining whether Respondent Pharmacy's registration would be inconsistent with the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The [registrant's] experience in dispensing, or conducting research with respect to controlled substances.

(3) The [registrant's] conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

[16] SI states that he has ''looked for and verified that [his] office does not currently have the eight (8) prescriptions'' identified in the Texas PMP, and he ''cannot confirm whether or not [those] prescriptions [were] among the ones [he] obtained on May 31, 2018.'' RFAAX 48, at 2.

[17] I note that PIC Kumenda made similar representations during the May 28, 2018 follow-up inspection. At that time DEA asked Respondent Pharmacy to show it all of the controlled substances it had in stock. RFAAX 47, at 5. According to DI, ''PIC Kumenda showed [DI] patient-ready bottles of controlled substances and stated those were all the controlled substances that the pharmacy had on hand.'' *Id.* Later, DI ''saw a box next to PIC Kumenda that contained additional controlled substances[, and] PIC Kumenda apologized for missing the box.'' *Id.*

[18] This factual assertion is repeated in Respondent Pharmacy's written statement. RFAAX 3, at 3.

[19] *See also* Respondent's written response, stating ''I turned to the pharmacist-in-charge and told her to go back and looked [sic.] for the medications because she hides controls like hydrocodone, Soma, Alprazolam in different places and ways. . . . [T]he agent again informed me that the hydrocodone is [short] as to the original count. . . . Again I instructed the pharmacist-in-charge to go and check in her hiding places she went and came back with the hydrocodone. . . .'' RFAAX 3, at 3.

[20] DEA took pictures of some of the drugs which are part of the record, including pictures of ''tablets of hydrocodone in plastic sandwich bags [or] wrapped up in a ball inside of a sheet of paper.'' *Id.;* RFAAX 37–39 (Pictures from April 3, 2019).

(5) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(f).

The DEA considers these public interest factors in the disjunctive. *Robert A. Leslie, M.D.,* 68 FR 15,227, 15,230 (2003). Each factor is weighed on a case-by-case basis. *Morall* v. *Drug Enf't Admin.,* 412 F.3d 165, 173–74 (DC Cir. 2005). Any one factor, or combination of factors, may be decisive. *David H. Gillis, M.D.,* 58 FR 37,507, 37,508 (1993). Thus, there is no need to enter findings on each of the factors. *Hoxie* v. *Drug Enf't Admin.,* 419 F.3d 477, 482 (6th Cir. 2005). Furthermore, there is no requirement to consider a factor in any given level of detail. *Trawick* v. *Drug Enf't Admin.,* 861 F.2d 72, 76–77 (4th Cir. 1988). The balancing of the public interest factors ''is not a contest in which score is kept; the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest. . . .'' *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 462 (2009). When deciding whether registration is in the public interest, the DEA must consider the totality of the circumstances. *See generally Joseph Gaudio, M.D.,* 74 FR 10,083, 10,094–95 (2009) (basing sanction on all evidence on record).

The Government has the burden of proving that the requirements for revocation of a DEA registration in 21 U.S.C. 824(a) are satisfied. 21 CFR 1301.44(e). When the Government has met its *prima facie* case, the burden then shifts to the Respondent to show that revoking registration would not be appropriate, given the totality of the facts and circumstances on the record. *Med. Shoppe-Jonesborough,* 73 FR 364, 387 (2008).

While I have considered all of the public interest factors,[21] the Government's case invoking the public interest factors of 21 U.S.C. 823(f) seeks revocation of Respondent Pharmacy's registration based solely under Public Interest Factors Two, Four, and Five. I find that the Government's evidence with respect to Factors Two, Four and Five satisfies its *prima facie* burden of showing that Respondent Pharmacy's continued registration would be ''inconsistent with the public interest.'' 21 U.S.C. 823(f). I further find that Respondent Pharmacy failed to provide sufficient evidence to rebut the Government's *prima facie* case. Specifically, as to Factors Two and Four, I find that the record contains substantial evidence that Respondent Pharmacy violated multiple federal recordkeeping requirements, and as to Factor Five, I find the record contains substantial evidence that Respondent Pharmacy's owner and PIC lacked candor during the course of the DEA investigation into Respondent Pharmacy.

A. Factors Two and Four

As already discussed, pursuant to section 304 of the CSA, in conjunction with section 303 of the CSA, I am to consider evidence of Respondent Pharmacy's compliance (or non-compliance) with laws related to controlled substances and experience dispensing controlled substances in determining whether Respondent Pharmacy's continued registration is ''consistent with the public interest.'' 21 U.S.C. 824(a)(4). ''[A] registrant's 'ignorance of the law is no excuse' for actions that are inconsistent with responsibilities attendant upon a registration.'' *Daniel A. Glick, D.D.S.,* 80 FR 74,800, 74,809 (2015) (quoting *Sigrid Sanchez, M.D.,* 78 FR 39,331, 39,336 (2013)). Instead, ''[a]ll registrants are charged with knowledge of the CSA, its implementing regulations, as well as applicable state laws and rules.'' *Id.* at 74,809 (internal citations omitted). Further, the Agency has consistently concluded that a pharmacy's registration is subject to revocation due to the unlawful activity of the pharmacy's owners, majority shareholders, officers, managing pharmacist, or other key employees. *EZRX, LLC,* 69 FR 63,178, 63,181 (2004); *Plaza Pharmacy,* 53 FR 36,910, 36,911 (1988).

In this matter, the Government alleged and presented evidence that Respondent Pharmacy committed several recordkeeping violations. The CSA recognizes that controlled substances are fungible and that a truly closed system requires that certain records and inventories be kept by all registrants who either generate or take custody of controlled substances in any phase of the distribution chain until they reach the ultimate user. *Satinder Dang, M.D.,* 76 FR 51,424, 51,429 (2011) (''Recordkeeping is one of the central features of the CSA's closed system of distribution.'') (internal citations omitted); *Paul H. Volkman,* 73 FR 30,630, 30,644 (2008), *pet. for rev. denied* 567 F.3d 215, 224 (6th Cir. 2009) (''Recordkeeping is one of the CSA's central features; a registrant's accurate and diligent adherence to this obligation is absolutely essential to protect against the diversion of controlled substances.''). The OSC alleged that Respondent Pharmacy violated multiple federal laws related to the proper completion and maintenance of records. Specifically, the government alleged and established that Respondent Pharmacy did not properly document its inventories, did not properly complete multiple 222 Forms, failed to record the receipt date of Schedule III through V controlled substances, and failed to properly maintain invoices, records of returns, and other records. *Supra* Section II.D.1.

1. Inventory Documentation Failures

With regard to Respondent Pharmacy's May 25, 2016 biennial inventory, the Government alleged that Respondent Pharmacy failed to record whether the inventory was conducted at the beginning or end of the business day, in violation of 21 CFR 1304.11(a) and (c). 21 CFR 1304.11(c) requires respondents to ''take a new inventory of all stocks of controlled substances on hand at least every two years,'' and § 1304.11(a) provides that each biennial inventory ''be taken either as of opening of business or as of the close of business on the inventory date and it shall be indicated on the inventory.'' It is uncontroverted that Respondent Pharmacy failed to record on the May 25, 2016 biennial inventory, whether the inventory was conducted at the opening or closing of the business day. *Supra* Section II.D.1.a.

Regarding both the May 25, 2016 biennial inventory and Respondent Pharmacy's October 24, 2017 inventory, the Government alleged that Respondent Pharmacy failed to separate

[21] As to Factor One, there is no evidence in the record to suggest that Respondent Pharmacy did not have a Texas license, *see* RFAAX 1, at 3, and there is no evidence in the record of any recommendation from Respondent's state licensing board or professional disciplinary authority. 21 U.S.C. 823(f)(1). State authority to practice medicine is ''a necessary, but not a sufficient condition for registration. . . .'' *Robert A. Leslie, M.D.,* 68 FR at 15,230. Therefore, ''[t]he fact that the record contains no evidence of a recommendation by a state licensing board does not weigh for or against a determination as to whether continuation of Respondent's DEA certification is consistent with the public interest.'' *Roni Dreszer, M.D.,* 76 FR 19,434, 19,444 (2011).

As to Factor Three, there is no evidence in the record that Respondent Pharmacy's owner or any of its employees have been convicted of an offense under either federal or state law ''relating to the manufacture, distribution, or dispensing of controlled substances.'' 21 U.S.C. 823(f)(3). However, as Agency cases have noted, there are a number of reasons why a person who has engaged in criminal misconduct may never have been convicted of an offense under this factor, let alone prosecuted for one. *Dewey C. MacKay, M.D.,* 75 FR 49,956, 49,973 (2010). Agency cases have therefore held that ''the absence of such a conviction is of considerably less consequence in the public interest inquiry'' and is therefore not dispositive. *Id.*

Schedule II controlled substances from Schedule III through V controlled substances in violation of 21 CFR 1304.04(h)(1). 21 CFR 1304.04(h)(1) states that registered pharmacies must maintain ''[i]nventories and records of all controlled substances listed in Schedule I and II . . . separately from all other records of the pharmacy.'' Here, it is uncontested that Respondent Pharmacy's May 25, 2016 biennial inventory and its October 24, 2017 inventory both comingled Schedule II controlled substances such as hydrocodone with Schedule III–V controlled substances such as alprazolam and carisoprodol. *Supra* Section II.D.1.a.

I find, therefore, that there is substantial record evidence that Respondent Pharmacy failed to properly prepare its inventory records and, therefore, violated 21 CFR 1304.04(h)(1) and 1304.11(a)&(c).

2. Improperly Completed 222 Forms

Next, the Government alleges and I find that Respondent Pharmacy, as a purchaser of controlled substances, failed to properly complete and execute multiple 222 Forms. First, 21 CFR 1305.12(a) requires purchasers to prepare and execute 222 Forms. As I have already found, four of Respondent Pharmacy's 222 Forms did not include required information, such as the number of packages, size of package, and name of item. *Supra* Section II.D.1.b. Second, 21 CFR 1305.12(b) required Respondent Pharmacy to note at the bottom of the Form 222 ''[t]he number of lines completed.'' I have already found that the ''Last Line Completed'' section was left blank on one of the 222 Forms at issue. *Supra* Section II.D.1.b. Third, under 21 CFR 1305.12(c), Respondent Pharmacy was required to include the ''name and address of the supplier from whom the controlled substances are being ordered'' on the 222 Forms, and I have found that information missing from one of the 222 Forms at issue. 21 CFR 1305.12(c); *supra* Section II.D.1.b. Fourth, 21 CFR 1305.12(d) provides that ''[e]ach DEA Form 222 must be signed and dated[,]'' and I have found that one of the 222 Forms at issue was not signed. *Supra* Section II.D.1.b.

The Government also alleged, and I find, that Respondent Pharmacy violated 21 CFR 1305.13(e). Under 21 CFR 1305.13(e), Respondent Pharmacy was required to ''record on Copy 3 of the DEA Form 222 the number of commercial or bulk containers furnished on each item and the dates on which the containers are received by the purchaser.'' I have found that Respondent Pharmacy received controlled substances but failed to record the ''No. of Packages Received'' and ''Date Received'' sections corresponding to those controlled substances, on ten of the 222 Forms at issue. *Supra* Section II.D.1.b.

I find, therefore, that there is substantial record evidence that Respondent Pharmacy failed to properly complete and execute multiple 222 Forms in violation of 21 CFR 1305.12 and 1305.13(e).

3. Failure To Maintain Record of Receipt Date

The Government also alleged that Respondent Pharmacy violated 21 CFR 1304.21(a) and (d) and 1304.22(a)(2)(iv) and (c) when it failed to record the date it received controlled substance shipments. Under 21 CFR 1304.21(a), Respondent Pharmacy was required to maintain ''a complete and accurate record of each substance . . . received [or] sold, . . . and [of] returned mail-back package[s.]'' Under 21 CFR 1304.21(d), Respondent Pharmacy was required to maintain a record of the date each controlled substance was received, sold, or returned. For the purposes of controlled substances on Schedules III–V, the received date is generally recorded on invoices or packing slips. *See* 21 CFR 1304.21(d); *see also Rene Casanova, M.D.,* 77 FR 58,150, 58,153 and 58,161 (2012). 21 CFR 1304.22(c), which incorporates § 1304.22(a)(2)(iv) also requires that Respondent Pharmacy record the ''date of and number of units and/or commercial containers in each acquisition to inventory.'' 21 CFR 1304.22(a)(2)(iv).

I have already found that Respondent Pharmacy failed to record the receipt date for eight shipments of controlled substances on the accompanying shipment invoices or packing slips. *Supra* Section II.D.1.c. Respondent Pharmacy thus failed to comply with its obligation to maintain an accurate record of each controlled substance it received in violation of 21 CFR 1304.21(a) and (d) and 1304.22(a)(2)(iv) and (c).

4. Improper Maintenance of Records Including Invoices and Returns

Also relevant to Factors Two and Four, Respondent Pharmacy is required to ''maintain, on a current basis, a complete and accurate record of each substance . . . received, sold, delivered, . . . or otherwise disposed of by [it], and each . . . unused and returned mail-back package, except that no registrant shall be required to maintain a perpetual inventory.'' 21 CFR 1304.21(a). As previously discussed, Respondent Pharmacy's records related to the receipt of Schedule III–V controlled substances were generally recorded on invoices or packing slips which were maintained by the pharmacy. RFAAX 20–22, 24, 26–28; 21 CFR 1304.21(d). Respondent Pharmacy kept records of controlled substances it sold or distributed in both electronic and handwritten prescription logs. RFAAX 16–19; 21 CFR 1304.22(c). DI declared that using Respondent Pharmacy's records, she ''conducted accountability audits that revealed that [Respondent Pharmacy] failed to keep complete and accurate records of controlled substances maintained.'' RFAAX 47, at 13; *supra* Section II.D.1.d. More specifically, the audit revealed that Respondent Pharmacy had surpluses and shortfalls of various controlled substances and demonstrated that not all ''controlled substances [were] accounted for in [Respondent Pharmacy's] records and physical inventory.'' RFAAX 47, at 14; *supra* Section II.D.1.d.

In evaluating shortages under Factor Four, the Agency has held that, ''[w]hether the shortages are attributable to outright diversion by either pharmacy or store employees, theft, or the failure to maintain accurate records, does not matter.'' *Ideal Pharmacy Care,* 76 FR at 51,416. As the Agency has explained, the ''inability to account for [a] significant number of dosage units creates a grave risk of diversion.'' *Fred Samimi,* 79 FR 18,698, 18,712 (2014). The Agency has also made it clear that it is not only concerned with shortages, but that overages are equally indicative that a pharmacy registrant has ''failed to maintain complete and accurate records as required by the CSA.'' *Superior Pharmacy,* 81 FR at 31,341; *see also Hills Pharmacy,* 81 FR at 49,843–45 (considering allegations of overages and shortages). In short, what matters to the public interest inquiry is the fact that Respondent could not account for a significant number of controlled substances by adequate documentation. *Ideal Pharmacy Care, Inc., d/b/a Esplanade Pharmacy,* 76 FR 51,415, 51,416 (2011).

Here, the Government took the additional step of identifying in evidence some of the specific documentation that Respondent Pharmacy was not able to produce. DI ''cross-verified records maintained by [Respondent Pharmacy] ([RFAAX] 20–28) with those obtained from the various suppliers ([RFAAX] 29–32).'' *Id.* This effort established, as I found above, that Respondent Pharmacy failed to maintain invoices or perchance orders documenting the receipt of seven

Schedule III–V [22] controlled substance orders. *Supra* Section II.D.1.d. I further found that Respondent Pharmacy failed to maintain a record of return. *Id.*

In short, through both the audit which generally established that Respondent Pharmacy was missing records and through specifically identified missing records, I find that Respondent Pharmacy failed to comply with its obligation to maintain complete and accurate records in violation of 21 CFR 1304.21(a).

B. Factor Five

Under Factor Five, the Administrator is authorized to consider ''[s]uch other conduct which may threaten the public health and safety.'' 5 U.S.C. 823(f)(5). Although Factor Five is broad, DEA decisions have qualified its breadth by limiting the considerations made under that factor to those where there is ''a substantial relationship between the conduct and the CSA's purpose of preventing drug abuse and diversion.'' *Zvi H. Perper, M.D.,* 77 FR 64,131, 64,141 (2012) (citing *Tony T. Bui,* 75 FR 49,979, 49,988 (2010)). ''Candor during DEA investigations, regardless of the severity of the violations alleged, is considered by the DEA to be an important factor when assessing whether a physician's registration is consistent with the public interest.'' *Jerri Hassman, M.D.,* 75 FR 8194, 8236 (2010) (internal citations and quotations omitted); *see also David A. Hoxie, M.D.,* v. *Drug Enf't Admin.,* 419 F.3d 477, 483 (6th Cir. 2005). It is appropriate to consider lack of candor allegations under Factor Five when the alleged conduct raises a probable or possible threat to public safety. *See e.g. Annicol Marrocco, M.D.,* 80 FR 28,695, 28,705 (2015) (analyzing under Factor Five the allegation that respondent's testimony regarding prescriptions issued to a particular individual, including prescriptions issued following a claim that the individual's pet monkey opened the bottle and threw the pills in the pool, lacked candor); *Ajay S. Ahuja, M.D.,* 84 FR 5479, 5494–95 (2019) (analyzing under Factor Five allegations of an attempt to mislead DEA investigators, but declining to analyze a simple statement of opinion made by the respondent under factor five); *Island Wholesale, Inc.,* 68 FR 17,406, 17,407 (2003) (analyzing under Factor Five the allegation that respondent provided a false customer list to DEA investigators). The Government alleged that Respondent Pharmacy's lack of candor is ''inconsistent with the public interest'' and constitutes ''other such conduct which may threaten the public health and safety.'' RFAA at 15 (*citing* 21 U.S.C. 823(f)(5)). I agree and find that Respondent's alleged lack of candor impeded a DEA investigation.

The Respondent Pharmacy lacked candor with regard to the fraudulent prescriptions filled between May 25, 2018, and May 26, 2018. As I found above, Respondent Pharmacy took multiple steps to conceal its filling of prescriptions that it clearly knew or should have known were fraudulent. *Supra* Section II.D.2. Respondent Pharmacy initially provided a distribution log, omitting material portions of the requested timeframe, that supported the Pharmacy's narrative that it had not filled any prescriptions since DEA's prior inspection. *Id.* And then when the pharmacy's own records showed that prescriptions it should have known to be fraudulent were filled, Respondent Pharmacy attempted to contradict its records by saying that SI had taken the prescriptions and they were not filled. *Id.* There can be no question here that Respondent Pharmacy lacked candor.[23] Further, lack of candor during a DEA investigation about filling fraudulent prescriptions constitutes a threat to the public health and safety.

Additionally, the OSC alleged that during the May 24, 2018 inspection, Respondent Pharmacy falsely stated that all controlled substances had been identified when controlled substances were actually still hidden throughout the pharmacy. As I have found, PIC Kumenda informed DEA that she had counted all of the controlled substances in Respondent Pharmacy's inventory. *Supra* Section II.D.2. But when DEA identified discrepancies in the May 24, 2018 inventory, Ms. Barry stated that ''PIC Kumenda hides drugs in the pharmacy to avoid thefts, and instructed her to go back and find more drugs.'' *Id.* On multiple occasions thereafter, PIC Kumenda located more controlled substances throughout the pharmacy in sandwiches bags or wrapped up in wadded paper, represented to DEA that she had now identified all of Respondent Pharmacy's controlled substances. *Id.* However, she was still able to find more upon discovering that discrepancies remained. *Id.*

''[A] DEA registrant is obligated at all times to act in the public interest.'' *Peter F. Kelly, D.P.M.,* 82 FR 28,676, 28,688 (2017). Respondent Pharmacy's layered efforts to conceal its filling of known fraudulent prescriptions and to physically hide controlled substances that were not immediately locatable for DEA's investigation actively impeded DEA's investigation. I find that Respondent Pharmacy impeded DEA's investigation and in doing so, threatened public health and safety.

C. Summary of the Public Interest Factors

As found above, Respondent Pharmacy violated numerous federal record keeping requirements related to controlled substances and lacked candor. Thus, I conclude that Respondent Pharmacy has engaged in misconduct which supports the revocation of its registration. I therefore hold that the Government has established a *prima facie* case that Respondent Pharmacy's continued registration ''would be inconsistent with the public interest.'' 21 U.S.C. 823(f).

IV. Sanction

Where, as here, the Government has met its *prima facie* burden of showing that the respondent's continued registration is inconsistent with the public interest, the burden shifts to the respondent to show why it can be entrusted with the responsibility carried by its registration. *Garret Howard Smith, M.D.,* 83 FR 18,882, 18,910 (2018) (citing *Samuel S. Jackson,* 72 FR 23,848, 23,853 (2007)). DEA cases have repeatedly found that when a registrant has committed acts inconsistent with the public interest, ''the Respondent is required not only to accept responsibility for [the established] misconduct, but also to demonstrate what corrective measures [have been] undertaken to prevent the reoccurrence of similar acts.'' *Holiday CVS,* 77 FR at 62,339 (internal quotations omitted). *See, also, Hoxie* v. *Drug Enf't Admin.,* 419 F.3d 477, 483 (6th Cir. 2005); *Ronald Lynch, M.D.,* 75 FR 78,745, 78,749, 78,754 (2010) (holding that

[22] 21 CFR 1305.13(e) explicitly requires that the receipt date for Schedule II controlled substances be recorded on the Form 222 order form. I do not see a requirement that an invoice containing only Schedule II controlled substances has to be maintained. *Morning Star Pharmacy and Medical Supply 1,* 85 FR 51,045, 51,049 (2020) (''In contrast to schedules III–V, pharmacies must record the date they receive schedule II substances on either the 222 Form or in CSOS, whichever was used to order the drugs—pharmacies are not required to also record the date of receipt for schedule II substances on the invoice.'').

[23] I have found that the substantial evidence in the record shows that the Respondent Pharmacy's owner lacked candor when she told DI that the fraudulent prescriptions had not been filled (in effect finding that Respondent Pharmacy's records saying the prescriptions were filled were more reliable than the owner's representations). *Supra,* II.D.2. However, if *arguendo* Respondent Pharmacy did not actually fill the fraudulent prescriptions, then Respondent Pharmacy made a misrepresentation to the Texas PMP in reporting them as filled. Either way, Respondent Pharmacy lacked candor with regard to the filling (or not) of these fraudulent prescriptions.

respondent's attempts to minimize misconduct undermined acceptance of responsibility); *Medicine Shoppe-Jonesborough,* 73 FR 364, 387 (2008) (noting that the respondent did not acknowledge recordkeeping problems, let alone more serious violations of federal law, and concluding that revocation was warranted).

The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual respondent; therefore, the Agency looks at factors, such as the acceptance of responsibility and the credibility of that acceptance as it relates to the probability of repeat violations. *Jeffrey Stein, M.D.,* 84 FR 46,968, 46,972 (2019). A registrant's candor during the investigation and hearing is an important factor in determining acceptance of responsibility and the appropriate sanction, *Garret Howard Smith, M.D.,* 83 FR at 18,910 (collecting cases); as is whether the registrant's acceptance of responsibility is unequivocal, *Lon F. Alexander, M.D.,* 82 FR 49,704, 49,728 (2017) (collecting cases). In determining whether and to what extent a sanction is appropriate, consideration must be given to both the egregiousness of the offense established by the Government's evidence and the Agency's interest in both specific and general deterrence. *Wesley Pope,* 82 FR 14,944, 14,985 (2017) (citing *Joseph Gaudio,* 74 FR 10,083, 10,095 (2009)); *David A. Ruben, M.D.,* 78 FR 38,363, 38,364 (2013). *Cf. McCarthy* v. *SEC,* 406 F.3d 179, 188–89 (2d Cir. 2005) (upholding SEC's express adoption of ''deterrence, both specific and general as a component in analyzing the remedial efficacy of sanctions.'').

Here, Respondent Pharmacy has presented no evidence on the record that I could consider as accepting responsibility. I have considered the written response, which denies any misconduct, stating multiple times that it ''would be impossible'' for ''the medications [to be] short of the original count[s],'' and asserting that ''we were far from deceit when we talked to [DEA].'' RFAAX 3, at 2–3. The written response further seems to pass blame for the findings of violations against Respondent Pharmacy onto the DEA—claiming that DEA ''raided the pharmacy,'' on a ''witch hunt waged against [Respondent] Pharmacy'' arising from ''hatred toward the owner.'' *Id.* at 2. It is clear from the written response that Respondent Pharmacy has not accepted responsibility for its actions.

I have also considered the proposed Corrective Action Plan that the Government submitted into the record. RFAAX 4. The proposed Corrective Action Plan does not include any acceptance of responsibility; rather it proposes policies that essentially mirror the requirements already existing in law. *Id.* Even if I were to consider remedial measures, in spite of Respondent Pharmacy's complete lack of acceptance of responsibility, these proposed remedial measures are insufficient to convince me to entrust Respondent Pharmacy with a registration. 21 U.S.C. 824(c)(3); *see also Melanie Baker, N.P.,* 86 FR 23,998, 24,011 (2021) (*citing Jones Total Health Care Pharmacy, L.L.C.,* 81 FR 79,188, 79,202–03 2016).

Moreover, Respondent Pharmacy's found lack of candor during the investigation demonstrates an unwillingness to cooperate with this agency in future compliance inspections. Truthful cooperation with agency requests for information ensures that agency officials can easily monitor and ensure compliance with the CSA and help to correct violations. *See Jeffrey Stein, M.D.,* 84 FR 46,968, 46,973 (2019) (finding that a registrant's honesty during law enforcement regulations is ''crucial to the Agency's ability to complete its mission of preventing diversion within such a large regulated population''). In order to entrust Respondent Pharmacy with a registration, I need to know that its personnel will not repeat their dishonest behavior, and in this case, Respondent Pharmacy has given me no reason to believe that I can trust it with a registration.

In sanction determinations, the Agency has historically considered its interest in deterring similar acts, both with respect to the respondent in a particular case and the community of registrants. *See Joseph Gaudio, M.D.,* 74 FR 10,083, 10,095 (2009); *Singh,* 81 FR at 8248. I find that considerations of both specific and general deterrence weigh in favor of revocation in this case. There is simply no evidence that Respondent Pharmacy's egregious behavior is not likely to recur in the future such that I can entrust it with a CSA registration; in other words, the factors weigh in favor of revocation as a sanction. Accordingly, I shall order the sanctions the Government requested, as contained in the Order below.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration FL4375730 issued to Creekbend Community Pharmacy. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending application of Creekbend Community Pharmacy to renew or modify this registration. This order is effective August 27, 2021.

Anne Milgram,

Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

William Ralph Kinkaid, M.D.; Decision and Order

On November 7, 2018, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to William Ralph Kinkaid, M.D. (hereinafter, Respondent), of Johnson City, Tennessee. Order to Show Cause (hereinafter, OSC), at 1. The OSC proposed the denial of Respondent's application for DEA Certificate of Registration, Control No. W18085586C, because Respondent was ''mandatorily excluded . . . from participation in Medicare, Medicaid, and all Federal health care programs pursuant to 42 U.S.C. 1320a–7(a)'' and that such exclusion ''warrants denial of [Respondent's] application pursuant to 21 U.S.C. 824(a)(5).'' *Id.* at 1–2 (citing *Richard Hauser, M.D.,* 83 FR 26,308 (2018)).

Specifically, the OSC alleged that, on June 24, 2013, the United States District Court for the Eastern District of Tennessee (hereinafter, E.D. Tenn.) issued a judgment against Respondent ''after [Respondent] pled guilty to one count of 'Receiving in Interstate Commerce a Misbranded Drug with Intent to Defraud or Mislead,' in violation of 21 U.S.C. 331(c).'' *Id.* at 2 (citing *U.S.* v. *William Ralph Kinkaid,* No. 2:12–CR–116 (E.D. Tenn. June 24, 2013)). The OSC further alleged that ''based on [Respondent's] conviction, the U.S. Department of Health and Human Services, Office of Inspector General (''HHS/OIG''), mandatorily excluded [Respondent] from participation in Medicare, Medicaid, and all Federal health care programs pursuant to 42 U.S.C. 1320a–7(a)'' effective June 28, 2013, for a period of ten years. *Id.*

The OSC notified Respondent of the right to request a hearing on the allegations or to submit a written statement, while waiving the right to a hearing, the procedures for electing each

option, and the consequences for failing to elect either option. *Id.* (citing 21 CFR 1301.43). The OSC also notified Respondent of the opportunity to submit a corrective action plan. *Id.* at 2–3 (citing 21 U.S.C. 824(c)(2)(C)).

Respondent submitted a Waiver of Hearing, Statement/Response to Order to Show Cause, and Corrective Action Plan dated December 5, 2018 (hereinafter, Response to the OSC). Request for Final Agency Action Exhibit (hereinafter, RFAAX) 7. On January 10, 2019, DEA issued a letter to Respondent denying his proposed Corrective Action Plan. RFAAX 8.

The Government submitted a Request for Final Agency Action (hereinafter, RFAA), along with Respondent's Response to the OSC and the evidentiary record, for adjudication on May 30, 2019. I issue this Decision and Order based on the record submitted by the Government, which includes Respondent's Response to the OSC, and constitutes the entire record before me. 21 CFR 1301.43(e).

I. Findings of Fact

a. Respondent's Application for DEA Registration

On August 6, 2018, Respondent submitted an application (Application Control No. W18085586C) for a DEA Certificate of Registration, at the proposed registered location of 193 Keefauver Road, Johnson City, TN 37615 for a practitioner with drug schedules II–V. RFAAX 1 (Certification of Registration Status). The application is in pending status. *Id.* Respondent previously held DEA Certificates of Registration Nos. BK2452819 and FK2770320, which are in retired status. *Id.*

b. Respondent's Criminal Conviction

The evidence in the record demonstrates that, on June 24, 2013, judgment was entered against Respondent following a guilty plea in E.D. Tenn. based on one count of ''Receiving in Interstate Commerce a Misbranded Drug With Intent to Defraud or Mislead'' in violation of 21 U.S.C. 331(c). RFAAX 4 (Judgment, *U.S.* v. *William Ralph Kinkaid,* No. 2:12–CR–116 (E.D. Tenn. June 24, 2013)). In Respondent's guilty plea, he stipulated to a number of facts, which satisfied the offense elements. RFAAX 3 (Plea Agreement, *U.S.* v. *William Ralph Kinkaid,* No. 2:12–CR–116 (E.D. Tenn. June 24, 2013)). In summary, Respondent admitted that he was majority owner and managing partner of McLeod Cancer and Blood Center in Johnson City, Tennessee (hereinafter, McLeod Cancer). *Id.* at 2. McLeod Cancer bought misbranded, unapproved prescription drugs, which were prescribed by Respondent and other doctors and administered to patients at McLeod Cancer from approximately September 2007 to early 2008 and from August 2009 to February 2012. *Id.* at 2, 5. The drugs were from foreign sources that were not inspected and approved by the U.S. Food and Drug Administration for distribution or use in the United States. *Id.* at 2–5. McLeod Cancer sought reimbursement for the drugs and their administration from Medicare, Medicaid, and other health benefit programs. *Id.* at 2. After nurses at McLeod Cancer raised concerns that the drugs were not approved for use in the United States, McLeod Cancer briefly stopped purchasing the drugs. *Id.* at 5–6. When McLeod Cancer resumed purchasing the unapproved drugs, they had the drugs shipped to a storage business that Respondent owned to prevent the nurses from learning McLeod Cancer was again purchasing unapproved foreign drugs. *Id.* at 6.

As a result of his conviction, Respondent was sentenced to 24 months in federal detention, followed by a year of supervised release. RFAAX 4, at 2–3. He was also fined $10,000 and assessed $100 in costs. *Id.* at 4.

c. Respondent's Exclusion

In June 2013, Respondent entered into a Settlement Agreement with the United States of America, in which he agreed ''to be excluded under [42 U.S.C. 1320a–7(a)(1) and 42 U.S.C. 1320a–7(b)(7)] from Medicare, Medicaid, and all Federal health care programs, as defined in 42 U.S.C. 1320a–7b(f), for a period of ten (10) years.'' RFAAX 5 (Settlement Agreement), at 7. Respondent also agreed to pay $2,550,000 to the United States and to the State of Tennessee in damages and penalties. *Id.* at 3.

d. Respondent's State Medical License

On July 22, 2015, the Tennessee Department of Health held a hearing regarding Respondent's state medical license. Response to the OSC, Ex. 10 (Deliberations and Decision of the Panel, *State of Tennessee Board of Medical Examiners* v. *William Kincaid, M.D.*). At the hearing, the panel voted to revoke Respondent's license. *Id.* In the transcript from the hearing, the two panelists who voted to revoke Respondent's license explained that they were voting for revocation because Respondent had knowingly violated the law, *id.* at 4, 8, 13; had placed business interests ahead of his responsibilities to his patients, *id.* at 5–6; and the discipline ''should reflect the severity of what he did,'' *id.* at 14. The panel, however, did not vote for a permanent revocation. One of the panelists explained her vote for non-permanent revocation this way, ''I believe that the doctor is a good doctor who should be rehabilitated, but it's up to him to rehabilitate himself for at least a year and come back.'' *Id.* at 13.

Respondent reapplied for a state medical license, and the State of Tennessee decided to grant him a limited medical license under a preceptorship on October 4, 2017. Response to the OSC, Ex. 12 (Oct. 4, 2017 Letter from Tennessee Board of Medical Examiners). The State of Tennessee subsequently granted Respondent a medical license on July 24, 2018. Response to the OSC, Ex. 13 (Respondent's Medical License).

II. Discussion

a. The Parties' Positions

i. Government's Position

The OSC's sole allegation is that Respondent's exclusion from all federal health care programs pursuant to 42 U.S.C. 1320a–7(a) warrants denying his application under 21 U.S.C. 824(a)(5). OSC, at 2. The Government alleges that Respondent's exclusion was based on his guilty plea to one count of ''Receiving in Interstate Commerce a Misbranded Drug With Intent to Defraud or Mislead'' in violation of 21 U.S.C. 331(c). RFAA, at 1. The Government further alleges that Respondent's exclusion from Medicare, Medicaid, and all Federal health care programs warrants denial of his application notwithstanding the fact that the underlying conduct that led to his exclusion did not have a nexus to controlled substances. OSC, at 2.

The Government argues that 21 U.S.C. 824(a)(5) should be read ''as requiring revocation (or denial) of a respondent's DEA certificate of registration (or application), upon an adequate showing of the factual predicate, at least for the duration of the mandatory exclusion.'' RFAA, at 4. Accordingly, the Government has presented evidence that Respondent is excluded from participation in Federal health care programs pursuant to 42 U.S.C. 1320a–7(a) but has not presented any additional evidence or arguments regarding why Respondent's application for registration should be denied.

ii. Respondent's Position

Respondent filed a written statement in response to the Government's OSC. Respondent's Response to the OSC included a number of exhibits with

documentary evidence to support his arguments, a first-person statement written from Respondent to the Tennessee Board of Medical Examiners, and dozens of letters that members of Respondent's community wrote on Respondent's behalf to the judge in Respondent's criminal case prior to sentencing. Respondent does not contest the Government's allegation that he is excluded from Federal health care programs pursuant to 42 U.S.C. 1320a–7(a). Respondent acknowledges that on June 24, 2013, he was convicted of receiving in interstate commerce a misbranded drug in violation of 21 U.S.C. 331(c) and that as a result of that conviction, he was ''mandatorily excluded from all Federal healthcare programs by HHS/OIG for ten years from the date of conviction.'' Response to the OSC, at 1. Respondent argues, however, that DEA should grant his application for a controlled substances registration in spite of his exclusion.

Respondent's Response to the OSC outlines his education and employment history, provides ''background'' information on his criminal offense, and discusses the loss of his state medical license and his re-licensure.[1] In his first-person statement, Respondent briefly described how he came to be the senior partner and business manager for his clinic, McLeod Cancer. Respondent stated that he was ''ill-equipped as the business manager'' and that when the clinic hired a business manager, he thought ''[his] management problems were over.'' Response to the OSC, Ex. 1. Respondent then stated, however, ''[l]ittle did I know I was sowing the seeds of my own destruction. I let [the business manager] do as he pleased, not realizing the full extent of the consequences and the depth of his treachery.'' *Id.*

Respondent states that after hiring the business manager, McLeod Cancer decided to purchase drugs from a particular supplier because they were ''cost-effective,'' but stopped because ''of concerns about applicable FDA regulations and laws.'' Response to the OSC, at 3. The McLeod Cancer physicians and business manager then sought a legal opinion from a private attorney ''on whether purchasing drugs from Canada for use in the United States was illegal.'' *Id.* Respondent submitted the attorney's response to the record as an exhibit to his Response to the OSC. *Id.* at Ex. 3. After receiving the attorney's opinion, Respondent decided to resume purchasing drugs from the supplier. *Id.* at Ex. 4, at 3. Respondent states that he ''interpreted the opinion paper as approving the practice,'' but now admits ''he was wrong and did not understand the possible significance of a 'technical violation' and resulting consequences.'' *Id.*

b. Analysis of Respondent's Application for Registration

In this matter, the OSC calls for my adjudication of the application for registration based on the charge that Respondent was excluded from participation in a program pursuant to section 1320a–7(a) of Title 42, which is a basis for revocation or suspension under 21 U.S.C. 824(a)(2). OSC, at 1–2. The OSC does not allege that granting Respondent's application would be inconsistent with the public interest based on consideration of the factors in 21 U.S.C. 823(f)(1) through (5) (hereinafter, the public interest factors).

Prior Agency decisions have addressed whether it is appropriate to consider a provision of 21 U.S.C. 824(a) when determining whether or not to grant a practitioner registration application. For over forty-five years, Agency decisions have concluded that it is. *Robert Wayne Locklear, M.D.,* 86 FR 33,738, 33,744–45 (2021) (collecting cases). In the recent decision *Robert Wayne Locklear, M.D.,* the former Acting Administrator stated his agreement with the results of these past decisions and reaffirmed that a provision of section 824 may be the basis for the denial of a practitioner registration application. 86 FR at 33,745. He also clarified that allegations related to section 823 remain relevant to the adjudication of a practitioner registration application when a provision of section 824 is involved. *Id.*

Accordingly, when considering an application for a registration, I will consider any allegations related to the grounds for denial of an application under 823 and will also consider any allegations that the applicant meets one of the five grounds for revocation or suspension of a registration under section 824. *Id. See also Dinorah Drug Store, Inc.,* 61 FR 15,972, 15,973–74 (1996).

i. 21 U.S.C. 823(f): The Five Public Interest Factors

Pursuant to section 303(f) of the CSA, ''[t]he Attorney General shall register practitioners . . . to dispense . . . controlled substances . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Section 303(f) further provides that an application for a practitioner's registration may be denied upon a determination that ''the issuance of such registration . . . would be inconsistent with the public interest.'' *Id.* In making the public interest determination, the CSA requires consideration of the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(f).

In this case, it is undisputed that Respondent holds a valid state medical license and is authorized to dispense controlled substances in the State of Tennessee where he practices. Response to the OSC, Ex. 12, 13. The Government did not allege that Respondent's registration would be inconsistent with the public interest pursuant to section 823 in the OSC and did not advance any arguments or present any evidence under the public interest factors in its RFAA. *See* RFAA; RFAAX 2. Instead, the Government based its case in section 824 alleging that Respondent's conviction of receiving a misbranded drug with intent to defraud or mislead and his subsequent exclusion from federal health care programs by the U.S. Department of Health and Human Services merit the denial of his registration under 21 U.S.C. 824(a)(5). RFAA, at 1–4. Because the Government has not alleged that Respondent's registration is inconsistent with the public interest under section 823, I will not deny Respondent's application based on section 823, and although I have considered 823, I will not analyze Respondent's application under the

[1] Respondent also included descriptions of the Department of Justice's conduct during its investigation and prosecution of his criminal case and dedicated a full page of his seven-page Response to the OSC (and attached dozens of pages of exhibits) to a criminal case that is unrelated, but Respondent states is factually similar, to Respondent's criminal case. Respondent presented documentation that, in this unrelated case, the Department of Justice moved to dismiss the case with prejudice when the defendants appealed their conviction. *See* Response to the OSC, at 3–5; Ex. 9 (Motion to Vacate Judgments of Conviction and Remand for Dismissal of Indictment with Prejudice, *United States of America* v. *Patricia Posey Sen and Anindya Kumar Sen,* Nos. 14–5786 (6th Cir. December 15, 2014). I am not addressing these portions of Respondent's Response to the OSC because this is not the proper forum to appeal Respondent's criminal conviction or to address any grievances Respondent may have regarding actions taken by the Department of Justice in relation to Respondent's criminal case.

public interest factors. Therefore, in accordance with prior agency decisions, I will move to assess whether the Government has proven by substantial evidence that a ground for revocation exists under 21 U.S.C. 824(a). *Supra* II.b.

ii. 21 U.S.C. 824(a)(5): Mandatory Exclusion From Federal Health Care Programs Pursuant to 42 U.S.C. 1320a–7(a)

Under Section 824(a) of the Controlled Substances Act (hereinafter, CSA), a registration ''may be suspended or revoked'' upon a finding of one or more of five grounds. 21 U.S.C. 824. The ground in 21 U.S.C. 824(a)(5) requires that the registrant ''has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320a–7(a) of Title 42.'' *Id.* Here, there is no dispute in the record that Registrant is mandatorily excluded from federal health care programs under 42 U.S.C. 1320a–7(a). The Government has presented substantial evidence of Respondent's exclusion and the underlying criminal conviction that led to that exclusion, and Respondent has admitted to the same. RFAAX 4, 5; Response to the OSC, at 1. I will, therefore, sustain the Government's allegation that Respondent has been excluded from participation in a program pursuant to section 1320a–7(a) of Title 42 and find that the Government has established that a ground exists upon which a registration could be revoked pursuant to 21 U.S.C. 824(a)(5).[2]

Although the language of 21 U.S.C. 824(a)(5) discusses suspension and revocation of a registration, for the reasons discussed above, it may also serve as the basis for the denial of a DEA registration application. *Robert Wayne Locklear, M.D.,* 86 FR at 33,745–46; *Dinorah Drug Store, Inc.,* 61 FR at 15,973 (interpreting 21 U.S.C. 824(a)(5) to serve as a basis for the denial of a registration because it ''makes little sense . . . to grant the application for registration, only to possibly turn around and propose to revoke or suspend that registration based on the registrant's exclusion from a Medicare program''). Accordingly, Respondent's exclusion from participation in a program under 42 U.S.C. 1320a–7(a) serves as an independent basis for denying his application for DEA registration. 21 U.S.C. 824(a)(5).

III. Sanction

The Government can meet its burden in a case involving a registrant who has been excluded from federal health care programs simply by showing evidence of the exclusion and the underlying conviction. Further, DEA has long held that the underlying conviction forming the basis of a registrant's mandatory exclusion from participation in Federal health care programs need not involve controlled substances for DEA to issue a sanction pursuant to 21 U.S.C. 824(a)(5). *Jeffrey Stein, M.D.,* 84 FR 46,968, 46,971–71 (2019); *Richard Hauser, M.D.,* 83 FR at 26,310.

The Government argues that in cases brought pursuant to 21 U.S.C. 824(a)(5), the statutory language *requires* DEA to revoke a respondent's registration (or deny a respondent's application) once the Government has proven that a respondent is mandatorily excluded from participation in Federal health care programs and that DEA should not permit a respondent to have a DEA registration for as long as the respondent is excluded. RFAA, at 4. Since the Government filed the RFAA, however, the Agency issued a Decision and Order in another exclusion case, in which the Government made the same argument, *Jeffrey Stein, M.D.,* that directly addressed and rejected the Government's argument. 84 FR 46,968 (2019); *see also Kansky J. Delisma, M.D.,* 85 FR 23,845 (2020).

The clear language of 21 U.S.C. 824(a)—''[a] registration . . . may be suspended or revoked by the Attorney General''—gives the Administrator the *discretion* to revoke the registration of a registrant who has been excluded from participation in Federal health programs. *Jeffrey Stein, M.D.,* 84 FR at 46,970–71 (providing detailed analysis of the language and legislative history of 21 U.S.C. 824(a)(5)). It does not require automatic revocation or denial on that ground. *Id.* Accordingly, although section 824(a) provides DEA with the authority to revoke a respondent's registration (or deny an application) upon a finding of one or more of the five listed grounds, if a respondent presents evidence, either in a written statement or in the context of a hearing, I will review the evidence provided by the respondent to determine whether revocation or suspension (or denial) is appropriate given the particular facts. *See* 5 U.S.C. 556(d) (''A party is entitled to present his case or defense by oral or documentary evidence.''); 21 CFR 1301.43(c) (permitting a Respondent to file ''a waiver of an opportunity for a hearing . . . together with a written statement regarding such person's position on the matters of fact and law involved in such hearing.''); *Jones Total Health Care Pharmacy, LLC* v. *Drug Enf't Admin.,* 881 F.3d 823, 829 (11th Cir. 2018) (''[W]e may set aside a decision as 'arbitrary and capricious when, among other flaws, the agency has . . . entirely failed to consider an important aspect of the problem.' ''); *Morall* v. *Drug Enf't Admin.,* 412 F.3d 165, 177 (D.C. Cir. 2005) (''To uphold DEA's decision, . . . we must satisfy ourselves 'that the agency ''examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a rational connection between the facts found and the choice made.' '').

Where, as in the instant case, the Government has established a ground to deny a registration, I will review any evidence and argument the respondent submitted to determine whether or not respondent has presented ''sufficient mitigating evidence to assure the Administrator that [he] can be trusted with the responsibility carried by such a registration.'' *Samuel S. Jackson, D.D.S.,* 72 FR 23,848, 23,853 (2007) (quoting *Leo R. Miller, M.D.,* 53 FR 21,931, 21,932 (1988)). '' 'Moreover, because ''past performance is the best predictor of future performance,'' *ALRA Labs, Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir. 1995), [the Agency] has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for [the registrant's] actions and demonstrate that [registrant] will not engage in future misconduct.' '' *Jayam Krishna-Iyer,* 74 FR 459, 463 (2009) (quoting *Medicine Shoppe,* 73 FR 364, 387 (2008)); *see also Samuel S. Jackson, D.D.S.,* 72 FR at 23,853; *John H. Kennnedy, M.D.,* 71 FR 35,705, 35,709 (2006); *Prince George Daniels, D.D.S.,* 60 FR 62,884, 62,887 (1995). The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual respondent; therefore, the Agency looks at factors, such as the acceptance of responsibility and the credibility of that acceptance as it relates to the probability of repeat violations or behavior and the nature of the misconduct that forms the basis for sanction, while also considering the Agency's interest in deterring similar acts. *See Arvinder Singh, M.D.,* 81 FR 8247, 8248 (2016).

In evaluating the degree required of a respondent's acceptance of responsibility to entrust him with a

[2] The Government correctly argues, and Respondent did not rebut, that the underlying conviction forming the basis for a registrant's mandatory exclusion from participation in federal health care programs need not involve controlled substances to provide the grounds for revocation or denial pursuant to section 824(a)(5). *Jeffrey Stein, M.D.,* 84 FR 46,968, 46,971–72 (2019); *see also Narciso Reyes, M.D.,* 83 FR 61,678, 61,681 (2018); *KK Pharmacy,* 64 FR 49,507, 49,510 (1999) (collecting cases); *Melvin N. Seglin, M.D.,* 63 FR 70,431, 70,433 (1998); *Stanley Dubin, D.D.S.,* 61 FR 60,727, 60,728 (1996).

registration, in *Mohammed Asgar, M.D.,* the Agency looked for ''unequivocal acceptance of responsibility when a respondent has committed knowing or intentional misconduct.'' 83 FR 29,569, 29,572 (2018) (citing *Lon F. Alexander, M.D.,* 82 FR 49,704, 49,728). Here, Respondent pled guilty to a criminal charge involving intentional misconduct—''Receiving in Interstate Commerce a Misbranded Drug with Intent to Defraud or Mislead.'' I will, therefore, look for a clear acceptance of responsibility from Respondent.

Respondent took concrete actions to accept responsibility for his misconduct while his criminal case was ongoing. He did so by pleading guilty to the charge in Federal Court and entering into a settlement agreement with the United States of America and the State of Tennessee. Respondent's Response to the OSC also states, ''[Respondent] has admitted his mistakes and taken responsibility for his actions with his freedom and money.'' Response to the OSC, at 6.

During the pendency of this matter, however, Respondent has not made any statements accepting responsibility or expressed remorse for his actions. *See id.* To the contrary, Respondent made arguments in his Response to the OSC that deflect or minimize responsibility for his actions. In a first-person statement, which he attached as an exhibit to his Response to the OSC, Respondent appeared to place the blame for the actions leading to his criminal conviction on his clinic's business manager. *See id.* at Ex. 1. In reference to hiring the business manager for the clinic, Respondent stated, ''[l]ittle did I know I was sowing the seeds of my own destruction. I let [the business manager] do as he pleased, not realizing the full extent of the consequences and the depth of his treachery.'' *Id.* I am troubled by this statement and its implications for Respondent's acceptance of responsibility.

Respondent's guilty plea and evidence entered into the record by Respondent himself demonstrate that Respondent was not an unknowing and naive participant in the scheme that led to his conviction. Respondent admitted as part of his plea that clinic nurses raised concerns about the misbranded drugs, which led to the clinic doctors deciding to stop ordering the drugs. Later, Respondent ''decided McLeod Cancer would resume purchasing misbranded unapproved drugs . . . [and that] [t]o prevent the nurses from learning that McLeod Cancer was again purchasing unapproved foreign drugs, [Respondent] directed [the clinic's business manager] to have the drugs shipped to a storage business in Johnson City which [Respondent] owned in part.'' RFAAX 3 (Plea Agreement, *U.S.* v. *William Ralph Kinkaid,* No. 2:12–CR–116 (E.D. Tenn. June 24, 2013)). Respondent also submitted to the record a letter written by an attorney addressing whether Respondent's clinic was ''breaking federal law by importing foreign prescription drugs for use in the United States.'' Response to the OSC, Ex. 3. While the attorney greatly downplayed the significance of the legal violation, particularly focusing on the lack of enforcement by the Food and Drug Administration (hereinafter, FDA) and referencing the importation of the drugs as ''a technical violation,'' he did state the FDA could enforce if it chose to do so. *Id.* Respondent decided to resume purchasing the misbranded unapproved drugs after receiving this opinion.

Respondent's decision to resume purchasing the misbranded unapproved drugs after receiving an opinion that doing so was a ''technical violation'' that the FDA was unlikely to enforce creates concern about whether Respondent can be entrusted with the responsibilities of a controlled substances registration. If Respondent were to violate part of the CSA that he considered to be a ''technical violation,'' based on a perception of limited Agency enforcement, it could impact the Agency's mission in preventing the diversion and misuse of controlled substances. DEA budgets for approximately 1,625 Diversion positions involved in regulating more than 1.8 million registrants overall.[3] Ensuring that a registrant is trustworthy to comply with all relevant aspects of the CSA without constant oversight is crucial to the Agency's ability to complete its mission of preventing diversion within such a large regulated population. *Jeffrey Stein, M.D.,* 84 FR at 46,974.

Had there been a hearing on the OSC, it is possible that Respondent could have clarified his statements regarding his business manager and his reasoning for presenting the private attorney's opinion regarding purchasing the misbranded drugs. But with such limited information from Respondent, his statements and presentation of the attorney's opinion that purchasing the misbranded drugs was a ''technical violation'' appear to be aimed at minimizing the egregiousness of his conduct, which the Agency has previously weighed against a finding of acceptance of full responsibility. *See Ronald Lynch, M.D.,* 75 FR 78,745, 78,754 (2010) (Respondent did not accept responsibility noting that he ''repeatedly attempted to minimize his [egregious] misconduct''; *see also Michael White, M.D.,* 79 FR 62,957, 62,967 (2014) (finding that Respondent's ''acceptance of responsibility was tenuous at best'' and that he ''minimized the severity of his misconduct by suggesting that he thinks the requirements for prescribing Phentermine are too strict.''). In light of Respondent's minimization of his crime and his role in the crime, and the lack of a hearing to determine if Respondent's previous guilty plea and settlement agreement does, in fact, translate to sincere remorse and acceptance of responsibility, I cannot characterize Respondent's acceptance of responsibility as unequivocal.

In addition to acceptance of responsibility, the Agency also gives consideration to both specific and general deterrence when determining an appropriate sanction. *Daniel A. Glick, D.D.S.,* 80 FR 74,800, 74,810 (2015). Specific deterrence is the DEA's interest in ensuring that a registrant complies with the laws and regulations governing controlled substances in the future. *Id.* General deterrence concerns the DEA's responsibility to deter conduct similar to the proven allegations against the respondent for the protection of the public at large. *Id.* Where a respondent has committed a crime with no nexus to controlled substances, it is sometimes difficult to demonstrate that a sanction will have a useful deterrent effect. In this case, I believe a sanction would deter Respondent and the general registrant community from committing ''technical violations'' of the CSA or its implementing regulations and thinking that they could do so without serious consequence.

In Respondent's favor, Respondent has been held accountable for receiving misbranded drugs with intent to defraud or mislead, having been sentenced to prison, paying substantial financial penalties, and temporarily losing his medical license. I find that such significant consequences are likely to have some deterrent effect on Respondent repeating similar misconduct in the future. Additionally, according to Respondent's unrebutted claims, he has fully satisfied all requirements imposed upon him by the Federal courts and all terms of his settlement agreement with the United States of America and the State of Tennessee. Response to the OSC, at 3–4. He also satisfied all requirements imposed upon him by the state licensing

[3] *See* DEA FY2020 Budget Request *available at https://www.justice.gov/jmd/page/file/1142431/download.*

authorities to regain his medical license, including at least three months of practice under a preceptorship and the completion of forty hours of continuing medical education. *See* Response to the OSC, Ex. 12, 13. However, it is difficult to determine the amount of deterrence these consequences will have on Respondent due to the fact that he deflected responsibility for the underlying conduct.

Finally, Respondent submitted dozens of letters from former patients, colleagues, and community members regarding his aptitude as a physician and compassionate nature. Response to the OSC, Ex. 14. While these character references do not diminish Respondent's bad acts, I find the letters to be personal and sincere in their written form. They can be of limited weight in this proceeding, however, because I have limited ability to assess the actual credibility of the references given their written form. *See Michael S. Moore, M.D.,* 76 FR 45,867, 45,873 (2011) (evaluating the weight to be attached to letters provided by the respondent's hospital administrators and peers in light of the fact that the authors were not subjected to the rigors of cross examination). They also were not written for the purposes of recommending that Respondent be granted a controlled substances registration, and, therefore, they offer little value in assessing the Respondent's suitability to discharge the duties of a DEA registrant. Further, absent Respondent's unequivocal acceptance of responsibility, what little value the letters might have offered me in evaluating my ability to trust Respondent is nullified by the fact that he himself has not shown me that he can be so entrusted.

As discussed above, to receive a registration when grounds for denial exist, a respondent must convince the Administrator that his acceptance of responsibility and remorse are sufficiently credible to demonstrate that the misconduct will not recur and that he can be entrusted with a registration. Having reviewed the record in its entirety, I find that Respondent has not met this burden. Although Respondent did take some responsibility for his actions through his guilty plea and settlement agreement with the United States and the State of Tennessee, his acceptance of responsibility was not unequivocal. Respondent's minimization and deflection of responsibility for his criminal conduct raises concern that he would perhaps also be willing to circumvent CSA requirements that he deemed ''technical'' to the detriment of its effective implementation. I am also concerned that granting his registration absent a full acceptance of responsibility for his criminal actions would send the message to the registered community that they could violate so-called ''technical'' provisions of the CSA or its regulations without serious consequence. Unless and until Respondent is willing to credibly accept full responsibility for his unlawful conduct, I find that I cannot entrust him with a controlled substances registration. Accordingly, I will order the Agency to deny Respondent's application for a certificate of registration.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823, I hereby order that the pending application for a Certificate of Registration, Control Number W18085586C, submitted by William Ralph Kincaid, M.D., is denied. This Order is effective August 27, 2021.

Anne Milgram,

Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Erica N. Grant, M.D.; Decision and Order

I. Introduction

On August 24, 2018, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Erica N. Grant, M.D. (hereinafter, Respondent) of Irving, Texas. OSC, at 1. The OSC proposed the revocation of Respondent's Certificate of Registration No. FG2374053 for three reasons. *Id.* First, it alleged that Respondent was ''convicted of a felony under State law relating to a controlled substance.'' *Id.* (citing 21 U.S.C. 824(a)(2)). Second, it alleged that it was ''inconsistent with the public interest'' for Respondent to maintain her registration. OSC, at 1 (citing 21 U.S.C. 824(a)(4) in conjunction with 21 U.S.C. 823(f)). Third, the OSC alleged that Respondent ''materially falsified the application'' for renewal of her registration. OSC, at 1 (citing 21 U.S.C. 824(a)(1)).

Specifically, the OSC alleged that Respondent's ''no contest'' plea to a second-degree felony in Texas, ''Attempting to Possess a Controlled Substance by Fraud in violation of Texas Health and Safety Code § 481.129,'' ''is a conviction providing a sufficient basis for the revocation'' of her registration. OSC, at 2, 3. Further, the OSC alleged that, ''[t]o determine what is in the 'public interest,' DEA considers, among other things, the registrant's 'conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.' '' *Id.* at 2. Finally, according to the OSC, ''DEA may revoke a registrant's DEA . . . [registration] upon a finding that the registrant materially falsified any application filed pursuant to, or required by, the Controlled Substances Act'' (hereinafter, CSA), such as by a ''failure to report . . . [an] arrest for a controlled substance felony.'' *Id.* at 2, 3.

The OSC notified Respondent of the right to request a hearing on the allegations or to submit a written statement, while waiving the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 3 (citing 21 CFR 1301.43). The OSC also notified Respondent of the opportunity to submit a corrective action plan. OSC, at 3–4 (citing 21 U.S.C. 824(c)(2)(C)).

By transmittal dated September 21, 2018, Respondent waived her right to a hearing and filed a written statement and a proposed Corrective Action Plan. Request for Final Agency Action (hereinafter, RFAA) Exhibit (hereinafter, collectively, RFAAX) 10 (Respondent's Hearing Waiver and Written Statement in Response to the OSC (hereinafter, Written Statement)) and RFAAX 11 (Respondent's Request for Corrective Action Plan (hereinafter, CAP)).[1] Respondent's written statement explicitly references her receipt of the OSC.[2] RFAAX 10, at 1.

Based on all of the evidence in the record, I find that the Government's service of the OSC was legally sufficient. In addition, also based on all of the evidence in the record, I find that Respondent timely filed her Written Statement and proposed CAP.[3]

[1] RFAAX 12 is the DEA Assistant Administrator's letter to Respondent, dated January 29, 2019, rejecting her proposed CAP.

[2] In addition, the RFAA represents that ''Respondent acknowledged service of a copy of the . . . [OSC] in a telephone conversation with [a] DEA Diversion Investigator.'' RFAA, at 3 (citing RFAAX 9 (Declaration of Diversion Investigator (hereinafter, DI), dated October 1, 2018), at 2).

[3] Respondent's Written Statement is dated September 21, 2018. It appears that Respondent transmitted her proposed CAP along with her Written Statement. The OSC is dated August 24, 2018; therefore, Respondent's submissions are

Continued

The Government forwarded its RFAA, along with the evidentiary record, to this office on August 27, 2019.

I issue this Decision and Order based on the Government's submission, which includes Respondent's Written Statement and proposed CAP, and is the entire record before me. 21 CFR 1301.43(e).

II. Findings of Fact

A. Respondent's DEA Controlled Substance Registration

Respondent is the holder of DEA Certificate of Registration No. FG2374053 at the registered address of 665 W LBJ Freeway, Suite 217, Irving, TX 75063 and a separate ''mail-to'' address. RFAAX 2 (Certification of Registration History, dated November 23, 2018), at 1. Pursuant to this registration, Respondent is authorized to dispense controlled substances in schedules II through V as a practitioner. *Id.* Respondent's registration expired on September 30, 2019, and is in an ''active pending status.'' *Id.*

B. The Investigation of Respondent

According to the DI assigned to this matter, the Texas Medical Board (hereinafter, TMB) notified him that Respondent was the subject of an Agreed Order Upon Formal Filing, In the Matter of the License of Erica Nicole Grant, M.D., License No. N–4438 (Before the TMB) dated March 2, 2018 (hereinafter, Agreed Order). RFAAX 9, at 1 (referencing RFAAX 3).[4] His investigation ensued and included obtaining copies of the Agreed Order and documents from the 195th Judicial District Court of Dallas County, Texas related to Respondent's *nolo contendere* plea. RFAAX 9, at 2.

C. The Government's Case

The Government's case includes nine exhibits. The content of some of those exhibits is also attached to Respondent's Written Statement. RFAA, at 6–7; *infra* Section II.D.

The DI Declaration certifies the authenticity of RFAA Exhibits 2 through 8. RFAAX 9, at 2. The DI Declaration, signed and attested to be ''true and correct'' under penalty of perjury, further states that DI interviewed Respondent ''at her offices in Irving, Texas'' on June 1, 2018. *Id.* at 2. According to the DI Declaration, ''In that interview, . . . [Respondent] admitted that she had diverted multiple controlled substances from numerous patients at Parkland Hospital in Dallas, Texas.'' *Id.* The DI Declaration also states that Respondent ''admitted she diverted Dilaudid, Morphine, Versed, and Fentanyl.'' *Id.*

The Government submitted a two-page document entitled, ''Affidavit for Arrest Warrant or Capias,'' of the Dallas County Hospital District Police Department, dated April 5, 2016 (hereinafter, Arrest Warrant Affidavit).[5] RFAAX 6. According to the Arrest Warrant Affidavit, the Parkland Health and Hospital System Director of Pharmacy contacted the Drug Diversion Control Officer about ''an issue developed in Anesthesia at Parkland Hospital . . . in which . . . [Respondent] . . . was drug screened . . . and sent to a rehabilitation facility at an unidentified location.'' *Id.* at 1. Subsequently, according to the Arrest Warrant Affidavit, relevant records about ''all controlled substances removed from any Pyxis within the hospital'' by Respondent between November 23, 2015, and February 18, 2016, were reviewed and compared with Respondent's documented entries. *Id.* This review led to the discovery of one ''discrepancy/diversion.'' *Id.*

According to the Arrest Warrant Affidavit, Respondent removed one hydromorphone 1 mg/1 mL syringe from a Pyxis located in the Labor & Delivery Alcove for a patient. *Id.* According to the patient's anesthesia records, however, the hydromorphone was not administered to the patient, ''nor was a procedure opened requiring the Hydromorphone'' for that patient. *Id.* Further, ''[a]n additional review of the Pyxis in Anesthesia and Labor & Delivery, between . . . [February 6, 2016, and February 17, 2016,] disclosed that no employee in Anesthesia, to include . . . [Respondent,] returned or wasted through Pyxis Hydromorphone removed from the Pyxis in Anesthesia and Labor and Delivery'' for that patient. *Id.* at 1–2. The Arrest Warrant Affidavit states that ''there was no Anesthesia event for this patient'' on February 6, 2016. *Id.* at 2. The Arrest Warrant Affidavit concludes that, ''[b]ased upon the documentation,'' Respondent ''did not administer the Hydromorphone to . . . [the patient], but fraudulently obtained the controlled substance, by stating that the controlled substance would be administered to . . . [the patient].'' *Id.* The Arrest Warrant Affidavit shows that a Dallas County, Texas Magistrate determined, based on her examination of the Arrest Warrant Affidavit, that probable cause existed for the issuance of an arrest warrant for Respondent. *Id.*

The Government submitted Respondent's Arraignment Sheet dated April 7, 2016. RFAAX 7, at 1. According to this document, Respondent was arraigned on two charges of ''Fraud Del CS/Prescription Sch II.'' *Id.* It also shows that bond was set at $2,500 for each charge. *Id.*

The Government also submitted Respondent's Judicial Confession, The State of Texas v. Erica Nicole Grant, No. F1644784 (195th Judicial District Court, Dallas County, Texas May 26, 2017) (hereinafter, Judicial Confession). RFAAX 4. The Judicial Confession memorializes Respondent's admission that, ''on or about the 6th day of February, 2016, in Dallas County, Texas,'' she ''did intentionally and knowingly possess and attempt to possess a controlled substance, namely: Hydromorphone, by misrepresentation, fraud, forgery, deception and subterfuge.'' *Id.* at 1. Respondent's signed statement concludes with these words: ''I further judicially confess that I committed the offense with which I stand charged exactly as alleged in the indictment in this cause.'' *Id.* In addition to Respondent, her attorney, the Assistant District attorney, the Deputy District Clerk, and the Presiding Judge signed this document. *Id.*

The Government submitted the Order of Deferred Adjudication, The State of Texas v. Erica Nicole Grant, No. F–1644784–N (195th Judicial District Court, Dallas County, Texas May 26, 2017) (hereinafter, Deferred Adjudication Order), RFAAX 5, at 1. According to this seven-page exhibit, the Deferred Adjudication Order was entered for a second-degree felony, ''Obstruction Controlled Substance Fraud Drug 1/2,'' on May 26, 2017.[6] *Id.* It shows that Respondent pled *nolo contendere* to an Information, that adjudication of guilt was deferred, and that Respondent was placed on community supervision for two years. *Id.* According to the document, Respondent ''appeared in person with Counsel.'' *Id.* The other pages of this exhibit are the ''Conditions of Community Supervision'' (three pages), the ''Court's Admonishment on Right to Order of Nondisclosure'' (one page), and

clearly timely regardless of when Respondent received service of the OSC. 21 CFR 1301.43.

[4] Respondent also submitted the Agreed Order for the record. RFAAX 11.

[5] The RFAA cites Factor Three in support of the OSC allegation that Respondent's continued registration is inconsistent with the public interest. RFAA, at 5; 21 U.S.C. 824(a)(4) in conjunction with 21 U.S.C. 823(f)(3).

[6] The Deferred Adjudication Order lists the offense as ''Obstruction Controlled Substance Fraud Drug 1/2.'' RFAAX 5, at 1. Under ''Statute for Offense,'' the document shows ''481.29 Penal Code.'' *Id.* The latter entry appears to be a scrivener's error for section 481.129 of the Texas Health and Safety Code. *See* RFAA, at 3.

the ''Judgment/Certificate of Thumbprint'' (one page). *Id.* at 3–7.

The Government put into the record the registration renewal application that Respondent submitted on August 11, 2016.[7] RFAAX 8, at 1. According to RFAAX 8, Respondent answered ''N'' (meaning ''no'') to whether she had ''ever been convicted of a crime in connection with controlled substance(s) under state or federal law . . ., or any such action pending.'' RFAAX 8, at 1. According to the Government, the fact that DEA did not rely on Respondent's ''N'' response does not make that response ''immaterial'' under past Agency decisions' interpretations of 21 U.S.C. 824(a)(1) and the Supreme Court's definition of ''material'' in *Kungys* v. *United States,* 485 U.S. 759, 770 (1988). RFAA, at 5–6.

The Government also submitted a copy of the Agreed Order. RFAAX 3; *see also infra* Section II.D. According to the RFAA's ''Statement of Undisputed Material Facts,'' the Government argues that, ''[b]etween November 2015 and February 2016, Respondent withdrew medications, including controlled substances[,] from at least 80 patients from the Parkland Hospital Pyxis System'' and ''[d]uring that time, Respondent diverted controlled substances, including Dilaudid, Morphine, Versed, and Fentanyl for her own use.'' RFAA, at 2 (citing RFAAX 3 and RFAAX 9). The Government does not provide a page cite to RFAAX 3 for this citation in its RFAA and I do not see all of the asserted statements in RFAAX 3. The RFAA contains no other reference to RFAAX 3 and includes no other document from the TMB. The DI Declaration, RFAAX 9, states that Respondent ''admitted that she had diverted multiple controlled substances from numerous patents at Parkland Hospital in Dallas, Texas'' and that Respondent ''admitted she diverted Dilaudid, Morphine, Versed, and Fentanyl.'' RFAAX 9, at 2. Accordingly, I find that two portions of the Government-proposed statements of undisputed material facts, that Respondent withdrew controlled substances ''from at least 80 patients'' and ''for her own use,'' are not supported by the evidence the RFAA cites, or by substantial record evidence.[8]

D. Respondent's Case

As already discussed, Respondent submitted a timely Written Statement and proposed CAP. *Supra* section I. In her Written Statement, Respondent stated that she is an anesthesiologist whose ''entire practice and . . . ability to make a living . . . as a single parent with a son in college and caregiver for . . . [her] 79 year-old mother and disabled sister is dependent on . . . [her] ability to provide a balanced anesthetic to patients which is not limited to, but includes controlled substances.'' RFAAX 10, at 1. She admitted that ''diversion of controlled substances occurred as stated from November 2015 through February 11, 2016'' and characterized it as a ''complete lack of judgment.'' *Id.* Her Written Statement places the diversion in the context of her contemporaneous personal life experiences ''never . . . as an excuse'' but ''rather [as] an explanation for which I have always taken 100% responsibility.'' *Id.* Respondent, ''[i]n accepting responsibility,'' has ''done everything in . . . [her] power to correct . . . [her] actions and 31 months later, . . . continue[s] to work hard at maintaining sobriety and gain the trust of those . . . lost, including the public.'' *Id.* She wrote, ''I accept sole responsibility and I have taken actions to become sober and healthy and continue to do such.'' *Id.* at 2. Stating that this is her ''first offense,'' she added that she is ''working diligently for it to never occur again'' and asked for the opportunity ''to continue to demonstrate'' that she ''ha[s] been rehabilitated and will always put the trust of the public first and foremost.'' *Id.* at 2–3.

Respondent's Written Statement includes a list, consisting of about half of a single-spaced page, describing the ''course of action'' she has taken ''since February 11, 2016,'' to ''maintain[ ] sobriety and a healthy lifestyle.'' *Id.* at 3. She stated that her ''course of action'' includes inpatient and outpatient rehabilitation, participation in Alcoholics Anonymous or Caduceus meetings three times a week, bimonthly sessions with a therapist, weekly random drug testing beginning in October 2016, as-needed sessions with an Addiction Specialist, and a personal spirituality program. *Id.* I find a matter of concern about Respondent's candor based on my review of this section of Respondent's Written Statement and the Agreed Order. In her Written Statement, Respondent wrote ''[NO incidents]'' after stating that her course of action includes ''[w]eekly random drug testing beginning October 2016 under voluntary agreement with . . . [TMB] with continuation under final order March, 2018.'' *Id.* The Agreed Order states, in the section entitled ''Specific Panel Findings,'' that ''Respondent voluntarily submitted to interim drug testing with the . . . [TMB]; however, she has had four missed calls and one late drug screen. She has not tested positive for any substances.'' RFAAX 3, at 3 and RFAAX 11, at 11. It appears that Respondent's ''[NO incidents]'' representation is addressing the situation after the Agreed Order went into effect and that the ''Specific Panel Findings'' of the Agreed Order is describing the situation leading up to creation of the ''Agreed Order.'' The matter of concern to me, thus, is Respondent's candor in this proceeding because she presented facts showing herself in a positive light and did not present related facts showing herself in an unfavorable light. Had Respondent requested and participated in a hearing, she would have been able to address my concern about her candor. She chose, as she is entitled under the regulations, to waive her opportunity for a hearing and to submit the Written Statement instead. RFAAX 10, at 1, 2; 21 CFR 1301.43. As the regulation notes, ''Such statement, if admissible, shall be made a part of the record and shall be considered in light of the lack of opportunity for cross-examination in determining the weight to be attached to matters of fact asserted therein.'' 21 CFR 1301.43(c).

About another half page, single spaced, of the Written Statement lists conditions to which the Agreed Order subjects Respondent.[9] RFAAX 10, at 3. I interpret Respondent's intent for including those conditions after the ''course of action'' list was to highlight

[7] RFAAX 8 is a more legible version of the first page of the attachment to RFAAX 2. According to RFAAX 2 and RFAAX 8, the registration renewal application ''Submission Date'' is August 11, 2016. RFAAX 2, at 2; RFAAX 8, at 1. According to the Certification of Registration History, the ''last approved renewal of this DEA registration was on August 15, 2016.'' RFAAX 2, at 1.

[8] *See also,* regarding ''from at least 80 patients,'' RFAAX 6, at 1 (''Based on . . . [the Parkland Health & Hospital System Director of Pharmacy's] information, the Pyxis (CareFusion) Records in reference to all controlled substances removed from any Pyxis within the hospital by . . . [Respondent], between 11/23/2015 and 02/18/2016, were reviewed, and all removals were compared to the entries . . . [Respondent] documented in each patient's Anesthesia Record. The following discrepancies/diversions were discovered: Drug—Hydromorphone 1 mg/1 mL: (Schedule II).'') and, regarding ''for her own use,'' RFAAX 3, at 3–4 and RFAAX 11, at 11–12 (specifying TMB's Conclusions of Law that the Board is authorized to take disciplinary action against Respondent ''based on Respondent's inability to practice medicine with reasonable skill and safety to patients because of . . . (C) excessive use of drugs, narcotics, chemicals, or another substance, or (D) a mental or physical condition'' and ''Respondent's use of alcohol or drugs in an intemperate manner that, in the opinion of the Board, could endanger the lives of patients,'' while not including a finding specifying that Respondent ingested any of the controlled substances she admitted diverting). RFAAX 3, at 2–3 and RFAAX 11, at 10–11.

[9] Respondent attached the Agreed Order to her proposed CAP. RFAAX 11, at 9–23; *infra.*

additional steps she agreed to follow for up to ten years. *Id.*

In her CAP, Respondent proposed that ''the requirements outlined in the Texas Medical Board Public Order #18–270 [the Agreed Order] . . . be accepted as an action plan and proceedings to revoke her DEA . . . [registration] be discontinued effective immediately.'' RFAAX 11, at 1, citing *id.* at 9–23.[10] Respondent represented that she has been ''compliant with the actions'' required by the Agreed Order and that she will report ''immediately'' to DEA the suspension of her medical license resulting from a violation of the Agreed Order.

Attached to Respondent's proposed CAP are (1) one page from the 2006 Edition of the DEA ''Practitioner's Manual'' entitled ''Form–224a Renewal Application for Registration,'' *id.* at 3; (2) the Deferred Adjudication Order, *id.* at 4–5; (3) Conditions of Community Supervision, *The State of Texas* v. *Erica Nicole Grant*, No. F–1644784–N (195th Judicial District Court, Dallas County, Texas May 26, 2017), *id.* at 6–7; (4) Order Dismissing Proceedings and Granting Early Discharge From Community Supervision Following Deferred Adjudication, The State of Texas v. Erica Nicole Grant, No. F1644784N (195th JDC, Dallas County, Texas May 29, 2018) (hereinafter, Order Dismissing Proceedings and Granting Early Discharge), *id.* at 8; and (5) the Agreed Order, *id.* at 9–23. The Deferred Adjudication Order, the Conditions of Community Supervision, and the Agreed Order are also part of the Government's case.[11] *Supra* section II.C.

The Order Dismissing Proceedings and Granting Early Discharge states that Respondent ''satisfactorily fulfilled'' all conditions of community supervision and that ''the best interests of society and . . . [Respondent] will be served by granting the early discharge from community supervision and dismissing the proceedings.'' RFAAX 11, at 8. The Order Dismissing Proceedings and Granting Early Discharge terminates the ''period of supervision'' about a year early, discharges Respondent from community supervision, and dismisses ''all proceedings in this cause'' against Respondent. *Id.*

The Agreed Order between Respondent and the TMB was signed and entered by the TMB presiding officer on March 2, 2018. RFAAX 3, at 15 and RFAAX 11, at 23. According to the Agreed Order's ''Mitigating Factor'' section, ''Respondent neither admits nor denies the information given above.'' RFAAX 3, at 3 and RFAAX 11, at 11. The ''Specific Panel Findings'' section is ''above'' the ''Mitigating Factor'' section and, thus, I find that Respondent neither admitted nor denied the TMB's General and Specific Panel Findings. RFAAX 3, at 3 and RFAAX 11, at 11. I also find, though, that Respondent ''agree[d] to the entry of th[e] Agreed Order,'' and agreed ''to comply with its terms and conditions'' to ''avoid further investigation, hearings, and the expense and inconvenience of litigation.'' RFAAX 3, at 3 and RFAAX 11, at 11.

The terms of the Agreed Order subject Respondent to multiple conditions for ten years. RFAAX 3, at 5 and RFAAX 11, at 13. Respondent's noncompliance with, or violation of, specified Agreed Order conditions could lead to the immediate suspension of her medical license. RFAAX 3, at 5–6, 8 and RFAAX 11, at 13–14, 16. The Agreed Order affords Respondent the opportunity to seek amendment or termination of the conditions after two years following the date of the Agreed Order's entry and once a year thereafter. RFAAX 3, at 13 and RFAAX 11, at 21. There is no evidence in the record that Respondent availed herself of the opportunity to seek amendment or termination of the Agreed Order's conditions.[12]

The TMB's ''Specific Panel Findings,'' which are matters that Respondent ''neither admits nor denies,'' contain five paragraphs. RFAAX 3, at 2–3 and RFAAX 11, at 10–11; *see also supra.* The TMB's first specific panel finding is that ''Respondent admitted that she diverted drugs through the Pyxis system that should have gone to patients'' and that ''[t]hese violations impacted patient care and involved lying to patients and her employer.'' RFAAX 3, at 2 and RFAAX 11, at 10. The second TMB specific panel finding is that ''Respondent admitted that she has struggled with addiction and substance abuse.'' RFAAX 3, at 2 and RFAAX 11, at 10. The third TMB specific panel finding is that ''Respondent was suspended from her position at Parkland Hospital after a peer review action'' and that ''[t[his suspension was related to her diversion of controlled substances and her substance abuse issues.'' RFAAX 3, at 2 and RFAAX 11, at 10. The fourth TMB specific panel finding is that ''Respondent admitted that she treated herself with controlled substances.'' [13] RFAAX 3, at 2 and RFAAX 11, at 10. The last TMB specific panel finding is that ''Respondent voluntarily submitted to interim drug testing with the Board,'' that ''she has had four missed calls and one late drug screen,'' and that ''[s]he has not tested positive for any substances.'' RFAAX 3, at 3 and RFAAX 11, at 11.

The Agreed Order's ''Conclusions of Law'' suggest that the TMB concluded that it had nine bases for disciplining Respondent ''[b]ased on the above [General and Specific Panel] Findings.'' RFAAX 3, at 3 and RFAAX 11, at 11. First, the TMB concluded that Respondent committed an act prohibited under Texas statute, Texas Occupations Code Annotated § 164.052 (2018). RFAAX 3, at 3 and RFAAX 11, at 11. Second, the TMB concluded that Respondent violated TMB rules requiring the maintenance of adequate medical records. RFAAX 3, at 3 and RFAAX 11, at 11. Third, the TMB concluded that Respondent was unable to practice medicine with reasonable skill and safety to patients because of excessive use of drugs, narcotics, chemicals, or other substance, or a mental or physical condition. RFAAX 3, at 3 and RFAAX 11, at 11. Fourth, the TMB concluded that Respondent failed to practice medicine in an acceptable professional manner consistent with public health and welfare due to negligence in performing medical services, failing to use proper diligence in her professional practice, failing to safeguard against potential complications, and inappropriate prescription of dangerous drugs or controlled substances to herself, family members, or others in which there is a close personal relationship. RFAAX 3, at 3–4 and RFAAX 11, at 11–12.

Fifth, the TMB concluded that Respondent's use of alcohol or drugs in an intemperate manner could endanger the lives of patients. RFAAX 3, at 4 and RFAAX 11, at 12. Sixth, the TMB concluded that Respondent's unprofessional or dishonorable conduct likely to deceive or defraud the public

[10] RFAAX 11, at 9–23 is the same document that the Government submitted at RFAAX 3.

[11] The page from the 2006 Edition of the DEA ''Practitioner's Manual'' includes the text of the first Liability question. RFAAX 11, at 3. According to the 2006 Edition, that question asks ''Has the applicant ever been convicted of a crime in connection with controlled substances under state or federal law''? *Id.* Based on this version of the first Liability question, Respondent ''disputes'' the OSC allegations that she was ''convicted'' of a crime in connection with controlled substances. *Id.* at 1–2 (citing *id.* at 3). Instead, she stated, she pled *nolo contendere,* ''received deferred adjudication probation,'' ''was released a year early from probation'' on May 29, 2018, and, therefore, ''the case is dismissed as a non-conviction.'' RFAAX 10, at 2.

[12] This is not surprising given that the Government submitted its RFAA less than two years after the date the Agreed Order was entered. RFAA, at 6.

[13] I find that Respondent's admission that she treated herself with controlled substances does not necessarily mean that she admitted to ingesting the controlled substances she diverted. RFAAX 3, at 2 and RFAAX 11, at 10.

or injure the public included providing medically unnecessary services, submitting a billing statement to a patient or a third-party payor that she should have known was improper, and violating state law concerning insurance fraud and concerning prescribing or administering without a valid medical purpose. RFAAX 3, at 4 and RFAAX 11, at 12. Seventh, the TMB concluded that Respondent prescribed or administered a drug or treatment that was nontherapeutic in nature, or that was nontherapeutic in the manner administered or prescribed. RFAAX 3, at 4 and RFAAX 11, at 12. Eighth, the TMB concluded that Respondent prescribed, administered, or dispensed dangerous drugs or controlled substances in a manner inconsistent with public health and welfare. RFAAX 3, at 4 and RFAAX 11, at 12. Ninth, the TMB concluded that Respondent's improper billing practices violated Texas law. RFAAX 3, at 4 and RFAAX 11, at 12.

There is substantial congruity between the evidence submitted by the Government and Respondent's evidence. I now address the OSC's allegations in the order in which they appear in the OSC.

E. Allegation That Respondent Has Been Convicted of a Felony Related to a Controlled Substance (21 U.S.C. 824(a)(2))

Based on substantial record evidence, including the evidence that both the Government and Respondent submitted, I find that Respondent pled *nolo contendere* to a second-degree Texas felony relating to a controlled substance, hydromorphone, and that adjudication of her guilt was deferred. *See, e.g.,* RFAAX 4, at 1 (hydromorphone); RFAAX 5, at 1 (controlled substance); RFAAX 11, at 4 (controlled substance); *id.* at 8 (''CS'' and ''Sch II'').

F. Allegation That Respondent's Registration Is Inconsistent With the Public Interest (21 U.S.C. 824(a)(4) and 823(f))

The section of the Government's RFAA addressing the 21 U.S.C. 824(a)(4) public interest basis for revocation of Respondent's registration focuses exclusively on Factor Three, 21 U.S.C. 823(f)(3): Respondent's ''conviction record under Federal or State laws relating to the . . . dispensing of controlled substances.'' [14] RFAA, at 5. The Government argues that Respondent's *nolo contendere* plea to a second-degree controlled substance felony under Texas law justifies revocation of Respondent's registration. *Id.*

As already discussed, I find that Respondent pled *nolo contendere* to a second-degree Texas felony relating to a controlled substance, hydromorphone, and that adjudication of her guilt was deferred. *Supra* section II.E. More specifically, I find substantial record evidence that Respondent pled as follows: ''on or about the 6th day of February, 2016, in Dallas County, Texas, I did intentionally and knowingly possess and attempt to possess a controlled substance, namely, HYDROMORPHONE, by misrepresentation, fraud, forgery, deception and subterfuge.'' RFAAX 4, at 1. Further, I find substantial record evidence based on the above findings and the unrefuted Affidavit for Arrest Warrant or Capias that Respondent did not return or waste the hydromorphone. RFAAX 6, at 1–2. I do not find substantial record evidence about what Respondent did with the hydromorphone that she pled to fraudulently possessing or attempting to possess.

While the Government focused exclusively on Factor Three, the OSC's allegations based on 21 U.S.C. 824(a)(4) and 823(f) are broader. Accordingly, I am analyzing, making findings of fact about, and drawing conclusions of law based on the entire text of 21 U.S.C. 823(f).

I find substantial record evidence that Respondent admitted that she engaged in the ''diversion of controlled substances'' ''from November 2015 through February 11, 2016.'' [15] RFAAX 11, at 1; RFAAX 10, at 1. I find substantial record evidence that Respondent, ''[w]hile making such an admission of diversion, . . . denie[d] all the above [OSC] charges against her as described in the Waiver of Hearing letter dated September 21, 2018.'' RFAAX 11, at 1. I find substantial record evidence that Respondent characterized as ''unfortunate'' the legal action taken by ''Parkland Hospital, the affiliate hospital where the diversion occurred,'' and stated that the legal action was taken ''unbeknownst and at the disapproval of the committee that led to a series of events as outlined in the facts.'' [16] RFAAX 10, at 1.

I find substantial record evidence that Respondent's Written Statement disputes the OSC's material falsification and felony conviction charges on the basis of the Texas ''deferred adjudication probation,'' and states that, ''[i]n summary, I do not deny nor have I ever in the past the unfortunate course of actions I decided to take by diverting controlled substances.'' *Id.* at 2. I find substantial record evidence that her Written Statement further states that, ''I accept sole responsibility and I have taken actions to become sober and healthy and continue to do such.'' *Id.* I find substantial record evidence that Respondent's Written Statement asks that she be ''allow[ed] . . . to continue to demonstrate that . . . [she has] been rehabilitated and will always put the trust of the public first and foremost.'' *Id.* at 2–3. I find substantial record evidence that the Written Statement represents that ''this is . . . [Respondent's] first offense and . . . [she] is working diligently for it to never occur again.'' *Id.* at 3.

I find there is substantial record evidence that Respondent admitted that she ''had diverted multiple controlled substances from numerous patients at Parkland Hospital in Dallas, Texas.'' RFAAX 9, at 2. I find there is substantial record evidence that Respondent admitted that she ''diverted Dilaudid, Morphine, Versed, and Fentanyl.'' *Id.*

I find there is substantial record evidence that Respondent and the TMB entered into an Agreed Order that was signed and entered by the TMB presiding officer on March 2, 2018. RFAAX 3, at 15 and RFAAX 11, at 23. I find substantial record evidence that Respondent neither admitted nor denied the TMB's General and Specific Panel Findings. RFAAX 3, at 3 and RFAAX 11, at 11. I find substantial record evidence that Respondent ''agree[d] to the entry of th[e] Agreed Order,'' and agreed ''to comply with its terms and conditions'' to ''avoid further investigation, hearings, and the expense and inconvenience of litigation.'' RFAAX 3, at 3 and RFAAX 11, at 11. I find substantial record evidence that the terms of the Agreed Order subject Respondent to multiple conditions for up to ten years, that Respondent's noncompliance with, or violation of, specified Agreed Order conditions could lead to the immediate suspension of her medical license, and that the Agreed Order affords Respondent the

[14] The CSA defines ''dispense'' to mean ''to deliver a controlled substance to an ultimate user . . . by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance.'' 21 U.S.C. 802(10).

[15] According to Respondent's Written Statement, ''The diversion of controlled substances occurred as stated from November 2015 through February 11, 2016.'' RFAAX 10, at 1. The meaning of ''as stated'' might refer to the allegations of the OSC, but since it is not clear, I am not making a finding about the meaning of the phrase.

[16] Respondent's reference to ''the facts'' appears to refer to the OSC's ''summary of the matters of fact and law at issue.'' OSC, at 1.

opportunity to seek amendment or termination of the conditions after two years following the date of the Agreed Order's entry and once a year thereafter. RFAAX 3, at 5–13 and RFAAX 11, at 13–21.

I find substantial record evidence that the TMB found that ''Respondent admitted that she diverted drugs through the Pyxis system that should have gone to patients'' and that ''[t]hese violations impacted patient care and involved lying to patients and her employer.'' RFAAX 3, at 2 and RFAAX 11, at 10. I find substantial record evidence that the TMB found that ''Respondent admitted that she has struggled with addiction and substance abuse.'' RFAAX 3, at 2 and RFAAX 11, at 10. I find substantial record evidence that the TMB found that ''Respondent was suspended from her position at Parkland Hospital after a peer review action'' and that ''[t[his suspension was related to her diversion of controlled substances and her substance abuse issues.'' RFAAX 3, at 2 and RFAAX 11, at 10. I find substantial record evidence that the TMB found that ''Respondent admitted that she treated herself with controlled substances.'' RFAAX 3, at 2 and RFAAX 11, at 10. I find substantial record evidence that the TMB found that ''Respondent voluntarily submitted to interim drug testing with the Board,'' that ''she has had four missed calls and one late drug screen,'' and that ''[s]he has not tested positive for any substances.'' RFAAX 3, at 3 and RFAAX 11, at 11.

I find substantial record evidence that the TMB concluded that it had multiple bases under Texas law for disciplining Respondent, including her failure to maintain adequate medical records; her inability to practice medicine with reasonable skill and safety to patients because of excessive substance use or a mental or physical condition; her failure to practice medicine in an acceptable professional manner consistent with public health and welfare due to, among other things, her negligence, improper diligence, not safeguarding against potential complications, and inappropriate prescription of dangerous drugs or controlled substances; her use of alcohol or drugs in an intemperate manner that could endanger the lives of patients; and her unprofessional or dishonorable conduct likely to deceive or defraud the public or injure the public including prescribing or administering a controlled substance without a valid medical purpose (Tex. Health & Safety Code § 481.071(a). RFAAX 3, at 3–4 and RFAAX 11, at 11–12.

G. Allegation That Respondent Materially Falsified a Renewal Application (21 U.S.C. 824(a)(1))

I find clear, unequivocal, and convincing record evidence that, on April 7, 2016, Respondent was arraigned on charges that she violated a second-degree Texas felony involving a controlled substance. RFAAX 7, at 1; *see also* RFAAX 6, at 1–2. I find clear, unequivocal, and convincing record evidence that Respondent answered ''N'' to the first Liability question on the registration renewal application that she submitted on or about August 11, 2016. RFAAX 2, at 2 and RFAAX 8, at 1. I find clear, unequivocal, and convincing record evidence that the text of the first Liability question on the registration renewal application that Respondent submitted on or about August 11, 2016, asked whether Respondent had ''ever been convicted of a crime in connection with controlled substance(s) under state or federal law . . . or any such action pending.'' [17] RFAAX 2, at 2 and RFAAX 8, at 1. I find clear, unequivocal, and convincing record evidence that the date of Respondent's Judicial Confession is May 26, 2017. RFAAX 4, at 1. Accordingly, I find clear, unequivocal, and convincing record evidence that Respondent's ''N'' response to the first Liability question on the registration renewal application that she submitted on or about August 11, 2016, was false because, on April 7, 2016, Respondent was arraigned on charges that she violated a second-degree Texas felony involving a controlled substance.

III. Discussion

A. The Controlled Substances Act

Under the CSA, ''[a] registration . . . to . . . distribute[ ] or dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant—(1) has materially falsified any application filed pursuant to or required by this subchapter or subchapter II; (2) has been convicted of a felony under . . . any . . . law of the United States, or of any State, relating to any substance defined in this subchapter as a controlled substance; . . . [or] (4) has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined by such section.'' 21 U.S.C. 824(a). The OSC alleges these three bases for revocation of Respondent's registration: violations of 21 U.S.C. 824(a)(1), (2), and (4).

B. Allegation That Respondent Materially Falsified an Application (21 U.S.C. 824(a)(1))

As already discussed, I find clear, unequivocal, and convincing evidence that Respondent submitted a registration renewal application containing a false answer to the first Liability question. *Supra* section II.G. My finding about Respondent's submission of a false answer involves Respondent's arraignment on charges that she violated a second-degree, controlled-substance related Texas felony about four months before her submission of the registration renewal application. *Id.* Respondent's false submission, therefore, implicates Factor Four, Respondent's ''[c]ompliance with applicable State, Federal, or local laws relating to controlled substances.'' 21 U.S.C. 823(f)(4). Respondent's false response to the first Liability question directly implicated my statutorily-mandated analysis and my decision by depriving me of legally relevant facts when I evaluated Respondent's registration renewal application. RFAAX 2, at 1; *see also Frank Joseph Stirlacci, M.D.,* 85 FR 45,229, 45,235 (2020). Accordingly, I find, based on the CSA and the analysis underlying multiple Supreme Court decisions explaining ''materiality,'' that the falsity Respondent submitted was material. *Frank Joseph Stirlacci, M.D.,* 85 FR at 45,235.

Respondent's Written Statement argues that her *nolo contendere* plea to a second-degree Texas felony is ''not a conviction,'' because ''it is a deferred adjudication probation that was completed May 29, 2018 and is therefore discharged as a non-conviction.'' RFAAX 10, at 2. She posited that, ''It is not considered a conviction under Texas law.'' *Id.* There are two reasons why I disagree with Respondent's arguments.

First, the Agency established over thirty years ago, and reiterated as recently as about ten years ago, that a deferred adjudication is ''still a 'conviction' within the meaning of the . . . [CSA] even if the proceedings are later dismissed.'' *Kimberly Maloney, N.P.,* 76 FR 60,922, 60,922 (2011). In reaching this conclusion, the Agency explained that, ''[a]ny other interpretation would mean that the conviction could only be considered between its date and the date of its subsequent dismissal.'' *Id.,* citing *Edson*

[17] Respondent submitted evidence about the exact wording of the first Liability question. RFAAX 11, at 3. I find clear, unequivocal, and convincing record evidence that Respondent's proffered evidence, from 2006, is out-of-date and obsolete and, therefore, irrelevant to this adjudication. *Id., compare with* RFAAX 2, at 2; RFAAX 8, at 1.

W. Redard, M.D., 65 FR 30,616, 30,618 (2000).

Second, Respondent's Written Statement arguments do not account for the fact, as I already found, that the first Liability question on the registration renewal application that she submitted asked whether she had ''ever been convicted of a crime in connection with controlled substance(s) under state or federal law . . . *or any such action pending*'' [emphasis added]. RFAAX 2, at 2; RFAAX 8, at 1; *see also supra* section II.G. I already found that Respondent submitted her registration renewal application on or about August 11, 2016, that she was arraigned on charges that she violated a second-degree Texas felony involving a controlled substance on April 7, 2016, and that she pled guilty on May 26, 2017. *Supra* section II.G. As such, Respondent had already been arraigned, meaning there was an ''action pending,'' when she submitted her registration renewal application on or about August 11, 2016. Her ''N'' response to the first Liability question on that renewal application, therefore, was false, because there was already a second-degree Texas controlled-substance related felony action pending.

After considering, analyzing, and evaluating Respondent's arguments, I find clear, convincing, and unequivocal record evidence and conclude that Respondent materially falsified the registration renewal application she submitted on or about August 11, 2016. Accordingly, I find that there is clear, convincing, and unequivocal evidence in the record supporting revocation of Respondent's registration based on her having ''materially falsified any application filed pursuant to or required by this subchapter or subchapter II.'' 21 U.S.C. 824(a)(1).

C. Allegation That Respondent Has Been Convicted of a Felony Relating to Any Controlled Substance (21 U.S.C. 824(a)(2))

As already discussed, I find, based on substantial record evidence, including evidence that both the Government and Respondent submitted, that Respondent pled *nolo contendere* to a second-degree Texas felony relating to a controlled substance, hydromorphone, and that adjudication of her guilt was deferred. *Supra* section II.E.; *see also* section II.F.

I find substantial record evidence that the second-degree Texas felony to which Respondent pled is section 481.129 of the Texas Health and Safety Code. RFAAX 4, at 1; *see also* RFAA, at 2. Chapter 481 is the Texas Controlled Substances Act. Every offense in the version of subchapter 129 of the Texas Controlled Substances Act in effect when Respondent pled *nolo contendere* in which the word ''fraud'' appears concerns controlled substances. *See, e.g.,* Tex. Health and Safety Code §§ 481.129(a)(5)(A), (B), and (C). 481.129(a)(6), and 481.129(a-1) (2017). Respondent's ''Judicial Confession'' states that she ''did intentionally and knowingly possess and attempt to possess a controlled substance, namely: HYDROMORPHONE, by misrepresentation, fraud, forgery, deception and subterfuge.'' RFAAX 4, at 1. Texas Health and Safety Code § 481.129(a)(5)(A) states that a ''person commits an offense if the person knowingly . . . possesses, obtains, or attempts to possess or obtain a controlled substance or an increased quantity of a controlled substance . . . by misrepresentation, fraud, forgery, deception, or subterfuge.'' Tex. Health and Safety Code §§ 481.129(a)(5)(A) (2017). Accordingly, I find substantial record evidence that Respondent pled *nolo contendere* to a Texas felony relating to a controlled substance, Tex. Health and Safety Code §§ 481.129(a)(5)(A) (2017). 21 U.S.C. 824(a)(2).

I note the record evidence showing that, pursuant to deferred adjudication, the proceedings against Respondent were dismissed and Respondent was discharged early from community supervision. RFAAX 11, at 8. As already discussed, though, under prior Agency decisions, an Order dismissing proceedings following deferred adjudication does not change the fact that Respondent pled *nolo contendere* to a second-degree Texas felony. *Supra* section III.B. Accordingly, I find that there is substantial evidence in the record supporting revocation of Respondent's registration based on her Texas second-degree controlled substance-related felony conviction. 21 U.S.C. 824(a)(2).

D. Allegation That Respondent's Registration Is Inconsistent With the Public Interest (21 U.S.C. 824(a)(4) and 823(f))

As already discussed, the CSA provides for the revocation or suspension of a registration to distribute or dispense a controlled substance ''upon a finding that the registrant . . . has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined by such section.'' 21 U.S.C. 824(a)(4). In the case of a ''practitioner,'' which is defined in 21 U.S.C. 802(21) to include a ''physician,'' Congress directed consideration of the following factors in making the public interest determination:

> (1) The recommendation of the appropriate State licensing board or professional disciplinary authority.
>
> (2) The applicant's experience in dispensing . . . controlled substances.
>
> (3) The applicant's conviction record under Federal or State laws relating to the . . . distribution[ ] or dispensing of controlled substances.
>
> (4) Compliance with applicable State, Federal, or local laws relating to controlled substances.
>
> (5) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(f). These factors are considered in the disjunctive. *Robert A. Leslie, M.D.,* 68 FR 15,227, 15,230 (2003).

According to Agency decisions, I ''may rely on any one or a combination of factors and may give each factor the weight [I] deem[ ] appropriate in determining whether'' to revoke a registration. *Id.; see also Jones Total Health Care Pharmacy, LLC* v. *Drug Enf't Admin.,* 881 F.3d 823, 830 (11th Cir. 2018) (citing *Akhtar-Zaidi* v. *Drug Enf't Admin.,* 841 F.3d 707, 711 (6th Cir. 2016)); *MacKay* v. *Drug Enf't Admin.,* 664 F.3d 808, 816 (10th Cir. 2011); *Volkman* v. *U.S. Drug Enf't Admin.,* 567 F.3d 215, 222 (6th Cir. 2009); *Hoxie* v. *Drug Enf't Admin.,* 419 F.3d 477, 482 (6th Cir. 2005). Moreover, while I am required to consider each of the factors, I ''need not make explicit findings as to each one.'' *MacKay,* 664 F.3d at 816 (quoting *Volkman,* 567 F.3d at 222); *see also Akhtar-Zaidi,* 841 F.3d at 711; *Hoxie,* 419 F.3d at 482. ''In short, . . . the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest; what matters is the seriousness of the registrant's misconduct.'' *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 462 (2009). Accordingly, as appellate courts have recognized, findings under a single factor are sufficient to support the revocation of a registration. *MacKay,* 664 F.3d at 821.

In this matter, the Government's RFAA addresses Factor Three. RFAA, at 5; *see also supra* section II.F.; *infra.* In addition to Factor Three, I consider all of the public interest factors that are relevant to the record evidence. 21 U.S.C. 823(f).

1. Factor One—Recommendation of the Appropriate State Licensing Board

Factor One calls for consideration of the ''recommendation of the appropriate state licensing board or professional

disciplinary authority'' in the public interest determination. 21 U.S.C. 823(f)(1). The record evidence does not include a direct recommendation to the Agency from the TMB about Respondent's continued registration.

As already discussed, both the Government and Respondent submitted the Agreed Order for the record. *Supra* sections II.C. and II.D. There is some congruence between the matters addressed in the Agreed Order and the OSC allegations, such as Respondent's diversion of controlled substances. *See, e.g.,* OSC, at 2; RFAAX 3, at 2–4; RFAAX 11, at 10–12. The Agreed Order states that the TMB found multiple bases under Texas law for disciplining Respondent. RFAAX 3, at 3–5 and RFAAX 11, at 11–13; *see also supra* section II.D. It subjects Respondent to multiple conditions for up to ten years. RFAAX 3, at 5–13 and RFAAX 11, at 13–21; *see also supra* section II.D.

While the Agreed Order is not a direct recommendation for purposes of Factor One, it does indicate a possible response to some of the allegations and evidence before me. *John O. Dimowo, M.D.,* 85 FR 15,800, 15,810 (2020).[18] I apply the same analysis and reach the same conclusion here given the differences between the allegations and evidence set out in the Agreed Order and the allegations and evidence before me. In sum, while the fact that the Agreed Order conditioned Respondent's medical license, as opposed to revoking or suspending it, is not dispositive of the public interest inquiry in this case and is minimized due to the differences in the charges underlying the Agreed Order and the OSC charges I am adjudicating, I consider the fact that the TMB conditioned Respondent's medical license, as opposed to revoking or suspending it, and I give that aspect of the Agreed Order minimal weight in Respondent's favor.

2. Factors Two and/or Four—The Respondent's Experience in Dispensing Controlled Substances and Compliance With Applicable Laws Related to Controlled Substances

As already discussed, there is substantial record evidence of Respondent's negative controlled substance dispensing and non-compliance with applicable laws related to controlled substances. *See, e.g., supra* section II.F. For example, I already found that Respondent, herself, admitted that she engaged in the ''diversion of controlled substances'' ''from November 2015 through February 11, 2016.'' *Id.; cf. id.* (referencing the Agreed Order and Respondent's decision not to admit or deny the TMB's General and Specific Panel Findings). I further found that Respondent, herself, admitted ''the unfortunate course of action . . . [she] decided to take by diverting controlled substances.'' *Id.*

I also found that the Government submitted substantial evidence that Respondent admitted, to the DI, diverting multiple controlled substances from numerous patients at Parkland Hospital. *Id.* I further found substantial record evidence that Respondent also admitted to the DI that she ''diverted Dilaudid, Morphine, Versed, and Fentanyl.'' *Id.*

In addition, I already found substantial record evidence that the TMB's findings included that ''Respondent admitted that she diverted drugs through the Pyxis system that should have gone to patients,'' ''Respondent admitted that she has struggled with addiction and substance abuse,'' ''Respondent was suspended from her position at Parkland Hospital after a peer review action'' and ''[t[his suspension was related to her diversion of controlled substances and her substance abuse issues,'' ''Respondent admitted that she treated herself with controlled substances,'' and ''Respondent voluntarily submitted to interim drug testing with the Board,'' that ''she has had four missed calls and one late drug screen,'' and that ''[s]he has not tested positive for any substances.'' *Id.*

I also found substantial record evidence that the TMB concluded that it had multiple bases under Texas law for disciplining Respondent. *Id.* The multiple bases for disciplining Respondent under Texas law included her prescribing or administering a controlled substance without a valid medical purpose. *Id.*

I find that these matters directly implicate Factors Two and/or Four and strongly weigh against Respondent.

3. Factor Three—The Respondent's Conviction Record Under State Laws Relating to the Manufacture, Distribution, or Dispensing of Controlled Substances

I already found that Respondent was convicted under Texas law of a second-degree felony relating to a controlled substance. *Supra* section II.E. and section III.C. (concerning 21 U.S.C. 824(a)(2)). Concerning Factor Three and the OSC charge under 21 U.S.C. 824(a)(4), in conjunction with 21 U.S.C. 823(f)(3), the Government's RFAA argues that ''revocation is justified by . . . [Respondent's] State conviction record relating to [the] manufacture, distribution, or dispensing of controlled substances as evidenced by her *nolo contendere* plea to a second-degree controlled substance felony in Texas.'' RFAA, at 5. The RFAA cites RFAAX 4 and RFAAX 5 to support this statement. *Id.* In its next sentence, the RFAA states that ''Respondent pled *nolo contendere* to intentionally and knowingly possessing and attempting to possess a controlled substance, hydromorphone, by misrepresentation, fraud, forgery, deception, and subterfuge.'' *Id.* Again, the RFAA cites RFAAX 4 and RFAAX 5 as support for this statement. *Id.* It also cites 21 U.S.C. 823(f)(3) and 21 U.S.C. 824(a)(4), reconfirming that this portion of the RFAA is addressing the public interest basis for revocation. After a ''*see also*'' signal, the Government cited generally to three Agency decisions. *Id.*

The first decision involves a *nolo contendere* plea, a deferred entry of judgment, and the subsequent dismissal of proceedings. *Edson W. Redard, M.D.,* 65 FR 30,616 (2000), cited *supra* section III.B. As already discussed, that decision states that the Agency ''has consistently held that a plea of *nolo contendere* constitutes a 'conviction' within the meaning of 21 U.S.C. 824(a)(2).'' *Id.* at 30,618. Concerning Factor Three, the decision has one sentence in a one-sentence paragraph: ''As previously discussed, factor three is relevant since the Deputy Administrator finds that Respondent was convicted of a felony offense relating to controlled substances.'' *Id.* at 30,619. The decision's ''previous discussion'' was that the doctor had pled *nolo contendere* to one count of obtaining and attempting to obtain hydrocodone by fraud. *Id.* at 30,617. The decision does not elaborate on its one-sentence Factor Three conclusion.

The second and third Agency decisions that the Government cited to support its argument that Factor Three is relevant are *Jana Marjenhoff, D.O.,* 80 FR 29,067 (2015) and *David D. Miller, M.D.,* 60 FR 54,511 (1995). RFAA, at 5. According to *Jana Marjenhoff, D.O.,* ''[r]egarding Factor Three, the record in this case does not contain evidence that the Respondent has been convicted of (or even charged with) a crime related to any of the controlled substance activities designated under this provision in the CSA.'' 80 FR at 29,089 [footnote omitted]. This sentence does

[18] The *John O. Dimowo, M.D.* Agency decision stands for the proposition that ''[a]lthough statutory analysis [of the CSA] may not definitively settle . . . [the breadth of the cognizable state 'recommendation' referenced in Factor One], the most impartial and reasonable course of action is to continue to take into consideration all actions indicating a recommendation from an appropriate state.'' 85 FR at 15,810.

not appear to support the Government's Factor Three argument.

Regarding *David D. Miller, M.D.,* the decision explains that the doctor pled *nolo contendere* in state court to the unlawful *distribution* of marijuana and concluded that this plea ''established a *prima facie* case under factor three.'' 60 FR at 54,512 [emphasis added]. I agree with this conclusion. 21 U.S.C. 823(f)(3). I note that, according to the record evidence before me in this matter, Respondent pled to a second-degree State felony ''possession'' charge, not to a charge about ''the manufacture, distribution, or dispensing of controlled substances.'' *Id.; see also* RFAAX 4, at 1 (memorializing Respondent's Judicial Confession that she ''did intentionally and knowingly possess and attempt to possess a controlled substance, namely: HYDROMORPHONE, by misrepresentation, fraud, forgery, deception and subterfuge'').

For all of these reasons, I conclude that the record before me contains no evidence, or contains insufficiently developed evidence, to support my crediting the Government's Factor Three-related argument. Accordingly, I do not find record evidence that fits the ''manufacture, distribution, or dispensing of controlled substances'' criteria of Factor Three.

4. Factor Five—Such Other Conduct Which May Threaten the Public Health and Safety

As already discussed, the record contains substantial evidence, submitted both by the Government and by Respondent, about Respondent's conduct which may threaten the public health and safety. *See, e.g., supra* section II.F. First, according to the ''Specific Panel Findings'' of the Agreed Order, the TMB found that Respondent's diversion of drugs through the Pyxis system ''impacted patient care and involved lying to patients and her employer.'' RFAAX 3, at 2 and RFAAX 11, at 10.

Second, based on all of its Findings and the correlation of its Findings with legal requirements, the TMB concluded that there were multiple ways that Respondent's conduct may threaten the public health and safety. RFAAX 3, at 3–4 and RFAAX 11, at 11–12. It concluded that Respondent was unable to ''practice medicine with reasonable skill and safety to patients,'' because of excessive substance use or a mental or physical condition. RFAAX 3, at 3 and RFAAX 11, at 11. The TMB concluded that Respondent had failed to ''practice medicine in an acceptable professional manner consistent with public health and welfare'' due to, among other things, her negligence in performing medical services, improper diligence in her professional practice, her failure to safeguard against potential complications, and her inappropriate prescription of dangerous drugs or controlled substances. RFAAX 3, at 3–4 and RFAAX 11, at 11–12. The TMB also concluded that ''Respondent's use of alcohol or drugs in an intemperate manner . . . could endanger the lives of patients.'' RFAAX 3, at 4 and RFAAX 11, at 12. Further, the TMB concluded that Respondent engaged in ''unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public.'' RFAAX 3, at 4 and RFAAX 11, at 12.

I find that these matters directly implicate Factor Five and strongly weigh against Respondent.

5. Summary of Factors One, Two, Three, Four, and Five

As I found above, the Agreed Order is not a direct recommendation for purposes of Factor One, but it does indicate a possible response to some of the allegations and evidence before me. *Supra* section III.D.1. While the fact that the Agreed Order conditioned Respondent's medical license, as opposed to revoking or suspending it, is not dispositive of the public interest inquiry in this case and is minimized due to the differences in the charges underlying the Agreed Order and the OSC charges, I consider the fact that the TMB conditioned Respondent's medical license, as opposed to revoking or suspending it, and I give that aspect of the Agreed Order minimal weight in Respondent's favor. *Id.*

Regarding Factors Two and Four, I find substantial record evidence, including from Respondent's admissions, of her negative controlled substance dispensing experience, her diversion of controlled substances, and her noncompliance with applicable laws relating to controlled substances. *See, e.g., supra* section II.F. and section III.D.2. I give this record evidence significant weight against Respondent.

Regarding Factor Three, I find no relevant record evidence.

Regarding Factor Five, I find substantial record evidence that Respondent engaged in conduct which may threaten the public health and safety. *Supra, e.g.,* section II.F. and section III.D.4. I give this record evidence significant weight against Respondent.

Accordingly, I conclude that it would be ''inconsistent with the public interest'' for Respondent to retain her registration due to the significant record evidence implicating Factor Two, Factor Four, and Factor Five, despite the record evidence implicating Factor One, and regardless of the lack of record evidence implicating Factor Three. 21 U.S.C. 824(a)(4) and 21 U.S.C. 823(f); *see Wesley Pope,* 82 FR 14,944, 14,985 (2017).

IV. Sanction

Where, as here, the Government presented three, independent bases for the revocation of Respondent's registration, and Respondent did not present evidence rebutting any of the three bases, it is then up to Respondent ''to assure the Administrator'' that she ''can be entrusted with the responsibilit[ies] that accompany registration.'' *White* v. *Drug Enf't Admin.,* 626 F. App'x 493, 496 (5th Cir. 2015); *see also Jones Total Health Care Pharmacy, LLC* v. *Drug Enf't Admin.,* 881 F.3d 823, 830 (11th Cir. 2018) (quoting *Akhtar-Zaidi* v. *Drug Enf't Admin.,* 841 F.3d 707, 711 (6th Cir. 2016)); *MacKay* v. *Drug Enf't Admin.,* 664 F.3d 808, 816 (10th Cir. 2011) (quoting *Volkman* v. *Drug Enf't Admin.,* 567 F.3d 215, 222 (6th Cir. 2009) quoting *Hoxie* v. *Drug Enf't Admin.,* 419 F.3d 477, 482 (6th Cir. 2005)). As the Fifth Circuit also stated, ''[s]uch evidence includes acceptance of responsibility and a demonstration that the . . . [Respondent] 'will not engage in future misconduct.' '' *White* v. *Drug Enf't Admin.,* 626 F. App'x at 496; *see also Pharmacy Doctors Enterprises, Inc.* v. *Drug Enf't Admin.,* 789 F. App'x, 724, 733 (2019) (citing *Jones Total Health Care Pharmacy, LLC* v. *Drug Enf't Admin.,* 881 F.3d at 831 (citing *MacKay* v. *Drug Enf't Admin.,* 664 F.3d at 820 (noting that past performance is the best predictor of future performance and, when a registrant has ''failed to comply with . . . [her] responsibilities in the past, it makes sense for the agency to consider whether . . . [she] will change . . . [her] behavior in the future'') and *Alra Labs., Inc.* v. *Drug Enf't Admin.,* 54 F.3d 450, 452 (7th Cir. 1995) (''An agency rationally may conclude that past performance is the best predictor of future performance.'')).

The Agency has decided that the egregiousness and extent of misconduct are significant factors in determining the appropriate sanction. *Garrett Howard Smith, M.D.,* 83 FR 18,882, 18,910 (2018) (collecting cases); *Samuel Mintlow, M.D.,* 80 FR at 3652 (''Obviously, the egregiousness and extent of a registrant's misconduct are significant factors in determining the appropriate sanction.''). The Agency has also considered the need to deter similar acts in the future by Respondent and by the community of registrants. *Garrett*

Howard Smith, M.D., 83 FR at 18,910; *Samuel Mintlow, M.D.,* 80 FR at 3652.

In terms of egregiousness, the violations that the substantial record evidence shows Respondent committed go to the heart of the CSA: Not complying with the closed regulatory system devised to ''prevent the diversion of drugs from legitimate to illicit channels'' and not prescribing controlled substances in compliance with the applicable standard of care and in the usual course of professional practice. *Gonzales* v. *Raich,* 545 U.S. at 13–14, 27.

Respondent's submissions address her acceptance of responsibility. RFAAX 10 and RFAAX 11. According to her Written Statement, she has ''always taken 100% responsibility'' for her diversion of controlled substances.'' RFAAX 10, at 1. It also states that she does ''not deny nor . . . [has she] ever in the past the unfortunate course of actions . . . [she] decided to take by diverting controlled substances.'' *Id.* at 2. Her Written Statement continues with her ''accept[ing] sole responsibility and . . . [stating that she has] taken actions to become sober and healthy and continue[s] to do such.'' *Id.*

Respondent's choice to submit a Written Statement, instead of taking advantage of her right to a hearing, means that she cannot answer questions about her acceptance of responsibility. The several areas of concern I have about her acceptance of responsibility, therefore, remain unresolved. First, Respondent's statements accepting responsibility are expressed only in the general terms of diverting controlled substances. *Id.* at 1, 2. Second, she does not accept responsibility for all of the OSC's founded allegations. Instead, she is explicit in her ''deni[al of] all the above charges against her,'' meaning, at least, the OSC charges that she was convicted of a felony relating to a controlled substance and that she materially falsified her registration renewal application. RFAAX 11, at 1. Third, she does not address, let alone accept responsibility for, the conduct the TMB found as a basis for disciplining Respondent. RFAAX 3, at 3–5 and RFAAX 11, at 11–13.

Consequently, Respondent's acceptance of responsibility is not broad enough to encompass all of the Agency's charges against her. RFAAX 3, at 3–5 and RFAAX 11, at 1, 11–13. As such, it is not unequivocal, as the Agency requires. *Jeffrey Stein, M.D.,* 84 FR 46,968, 46,972–73 (2019) (unequivocal acceptance of responsibility); *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 463 (2009) (collecting cases). These deficiencies are concerning as they may mean that Respondent is not ready and/or willing to appreciate (1) the full extent of her misconduct and the (2) breadth of the harm her misconduct caused. I am also left wondering what Respondent learned from her misconduct, and whether Respondent has the resources to avoid committing the misconduct again.

For example, Respondent's statements accepting responsibility connect this acceptance with a violation of ''the oath . . . [she] took as a physician and trusted public figure.'' RFAAX 10, at 1. This, of course, is good and appropriate, and it ties into her statements that she has ''done everything in . . . [her] power to correct . . . [her] actions,'' and that ''she continue[s] to work hard at maintaining sobriety and gain[ing] the trust of those that . . . [she has] lost, including the public.'' *Id.* Her acceptance of responsibility does not appear to extend beyond the impact of her misconduct on herself, her sobriety, and the public's perception of her trustworthiness. For example, she focuses on herself as she characterizes as ''unfortunate'' Parkland Hospital's taking legal action concerning her diversion of controlled substances. RFAAX 10, at 1; *supra* section II.F. She does not mention, let alone unequivocally accept responsibility for, potentially endangering the lives of the Hospital's patients. RFAAX 3, at 3–4 and RFAAX 11, at 11–12. By way of further example, she does not acknowledge that her misconduct, not complying with the closed regulatory system devised to ''prevent the diversion of drugs from legitimate to illicit channels,'' goes to the heart of the CSA. *Gonzales* v. *Raich,* 545 U.S. at 13–14, 27. Her stated ''hard work'' goes to ''maintaining sobriety and gain[ing] the trust of those that . . . [she has] lost, including the public,'' but not, apparently, also to regaining the trust of the Agency whose statutory responsibilities include determining who may be entrusted with the responsibilities of a controlled substance registration.

For all of the above reasons, it is not reasonable for me, at this time, to trust that Respondent will comply with all controlled-substance related legal requirements in the future.[19] *Alra Labs., Inc.* v. *Drug Enf't Admin.,* 54 F.3d at 452 (''An agency rationally may conclude that past performance is the best predictor of future performance.'').

[19] I do not consider remedial measures when a Respondent does not unequivocally accept responsibility. As discussed, the scope of Respondent's presentation of remedial efforts was limited and, therefore, unpersuasive and not reassuring.

Accordingly, I shall order that Respondent's registration be revoked and that all pending applications to renew or modify Respondent's registration, and any pending application for a new registration in Texas, be denied.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a) and 21 U.S.C. 823(f), I hereby revoke DEA Certificate of Registration No. FG2374053 issued to Erica N. Grant, M.D. Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a) and 21 U.S.C. 823(f), I further hereby deny any pending application of Erica N. Grant, M.D., to renew or modify this registration, as well as any other pending application of Erica N. Grant, M.D. for registration in Texas. This Order is effective August 27, 2021.

Anne Milgram,

Administrator.

[FR Doc. 2021–16003 Filed 7–27–21; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0277]

Agency Information Collection Activities; Proposed Collection and Comments Requested; Reinstatement With Change of Previously Approved Collection #1121–0277: OJJDP's National Training and Technical Assistance Center (NTTAC) Feedback Form Package

AGENCY: Office of Juvenile Justice and Delinquency Prevention (OJJDP), Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until September 27, 2021.

FOR FURTHER INFORMATION CONTACT: If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jill Molter, Web Content Manager, OJJDP's NTTAC COR at 202–514–8871, Office of Juvenile Justice and Delinquency Prevention, Office of

Justice Programs, Department of Justice, 810 7th Street NW, Washington, DC 20530 or by email at *jill.molter@usdoj.gov.* Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officers, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

— Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Office of Juvenile Justice and Delinquency Prevention, including whether the information will have practical utility;
— Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
— Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
— Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Reinstatement with change of previously approved collection.

2. *The Title of the Form/Collection:* OJJDP's NTTAC Feedback Form Package.

3. *The agency form number:* OJJDP's NTTAC, all forms included in package #1121–0277.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other: Federal Government, State, local or tribal government; Not-for-profit institutions; Businesses or other for-profit.

Abstract: The Office for Juvenile Justice and Delinquency Prevention National Training and Technical Assistance Center (NTTAC) Feedback Form Package is designed to collect in-person and online data necessary to continuously assess the outcomes of the assistance provided for both monitoring and accountability purposes and for continuously assessing and meeting the needs of the field. OJJDP's NTTAC will send these forms to technical assistance (TA) recipients; conference attendees; training and TA providers; online meeting participants; in-person meeting participants; and focus group participants to capture important feedback on the recipients' satisfaction with the quality, efficiency, referrals, information, and resources provided and assess the recipients' additional training and TA needs. The data will then be used to advise OJJDP's NTTAC on ways to improve the support provided to its users; the juvenile justice field at-large; and ultimately improve services and outcomes for youth.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 5066 respondents will complete forms and the response time will range from .03 hours to 1.5 hours.

6. *An estimate of the total public burden (in hours) associated with the collection:* An estimated 520.5 total annual burden hours are associated with this collection.

If additional information is required, contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405B, Washington, DC 20530.

Dated: July 23, 2021.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021–16078 Filed 7–27–21; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0003]

RIN 1218–AC98

Mechanical Power Presses Update

AGENCY: Occupational Safety and Health Administration (OSHA), DOL.

ACTION: Request for information (RFI).

SUMMARY: OSHA requests information and comment on issues related to the mechanical power presses standard. The standard was issued in 1971 based upon the 1971 American National Standards Institute (ANSI) industry consensus standard for mechanical power presses. This ANSI standard has been updated a number of times since 1971. OSHA is seeking information regarding whether it should update the mechanical power presses standard and, if so, how closely the standard should follow the current ANSI standard for mechanical power presses. It is also seeking information on the types of presses that should be covered, the use and certification of equipment, and other topics such as presence-sensing device initiation (PSDI) systems, and requirements for press modifications, training, and injury reporting. OSHA will use the information received in response to this RFI to determine what action, if any, it may take to reduce regulatory burdens while maintaining worker safety.

DATES: Submit comments on or before October 26, 2021. All submissions must bear a postmark or provide other evidence of the submission date.

ADDRESSES: Comments may be submitted as follows:

Electronically: You may submit comments, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

OSHA will place comments and requests for a hearing, including personal information, in the public docket, which will be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT:

Press Inquiries: Frank Meilinger, Director, OSHA Office of Communications; telephone: 202–693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Lisa Long, OSHA Directorate of Standards and Guidance; email: *long.lisa@dol.gov.*

SUPPLEMENTARY INFORMATION:

Copies of this ***Federal Register*** *notice:* Electronic copies are available at *http://www.regulations.gov.* This **Federal Register** notice, as well as news releases and other relevant information, also are available at OSHA's web page at *http://www.osha.gov.*

References and Exhibits: Documents referenced by OSHA in this RFI, other than OSHA standards and **Federal Register** notices, are in Docket No. OSHA–2007–0003 (Mechanical Power Presses Update). The docket is available at *http://www.regulations.gov,* the Federal eRulemaking Portal. For additional information on submitting items to, or accessing items in, the docket, please refer to the **ADDRESSES** section of this RFI. Most exhibits are available at *http://www.regulations.gov;* some exhibits (*e.g.,* copyrighted material) are not available to download from that web page. Contact the OSHA Docket Office for assistance in locating docket submissions; telephone: (202) 693 2350; email: *technicaldatacenter@dol.gov.*

Table of Contents

I. Background

A. Introduction: OSHA's Existing Mechanical Power Presses Standard

A mechanical power press is a mechanically powered machine that shears, punches, forms, or assembles metal or other material by means of cutting, shaping, or use of combination dies. A mechanical power press is a two-part system: The first part is a movable upper part, called the ram; and the second part is a stationary bed or anvil. A die or punch is placed on the ram and the ram descends into a die block attached to the anvil. The punch and die block are known as the die set. A mechanical power press can be either full-revolution or part revolution. A full-revolution press cannot be stopped once the cycle begins. A part-revolution press has a brake that can stop the press mid-cycle.

In 1971, OSHA published the standard for mechanical power presses, § 1910.217, based on the 1971 edition of ANSI B11.1, the industry consensus standard on mechanical power presses.[1] The OSHA standard includes requirements for inspecting, maintaining, and modifying mechanical power presses to ensure that they are operating safely and includes a special reporting requirement for injuries to employees operating mechanical power presses. The standard also includes requirements for safeguarding the point of operation. OSHA's standard does not cover press brakes, hydraulic and pneumatic power presses, bulldozer presses, hot bending and hot metal presses, forging presses and hammers, riveting machines, or similar types of fastener applicators.

There are numerous ways to guard mechanical power presses, including point of operation guards, die enclosures, fixed barrier guards, movable barrier guards, presence sensing devices (PSDs), and presence sensing device initiation (PSDI) systems. PSDs are electronic units designed to automatically stop the machine from cycling when an intrusion is detected in the danger zone (point of operation) between the fixed bed of a press and the ram. PSDs are in wide use and are permitted under the OSHA standard as a safeguard to prevent operation of the press when an employee's hands or other part of the body are at the point of operation. PSDI is a system that permits the PSD to initiate the stroke of the press when it senses that all parts of the body are clear of the point of operation. The ability to stop the press mid-cycle is considered essential for the safe operation of a press in PSDI mode; when something enters the point of operation while the ram is in motion, the PSDI system stops the press. Full-revolution power presses cannot use PSDI because these machines cannot be stopped mid-cycle.

As initially adopted in 1971, the OSHA standard did not permit PSDI, but instead required that an operator physically initiate the stroke of a power press by using hand controls or a foot pedal. In 1976, OSHA granted an experimental variance to Interlake Stamping Company of Willoughby, Ohio, to allow the company to use PSDI on mechanical power presses. In granting the variance, OSHA stated that the PSDI system reduced worker fatigue, a recognized cause of accidents.[2] After using PSDIs for five years, Interlake Stamping found that a PSDI improved press productivity by 30 percent.[3] During the 26 years of using PSDI, no Interlake Stamping workers were injured while using the PSDI system.[4]

In 1988, OSHA added paragraph (h) to § 1910.217 to allow the use of PSDI on part-revolution mechanical power presses.[5] Among other requirements, OSHA required that OSHA-approved third parties validate the PSDI systems upon installation and at least annually thereafter.[6] OSHA believed that national testing laboratories and industry organizations would conduct the third-party validation. To date, however, no third party has sought OSHA approval to conduct third-party validation.

In 2011, Interlake applied for a permanent variance for relief from the third party validation requirements. OSHA responded with additional conditions for alternative means to provide additional protection to employees operating in PSDI mode. This included descriptions of the power press and light curtains in use; equipment guarding means and worker training; and inspection, testing and maintenance procedures. Due to cost concerns, Interlake withdrew its request for the permanent variance and then removed its PSDI system in 2013.[7] OSHA is not aware of any remaining facility that operates mechanical power presses in PSDI mode.

B. Regulatory History

OSHA's Section 610 Review of the PSDI Requirements

OSHA is required by the Regulatory Flexibility Act, 5 U.S.C. 610, to conduct periodic reviews of its safety and health standards (''Section 610 Reviews''). The purpose of these reviews is to determine whether OSHA should change, amend, or rescind standards consistent with the objectives of applicable statutes, to minimize any significant economic impact of the standards on a substantial number of small entities. OSHA conducted a Section 610 Review of the PSDI section of the mechanical power press standard (29 CFR 1910.217(h)) to

[1] See 36 FR 10466, 10643 (May 29, 1971), reprinted at 39 FR 23502 (June 27, 1974).

[2] See 41 FR 36702 (August 31, 1976).

[3] See 79 FR 13078 (March 7, 2014).

[4] See *https://www.osha.gov/dea/lookback/psdi_final2004.html.*

[5] See 53 FR 8322 (March 14, 1988).

[6] See § 1910.217(h)(11).

[7] See Interlake Stamping Corp.; Revocation of an Experimental Variance and Interim Order, 79 FR 13078 (March 7, 2014).

determine why PSDI had not been implemented and to identify how the standard could be changed to facilitate PSDI use in a manner that protects worker safety.[8] In the **Federal Register** notice (67 FR 55181, August 28, 2002) informing the public about the Section 610 Review and soliciting comments, OSHA sought comments on four options for revising the standard:

Option 1—Update all of § 1910.217 to make it consistent with ANSI B11.1–2001 or something similar.[9]

Option 2—Revise the third-party validation requirements.

Option 3—Eliminate all requirements for third-party validation and possibly replace them with a self-certification requirement and leave the other PSDI requirements intact.

Option 4—Replace OSHA's current PSDI requirements with the PSDI requirements in ANSI B11.1–2001.

Responses to the Section 610 Review

Based on analyses and information obtained during the Section 610 Review, OSHA concluded it should pursue Option 1, to update all of § 1910.217 to make it consistent with ANSI B11.1–2001 or something similar (Ex. OSHA–2007–0003–0002). *2007 Advance Notice of Proposed Rulemaking Request for Data, Information, and Comments.*

In 2007, the agency published an Advance Notice of Proposed Rulemaking (ANPRM) on mechanical power presses.[10] The ANPRM discussed a broad range of issues concerning the possible update of the mechanical power presses standard. The issues to be considered went beyond those of the current mechanical power presses standard and included broadening the scope of the standard to include other types of presses, equipment, and processes not previously addressed. OSHA invited comments on 37 questions, which were organized into the following six topic categories:

1. The Scope of the Mechanical Power Presses Standard,
2. Consensus Standards Related to Mechanical Power Presses,
3. Technical Issues,
4. Cost Issues,
5. Training Requirements, and
6. Reporting and Recordkeeping Requirements.

Commenters were encouraged to address any aspect of power presses, including pneumatic, hydraulic, and other presses, and provide information that would assist the agency in its consideration of what actions were appropriate. The agency was particularly interested in ways to incorporate flexibility into the standard to make it more protective, and to make compliance more straightforward.

The Scope of the Power Presses Standard

OSHA's first broad area of questioning in the 2007 ANPRM was on whether to broaden the scope of the mechanical power press standard including questions related to whether to:

- Include other types of presses, such as hydraulic and pneumatic power presses;
- regulate all power presses under one standard or under multiple standards; and
- ensure general machine guarding requirements in § 1910.212 adequately protect employees using non-mechanical power presses.

Respondents agreed that the existing mechanical power presses requirements in § 1910.217 were outdated. However, they varied in their comments regarding how to regulate various types of power presses. Suggestions included the following:

- Updating the standard based on the ANSI B11.1 standard;
- Developing an OSHA specific standard for each type of press;
- Considering adopting ANSI standards for other types of presses; and
- Expanding § 1910.212 to cover other types of presses beyond mechanical.

Consensus Standards Related to Mechanical Power Presses

The agency also sought comment on whether the revised OSHA standard should include information from the appendices or the explanatory information columns contained in the ANSI B11.1 standard. Commenters did not agree on exactly what information an OSHA standard should contain. Some commenters suggested that explanatory material should be non-mandatory. Others suggested that some explanatory material could be included as regulatory text.

Technical Issues

In response to questions regarding technical issues, commenters stated the following:

- Mechanical power presses are in decline;
- OSHA should consider the role of automation on safety and production;
- ANSI B11.1 permits modification and reconstruction of presses; and
- PSDI validation is useful, but third-party validation may not be necessary.

Training Requirements

Commenters expressed widespread support for strengthened training requirements. Many respondents stated that OSHA should require semiannual or annual training. Commenters were split on whether OSHA should change its existing performance-oriented approach with specific training provisions.

Reporting and Recordkeeping Requirements

OSHA requested comment on whether to eliminate the requirement in § 1910.217(g) that employers report point-of-operation injuries to OSHA within 30 days. One commenter questioned why OSHA singled out injuries involving mechanical power presses and required a special procedure for reporting injuries when there is already a general recordkeeping and reporting standard. Other comments, including an industry trade group, stated that OSHA should retain the requirement, and that employers find this injury data useful.

C. Hazards and Incidents

OSHA looked at several sources of data to understand the hazards that led to injuries involving mechanical power presses. These include injury reports required by § 1910.217(g), Bureau of Labor Statistics (BLS) injury data, and OSHA severe injury reporting data.

29 CFR 1910.217(g) Injury Reports

OSHA's standard (29 CFR 1910.217(g)) requires employers to report, within 30 days of an occurrence, all point-of-operation injuries to operators or other employees. These reports must contain, among other things, the injury sustained (amputations, lacerations, crushes, etc.), the task being performed (operation, set-up, maintenance, or other), the type of safeguard being used, and the cause of the accident. Although OSHA has collected this data, it has not been subject to any verification for accuracy or completeness. As explained further below, OSHA believes these reports may undercount the number of incidents.

OSHA received 204 reports of incidents related to mechanical power presses from 2007 through 2015—an average of about 23 per year. These incidents resulted in a reported 388 injuries (an average of 43 per year) with finger amputations being the most

[8] The review also included a review under Section 5 of Executive Order 12866.

[9] At the time OSHA initiated its Section 610 Review in 2002, ANSI B11.1–2001 was the most recent version of the consensus standard.

[10] See 72 FR 30729 (June 4, 2007).

prevalent injury–accounting for 39 percent of all injuries over that period.

TABLE 1—MECHANICAL POWER PRESS INCIDENTS AND INJURIES, 2007–2015

	2007	2008	2009	2010	2011	2012	2013	2014	2015	Total	Percent of total
Crush	17	5	6	14	12	10	6	9	6	85	22
Finger Amputation	29	10	16	19	26	24	9	10	10	153	39
Fingertip Amputation	18	6	8	11	1	6	7	8	1	66	17
Fracture	3	3	8	0	1	2	5	3	1	26	7
Laceration	10	6	7	0	6	2	4	3	4	42	11
Other/Unspecified	4	0	2	1	2	2	3	0	2	16	4
Total Injuries	81	30	47	45	48	46	34	33	24	388	
Total Incidents	37	15	20	27	26	24	20	21	14	204	

Note: Multiple injuries can result from a single incident. For example, a worker that suffered a single finger amputation would be considered to have one injury as a result of one incident. However, if a worker suffered amputation of five fingers, that would be considered five injuries as a result of one incident.

BLS Injury Data

Using BLS data, OSHA estimated the number of injuries that result from accidents involving mechanical power presses. BLS publishes data on all press injuries involving days away from work, but such data do not differentiate between mechanical or other types of power presses. BLS reports injury data by type of press including unspecified presses, assembly presses, brake presses, punch presses, and presses not elsewhere classified. According to BLS, from 2011 through 2016, there were 7,030 nonfatal occupational injuries involving days away from work due to presses—an average of 1,172 annually. Unfortunately, BLS' classification scheme does not allow OSHA to identify which injuries occur during the use of mechanical power presses versus other types of presses. OSHA believes it is possible that some occupational injuries reported in the BLS data may be attributable to mechanical power press operations but are not being reported to OSHA under OSHA's existing standard at 29 CFR 1910.217(g).

OSHA Severe Injury Reporting Program

On September 18, 2014, OSHA issued a final rule that implemented a Severe Injury Reporting Program (SIR), which requires, among other things, that employers report all amputations resulting from a work-related incident to OSHA within 24 hours of the employer becoming aware of the incident (79 FR 56130). From 2015 to 2017, OSHA received about 8,200 reports of amputations under the SIR program. In 2015, OSHA received 246 reports of amputations in the fabricated metal product manufacturing industry (NAICS 332), 109 reports in primary metal manufacturing (NAICS 331), 123 reports in machinery manufacturing (NAICS 333), and 134 reports in transportation equipment manufacturing (NAICS 334). There is no further breakdown of the data into how many amputations occurred on power presses, much less mechanical power presses; however, research from the late 1980s suggested that about 10 percent of all reported amputations occur among power press operators (Injuries and Amputations Resulting from Work with Mechanical Power Presses; *https://www.cdc.gov/niosh/docs/87-107/*) (Ex. OSHA–2007–0003–0025).

OSHA research from the late 1980s suggested that about 49 percent of injuries on mechanical power presses resulted in an amputation causing about 557 injuries to power press operators on average each year (*https://www.cdc.gov/niosh/docs/87-107/*). Based on estimates in the Section 610 Review of the PSDI standard, OSHA estimates that large mechanical power presses account for 9.5 percent of power presses used in the United States (*https://www.osha.gov/dea/lookback/psdi_final2004.html*). OSHA believes that these manufacturing industries are likely to include power press operators and that it is possible that some amputations attributable to mechanical power press operations are not being reported to OSHA under OSHA's existing standard at 29 CFR 1910.217(g).

D. Consensus Standards

The American Engineering Standards Committee, a predecessor of ANSI, released its first consensus standard for mechanical power presses in 1922. The standard has been updated periodically. The most recent ANSI consensus standard for mechanical power presses is ANSI B11.1–2009 (R2020), ''Safety Requirements for Mechanical Power Presses''; (Ex. OSHA–2007–0003–0026). Hydraulic and pneumatic power presses are both covered under a different consensus standard, ANSI B11.2, which was originally released in 1982. The most recent consensus standard for hydraulic and pneumatic power presses is ANSI B11.2–2013 (R2020), ''Safety Requirements for Hydraulic and Pneumatic Power Presses''; (Ex. OSHA–2007–0003–0027).

E. Training and Certification

The OSHA mechanical power presses standard spells out training requirements in several sections. Section 1910.217(e)(3) requires training of maintenance personnel, and provides that it is the responsibility of the employer to ensure the original and continuing competence of personnel caring for, inspecting, and maintaining power presses. Section 1910.217(f)(2) requires the employer to train and instruct the operator in the safe method of work before starting work on any operation covered by this section, and to ensure by adequate supervision that correct operating procedures are being followed. Section 1910.217(h)(13) requires that training for operators using presses in PSDI mode must be provided before the employee initially operates the press and as needed to maintain competence, but not less than annually thereafter. Such training must also include certain enumerated instructions specific to presses used in PSDI mode. In addition, OSHA requires that employers certify employee training in the use of the PSDI mode.

The training provisions in ANSI B11.1–2009 require the employer to meet the following:

- Train personnel associated with press production systems in safe working procedures and ensure they are qualified to perform the functions to which they are assigned;
- instruct all operators in the operation of the press production system including the proper method of operation for each production set–up before the press production system is

placed into production and that all operators demonstrate their knowledge of the press production system;

- instruct all die setters in the proper procedures for selecting, inspecting, and installing dies appropriate to the operations;
- ensure that maintenance personnel are trained in safe working procedures for inspecting and maintaining press production systems;
- ensure that supervisors are trained in safe working procedures for set-up, operation, and maintenance of press production systems; and
- train personnel, as required by assigned functions, in the safe working procedures for lockout/tagout of hazardous energy sources in accordance with ANSI Z244.1.

ANSI also requires a trained designated supervisor to continually supervise the press production system operation to ensure that the proper point-of-operation safeguarding is installed, activated, and operational for each job set-up and prior to release for production by the operator. The designated supervisor must also ensure that operators follow the correct operating procedures and use the press production system as intended within the rated capacities of the press and associated system components.

F. Economic Impacts

In addition to the specific questions posed in other parts of this RFI, OSHA is requesting data and information on the potential economic impacts should OSHA decide to make changes to the mechanical power presses standard. When responding to the questions in this RFI, OSHA requests, whenever possible, that stakeholders discuss potential economic impacts in terms of the following:

1. Quantitative benefits (*e.g.,* reductions in injuries, fatalities, and property damage);
2. Costs (*e.g.,* compliance costs or decreases in productivity); and
3. Offsets to costs (*e.g.,* increases in productivity, less need for maintenance and repairs).

OSHA also invites comments on any unintended consequences and consistencies or inconsistences with other policies or regulatory programs that might result if OSHA revises the mechanical power presses standard.

OSHA welcomes all comments but requests that stakeholders discuss economic impacts in specific detail, if possible. For example, if a provision or policy change would necessitate additional employee training, it is most helpful to OSHA to receive information on the following:

1. The training courses necessary;
2. the topics training would cover;
3. the types of employees who would need training and what percent (if any) of those employees currently receive the training;
4. the length and frequency of training;
5. any retraining necessary; and
6. the training costs, whether conducted by a third-party vendor or by an in-house trainer.

For discussion of equipment related costs, OSHA is interested in all relevant factors:

1. The prevalence of current use of the equipment;
2. the purchase price;
3. the cost of installation and training;
4. the cost of equipment maintenance and upgrades; and
5. the expected life of the equipment.

The agency also invites comment on the time and level of expertise required if OSHA were to implement the potential changes this RFI discusses, even if dollar-cost estimates are not available.

II. Request for Data, Information, and Comment

A. Hazards and Incidents

OSHA seeks comments on hazards associated with the operation of mechanical power presses and presses other than mechanical power presses, *i.e.,* hydraulic and pneumatic presses. CDC last studied Injuries and Amputations Resulting from Work with Mechanical Power Presses in the late 1980s and this study was specific to Mechanical Power Presses. OSHA requests additional studies or data on workplace injuries or fatalities related to mechanical power presses and presses other than mechanical power presses, particularly recent studies or data. (1) Is there more recent information about the risks and hazards associated with the operation of power presses? (2) Based on a review of accident and injury data (see Table 1), OSHA has identified finger and fingertip amputations, crush injuries, lacerations, and fractures as the main types of injuries caused by mechanical power presses. Please supply any additional information on these and other injuries associated with power presses? (3) How frequently are workers using power presses injured? How frequently are workers using power presses severely injured? How frequently are workers using power presses fatally injured? (4) Do injury rates and severity vary based on the type of press used or other factors? (5) Have injury rates associated with the use of power presses increased or declined over time? If so, why?

B. Power Presses Standard

OSHA seeks comment on how it should update the mechanical power presses standard. (6) Should OSHA use ANSI B11.1 as the basis for a standard update? (7) Are there provisions in the ANSI standard not in the OSHA standard that are important for providing worker protection? (8) If the agency bases a revised standard on ANSI B11.1, should OSHA add explanatory material in the form of non-mandatory appendices? (9) Would employers find a non-mandatory appendix useful if it addressed similar subjects as the explanatory text in the latest ANSI standard? (10) What material, if any, should be in the appendices?

The current OSHA mechanical power presses standard specifically excludes press brakes, bulldozer presses, hot bending and hot metal presses, forging presses and hammers, riveting machines, and similar types of fastener applicators. The ANSI B11.1–2009 standard excludes these as well; however, it also excludes cold headers and formers, eyelet machines, high-energy-rate presses, iron workers and detail punches, metal shears, powdered metal presses, press welders, turret and plate-punching machines, wire termination machines, and welding machines. (11) If OSHA updates the standard to be consistent with the provisions of ANSI B11.1–2009 or its equivalent, should OSHA exclude all of the machines that ANSI B11.1–2009 excludes? (12) If so, why? (13) Alternatively, should OSHA continue to exclude only the machines currently excluded by the OSHA standard? (14) Should OSHA exclude any other machines that ANSI B11.1–2009 does not specifically excluded? (15) What are these other machines and why should OSHA exclude them?

(16) Is your firm currently complying with the ANSI B11.1 standard? (17) Is compliance with any of the provisions in the ANSI standard prohibitively costly? If so, please specify which provisions are prohibitively costly. (18) Do you believe it would be less costly for your firm to comply with the ANSI standard as opposed to OSHA's existing standard? (19) If so, in what areas do you anticipate savings, including reduced compliance costs and/or improved efficiency?

C. Standards Other Than ANSI Consensus Standards

In the 2007 ANPRM, OSHA asked whether there are other consensus standards, international standards, or other references that OSHA should

consider in updating the mechanical power presses standard. The majority of commenters discussed the B11.1 standard however, they also suggested considering standards from the International Organization for Standardization (ISO), Canadian Standards Association (CSA), as well as other European standards. In this RFI, OSHA again seeks comment on these standards and whether OSHA should consider them as a basis for an updated OSHA's standard on power presses.

D. Presses Other Than Mechanical Power Presses

In this RFI, OSHA seeks comment on whether it should regulate other types of presses, *i.e.,* hydraulic and pneumatic presses. (20) Should these presses be covered under a new standard written in the fashion of the existing mechanical power presses standard, § 1910.217? (21) Should OSHA base any new requirements for hydraulic and pneumatic presses on ANSI B11.2–2013 (R2020), Safety Requirements for Hydraulic and Pneumatic Power Presses? (22) Does compliance with the ANSI B11.2–2013 (R2020) consensus standard provide adequate protection for workers using hydraulic and pneumatic presses? (23) Are there any ANSI B11.2–2013 (R2020) provisions or other protections critical to protecting workers that OSHA should include if the agency decides to propose a rule addressing non-mechanical power presses? (24) If so, which ones?

(25) Do you currently follow other ANSI consensus standards corresponding to any other types of presses (for example, ANSI B11.4, Safety Requirements for Shears)? (26) Are any provisions in this ANSI standard especially costly or difficult to comply with? (27) If so, which ones?

OSHA also seeks data and information about the proportion of pneumatic and hydraulic presses among all presses in use today.

E. Presence-Sensing Device Initiation

Both the ANSI B11.1–2009 standard and the existing OSHA mechanical power presses standard, § 1910.217, contain requirements for PSDI. However, unlike the ANSI standard, OSHA's standard requires third-party validation for PSDI. As previously noted, no third party has stepped forward to issue such certification.

(28) Should OSHA revise or eliminate its requirements regarding the use of PSDI systems? (29) Should OSHA base its PSDI requirements on the PSDI requirements in ANSI B11.1–2009? (30) Are there any types of operations that should not allow PSDI? (31) If so, which operations and why? (32) Should OSHA consider an option that includes regulating other types of power presses? (33) Are there any types of power presses that should not allow PSDI? (34) If so, which ones and why? (35) Should OSHA eliminate the third-party validation requirement? OSHA also seeks comment on whether it should continue to include mandatory and/or non-mandatory appendices with additional requirements for PSDI.

(36) If OSHA were to eliminate the existing requirements for PSDI systems, would you incorporate this technology on your existing power presses? (37) What would it cost to incorporate PSDI technology into your presses? OSHA previously estimated that the average cost to convert to PSDI technology would cost between $1,650 and $6,600 per press in 1988 dollars (*https://www.osha.gov/dea/lookback/psdi_final2004.html*). OSHA believes that simply inflating that price to 2020 dollars would not adequately reflect the estimated cost of converting to PSDI technology today because the cost of this technology has not increased at the same rate as the cost of other goods.

The agency believes that continuing to allow employers to use PSDI systems will increase productivity. The economic analysis accompanying the 1985 proposed rule for mechanical power presses estimated that allowing PSDI systems would result in productivity improvements ranging between 10 and 50 percent depending on the type of press (50 FR 12700, Mar. 29, 1985) (*https://www.regulations.gov/document?D=OSHA-S225-2006-0706-0168*). The analysis of the 1988 final rule estimated that allowing employers to convert existing presses to PSDI systems would increase the productivity of each press by an average of about 24 percent (53 FR 8322) (*https://www.regulations.gov/document?D=OSHA-S225-2006-0706-0173*). (38) Do you agree that PSDI devices would improve productivity? (39) If so, to what extent? OSHA welcomes any studies or information on the productivity effects of using PSDI systems.

F. Existing Presses

OSHA seeks comment on the number of power presses in use today including information on their characteristics. (40) How many power presses do you use at your facility? (41) What type of presses are they (mechanical, hydraulic, and pneumatic), and, if any are mechanical, how many do you use and what percentage of those mechanical power presses have part-revolution clutches? The agency seeks comment on the service life of mechanical power presses. (42) What type of press would you purchase to replace a mechanical power press? (43) What proportion of those mechanical power presses would you replace with presses equipped with part-revolution clutches?

(44) If OSHA based a new standard on ANSI B11.1–2009 (R2020), how many presses currently in use would be out of compliance? (45) Would you upgrade any of your presses to meet the ANSI B11.1 consensus standard, or would you replace the presses? (46) What percentage of your presses would you upgrade versus replace?

OSHA welcomes all data, studies, inventories, or information on the number of power presses of all types in use and/or the relative proportion of each type of press.

G. Modifying and Repairing Existing Presses; Records of Maintenance

The current OSHA standard permits any person to reconstruct or modify a mechanical power press as long as the reconstruction or modification is performed in accordance with § 1910.217(b).

OSHA seeks comment regarding the modification and repair of power presses. (47) Should OSHA require that only competent persons perform these tasks? (48) If so, how should OSHA define the term ''competent person'' with respect to mechanical power presses? OSHA also seeks comment on how to handle documentation of maintenance on power presses. (49) Should OSHA require documentation and, if so, should OSHA require document retention and access? (50) Who should maintain the documentation: The manufacturer, the owner, or a third party?

H. Reporting and Recordkeeping Requirements

OSHA requires that employers keep separate records and submit reports for injuries to employees operating mechanical power presses. These records are specific to OSHA's mechanical power presses standard and were put in its standard to allow OSHA to track the effectiveness of its mechanical power presses standard. (51) Are employers aware of these specific reporting requirements, and that they are additional to BLS occupational injury data collections and OSHA SIR reporting? (52) Should OSHA retain these requirements? (53) Should OSHA modify these requirements and, if so, how?

I. Affected Industries and Economic Impacts

OSHA believes that all power press workers fall into the BLS Occupational Employment Statistics (OES) aggregate Standard Occupational Code (SOC) Metal and Plastic Workers (occupational code 51–4000), and specifically into the four occupations denoted in Table 2. OSHA assumes that all workers in these occupations, in most industries, are using power presses of all kinds.

TABLE 2—OCCUPATIONS OF POWER PRESS OPERATORS BY STANDARD OCCUPATIONAL CODE

SOC	Occupation title
51–4022	Forging Machine Setters, Operators, and Tenders, Metal and Plastic.
51–4031	Cutting, Punching, and Press Machine Setters, Operators, and Tenders, Metal and Plastic.
51–4041	Machinists.
51–4199	Metal Workers and Plastic Workers, All Other.

Source: BLS, Occupational Employment Statistics.

For this RFI, OSHA identified affected industries as those employing workers in the Forging Machine Setters, Operators, and Tenders, Metal and Plastic (SOC 51–4022) occupation; the Cutting, Punching, and Press Machine Setters, Operators, and Tenders, Metal and Plastic (SOC 51–4031) occupation; and the All Other Metal Workers and Plastic Workers (SOC 51–4199) occupation. Although the BLS data show workers in these SOC categories employed in retail and wholesale trade, rental and leasing companies, and various service industries, OSHA believes these workers are likely performing tasks that do not utilize mechanical power presses and therefore OSHA did not include them in the universe of affected industries. The agency welcomes comment on whether these industries should be included. OSHA included Machinists (OES 51–4041) in the sum of power press employees (but only in industries that employed one of the three other occupations) and included all workers in the above SOC categories in temporary employment agencies and repair and maintenance industries. These industries and affected employees appear in Table 3.

Overall, OSHA estimates there are about 550,000 workers working with power presses. This is probably an overestimation because each of the selected occupations likely include workers who do not use power presses.

Based on data from OSHA's 2004 Section 610 Review, the agency determined that, between 1996 and 2002, large mechanical power presses (which included all new, part-revolution, mechanical power presses) represented 9.5 percent of total press production (*https://www.osha.gov/dea/lookback/psdi_final2004.html*). OSHA has assumed that this share of press production is roughly equal to the share of power press workers using mechanical power presses. Therefore, of the estimated 565,000 power press workers, OSHA estimates that about 53,600 of them operate mechanical power presses.

OSHA acknowledges that this is an imprecise estimate that makes a number of assumptions, including that large mechanical power presses are replaced at the same rate as all other power presses and that workers are evenly distributed among all press types. The agency's affected mechanical power press employment calculation is an overestimate if, for example, large mechanical power presses last longer than other power presses, large mechanical power presses are increasingly being replaced by other types of presses (non-mechanical), or if it takes more employees to operate a large mechanical power press than it does any other press. The agency is also aware that mechanical power presses are being used less frequently than in the past, and therefore, OSHA's estimate, which applies an estimation methodology developed as part of OSHA's Section 610 Review in 2004 to current employment and establishment data, may not accurately reflect current mechanical power press employment numbers.

OSHA seeks comments on what occupations employ power press workers. (54) Do the job titles listed above encompass all power press workers? (55) If not, what job categories or job titles should OSHA include? (56) What are the job titles of workers who use power presses at your facility? (57) Would you classify your facility's power press workers in one of the occupations listed above or is there a more appropriate occupational category for them? (58) How many total workers are at your establishment and how many of those workers use power presses as part of their job? (59) What types of power presses do they use (mechanical, pneumatic, hydraulic, or other)? (60) If those employees work on mechanical power presses, how many (or what percentage) of those presses have part-revolution clutches?

Table 3 shows total employment and total establishments in the affected industries.

TABLE 3—SELECTED CHARACTERISTICS OF INDUSTRIES THAT EMPLOY MECHANICAL POWER PRESS (MPP) OPERATORS

NAICS	NAICS—title	Total power press employees [1]	Affected (large MPP) employees	Total employment [2]	Total establishments [2]
236000	Construction of Buildings	260	25	1,391,532	222,751
237100	Utility System Construction	340	32	607,919	19,156
238000	Specialty Trade Contractors	2,280	217	4,423,714	472,803
311400	Fruit and Vegetable Preserving and Specialty Food Manufacturing [3].	0	0	159,258	1,924
316900	Other Leather and Allied Product Manufacturing	160	15	11,256	770
321000	Wood Product Manufacturing	1,540	146	415,151	14,463
322000	Paper Manufacturing	2,350	223	344,537	3,999
323000	Printing and Related Support Activities	840	80	438,516	24,809
325000	Chemical Manufacturing	2,730	259	798,028	13,615
326000	Plastics and Rubber Products Manufacturing	27,070	2,572	785,794	12,065

TABLE 3—SELECTED CHARACTERISTICS OF INDUSTRIES THAT EMPLOY MECHANICAL POWER PRESS (MPP) OPERATORS—Continued

NAICS	NAICS—title	Total power press employees [1]	Affected (large MPP) employees	Total employment [2]	Total establishments [2]
327000	Nonmetallic Mineral Product Manufacturing	2,990	284	399,572	15,076
331000	Primary Metal Manufacturing	26,450	2,513	374,837	4,112
332000	Fabricated Metal Product Manufacturing	209,230	19,877	1,437,086	55,020
333000	Machinery Manufacturing	93,600	8,892	1,057,407	23,060
334100	Computer and Peripheral Equipment Manufacturing	560	53	40,392	916
334200	Communications Equipment Manufacturing	970	92	82,857	1,260
334400	Semiconductor and Other Electronic Component Manufacturing.	6,070	577	257,700	3,789
334500	Navigational, Measuring, Electromedical, and Control Instruments Manufacturing.	8,170	776	383,979	5,201
335000	Electrical Equipment, Appliance, and Component Manufacturing.	15,640	1,486	345,470	5,549
336000	Transportation Equipment Manufacturing	89,580	8,510	1,585,194	11,567
337000	Furniture and Related Product Manufacturing	4,340	412	372,286	14,581
339000	Miscellaneous Manufacturing	19,810	1,882	550,598	25,811
493000	Warehousing and Storage	310	29	967,386	16,919
561300	Employment Services	40,160	3,815	6,771,435	53,657
561900	Other Support Services	460	44	296,453	20,123
811000	Repair and Maintenance	8,140	773	1,303,518	217,830
Totals		564,050	53,585	25,601,875	1,260,826

Source: OSHA, Office of Regulatory Analysis 2020.
[1] BLS Occupational Employment Survey 2019.
[2] County Business Patterns, U.S. Census, 2018.
[3] OSHA seeks comment regarding possible MPP use in this industry.

OSHA seeks comment on the industries that employ mechanical power press workers, and, if possible, those that use mechanical power presses with part-revolution clutches. (61) Are there any affected industries that the agency has not included in Table 3? (62) If so, which ones and how are those industries using mechanical power presses?

Estimates based on earlier years of OES data indicated that mechanical power presses are used in NAICS 311400, Fruit and Vegetable Preserving and Specialty Food Manufacturing, while estimates based on more recent data suggest that there are no mechanical power presses in use in that industry. Since OSHA derives its estimates from more aggregate data, the agency recognizes that the updated estimates may be inadvertently eliminating an industry that should be included in the scope of an updated mechanical power presses rulemaking. OSHA seeks comment on the current use of mechanical power presses in the NAICS 311400 industry.

As mentioned earlier, part of OSHA's estimate of large mechanical power presses depends on information about the service life of mechanical power presses, and the rate of mechanical power press replacement relative to other types of presses. To further refine this estimate, the agency seeks comment on the service life of mechanical power presses. (63) What type of press do you typically purchase to replace a mechanical power press? (64) What proportion of those replacement mechanical power presses are replaced with presses equipped with part-revolution clutches?

The Regulatory Flexibility Act (5 U.S.C. 601, as amended) requires OSHA to assess the impact of proposed and final rules on small entities. OSHA requests small entities to comment on the expected impacts of a revision to the mechanical power presses standard based on current consensus standards, including ANSI, CSA, or ISO standards. Please give specific examples of resource requirements in terms of additional staffing or time commitments (per job category), costs for purchase or rental of equipment or materials (dollar cost per unit), and costs for energy usage and any other additional expenses. (65) Would small entities face economic or technological feasibility concerns in complying with a revised standard that references current consensus standards? (66) If OSHA promulgated standards similar to the mechanical power presses standard for hydraulic and pneumatic presses, would this raise any economic or technological feasibility concerns specific to small businesses? (67) If you identify as a small entity in your industry, what is the basis for that identification (for example, reliance on Small Business Administration size standards; *https://www.sba.gov/*)? If you are uncertain as to your qualifications as a small entity, please provide details on your establishment size in terms of number of employees and categories of employee occupations; industry identification (by North American Industrial Classification System 6-digit code if available); and the primary types of goods or services produced by your company. Please describe in detail the technical or financial concerns that you or other small employers may encounter when implementing consensus standards addressing mechanical or other power presses.

J. Other Issues

(68) Are there any other issues related to mechanical, hydraulic, or pneumatic power presses that OSHA should address? Include issues remaining from, or not sufficiently addressed in, the 2007 ANPRM.

OSHA encourages comments from manufacturers, owners, and operators of presses, labor organizations, worker centers, government safety agencies, standards organizations, and other interested parties. Those who responded to the original 2007 ANPRM are especially encouraged to comment, either to confirm their original opinions or to tell us how those opinions have changed. OSHA invites those who did not respond to the original 2007

ANPRM to examine the relevant files at *www.regulations.gov.*

Authority and Signature

James S. Frederick, Acting Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice pursuant to 29 U.S.C. 653, 655, and 657, Secretary's Order 08–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR part 1911.

Signed at Washington, DC.

James S. Frederick,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2021–15995 Filed 7–27–21; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (21–048)]

NASA Federal Advisory Committees; Notice of Committees Re-Establishment Pursuant to the Federal Advisory Committee Act

AGENCY: National Aeronautics and Space Administration.

The Administrator of the National Aeronautics and Space Administration (NASA) has determined that the re-establishment of four (4) NASA Federal advisory committees under the Federal Advisory Committee Act (FACA) is necessary and in the public interest in connection with the performance of duties imposed upon NASA by law. This determination follows consultation with the Committee Management Secretariat, General Services Administration. These four committees were originally established on January 17, 2017. These four committees and their charters expired on June 12, 2021.

Name of Federal Advisory Committees: Astrophysics Advisory Committee; Heliophysics Advisory Committee; Earth Science Advisory Committee; and Planetary Science Advisory Committee.

Purpose and Objectives: Each of the four (4) NASA Federal advisory committees will advise NASA on scientific matters within the scope of its respective area of responsibility. Specifically, the scientific matters involve NASA research programs, policies, plans, and priorities pertaining to Astrophysics, Heliophysics, Earth Science, and Planetary Science. The four (4) NASA Federal advisory committees will function solely as advisory bodies and will comply fully with the provisions of FACA.

Membership: Membership of each of the four (4) NASA Federal advisory committees and any subordinate groups formed under each committee shall consist of Special Government Employees, Regular Government Employees, or Representatives. They will be chosen from among academia, government and industry with demonstrated and well-recognized knowledge, expertise and experience in fields relevant to their respective scientific disciplines. The membership of each Federal advisory committee will be fairly balanced in terms of points of view represented and functions to be performed. Diversity shall be considered as well.

Duration: Each of the four (4) NASA Federal advisory committees is a discretionary committee and is envisioned to be continuing entity subject to charter renewals every two years.

Responsible NASA Official: Mr. Jason Callahan, Science Mission Directorate, NASA Headquarters, (202) 358–0065 or *jason.w.callahan@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Jason Callahan, Science Mission Directorate, NASA Headquarters, (202) 358–0065 or *jason.w.callahan@nasa.gov.*

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2021–16028 Filed 7–27–21; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0080]

Information Collection: Tribal Participation in the Advance Notification Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a proposed collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Tribal Participation in the Advance Notification Program.''

DATES: Submit comments by August 27, 2021. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0080 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2019–0080. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2019–0080 on this website.
- *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.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML20080L789. The supporting statement is available in ADAMS under Accession No. ML21161A283.
- NRC's Clearance Officer: A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent

within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov/* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a proposed collection of information to OMB for review entitled ''Tribal Participation in the Advance Notification Program.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on April 5, 2021 (86 FR 17646.

1. *The title of the information collection:* ''Tribal Participation in the Advance Notification Program.''

2. *OMB approval number:* An OMB control Number has not yet been assigned to this proposed information collection.

3. *Type of submission:* New.

4. *The form number, if applicable:* Not applicable.

5. *How often the collection is required or requested:* Information would be requested: (1) Every five years, (2) after an Indian Tribe achieves Federal recognition, (3) when a transportation route is approved that is within an Indian Tribe's reservation or that crosses a reservation boundary, and (4) when there are changes. Information is requested from those Indian Tribes seeking to receive advance notifications. Some information is requested one time.

6. *Who will be required or asked to respond:* Federally recognized Indian Tribes. Only those federally recognized Indian Tribes with reservations and either receiving or seeking to receive the advance notifications would be asked to respond to the specific information request.

7. *The estimated number of annual responses:* 22 (7 reporting responses + 15 recordkeepers).

8. *The estimated number of annual respondents:* 15.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 34.5 (24.5 hours reporting + 10 hours recordkeeping).

10. *Abstract:* In order to receive notifications when certain shipments of nuclear waste or shipments of irradiated reactor fuel within or across the boundary of an Indian Tribe's reservation, Indian Tribes will submit certifications that Tribal official or their designee(s) has (or have) taken training on the handling of safeguards information (SGI) and the Indian Tribe has the necessary protection measures in place and the Indian Tribe will protect the SGI. If the Tribal official is designating another person to receive the advance notifications, information on the designation will be provided. The Indian Tribe will also provide the contact information for the Tribal official or the Tribal official's designee(s). The Indian Tribe will also provide an affirmation of the boundaries of the Indian Tribe's reservation or the necessary corrections to a map provided by the NRC. The NRC will also collect the name and contact information for the Indian Tribe's emergency response contact(s). The NRC makes this information available to others, including NRC licensees and agreement state licensees. NRC licensees will use the information to comply with the NRC's regulations that require them to provide advance notice of certain shipments of radioactive material to participating Indian Tribes.

Dated: July 22, 2021.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2021–16002 Filed 7–27–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0250]

Information Collection: General Domestic Licenses for Byproduct Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''General Domestic Licenses for Byproduct Material.''

DATES: Submit comments by August 27, 2021. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0250 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2020–0250.
- *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 supporting statement and burden spreadsheet are available in ADAMS under Accession Nos. ML21173A071 and ML21173A079.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

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.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov/* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''General Domestic Licenses for Byproduct Material.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on March 23, 2021 (86 FR 15512).

1. *The title of the information collection:* Part 31 of title 10 of the *Code of Federal Regulations* (10 CFR), ''General Domestic Licenses for Byproduct Material.''

2. *OMB approval number:* 3150–0016.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* Not applicable.

5. *How often the collection is required or requested:* Reports are submitted as events occur. General license registration requests may be submitted at any time. Changes to the information on the registration may be submitted as they occur. Devices meeting certain criteria must be registered annually.

6. *Who will be required or asked to respond:* Persons receiving, possessing, using, or transferring devices containing byproduct material.

7. *The estimated number of annual responses:* 167,858 (12,277 reporting responses + 181 third-party responses + 155,400 recordkeepers).

8. *The estimated number of annual respondents:* 155,400 (18,500 NRC licensee respondents + 136,900, Agreement State licensee respondents).

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 43,803 hours (4,905 reporting hours + 48 third-party disclosure hours + 38,850 recordkeeping hours).

10. *Abstract:* 10 CFR part 31, ''General Domestic Licenses for Byproduct Material'' establishes general licenses for the possession and use of byproduct material in certain devices. General licensees are required to keep testing records and submit event reports identified in 10 CFR part 31, which assist the NRC in determining, with reasonable assurance, that devices are operated safely and without radiological hazard to users or the public.

Dated: July 22, 2021.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2021–16001 Filed 7–27–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0141]

Evaluating the Habitability of a Nuclear Power Plant Control Room During a Postulated Hazardous Chemical Release

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft regulatory guide (DG), DG–1387, ''Evaluating the Habitability of a Nuclear Power Plant Control Room during a Postulated Hazardous Chemical Release.'' This DG is a proposed Revision 2 to Regulatory Guide (RG) 1.78, which describes an approach that is acceptable to the NRC staff to meet regulatory requirements for evaluating the habitability of a nuclear power plant control room during a postulated hazardous chemical release. Releases of hazardous chemicals, onsite or off-site, can result in the nearby control room becoming uninhabitable.

DATES: Submit comments by August 27, 2021. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal Rulemaking website:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0141. 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.

• *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the

SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Casper Sun, Office of Nuclear Reactor Regulation, telephone: 301–415–1646, email: *Casper.Sun@nrc.gov;* Michael Eudy, Office of Nuclear Regulatory Research, telephone: 301–415–3104, email: *Michael.Eudy@nrc.gov;* or Kyle Song, Office of Nuclear Regulatory Research, telephone: 301–415–3637, email: *Kyle.Song@nrc.gov.* All are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0141, facility name, unit number(s), docket number(s), application date, and subject, if applicable, when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0141.
- *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 the **SUPPLEMENTARY INFORMATION** section.
- *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.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2021–0141 in your comment submission.

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

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Additional Information

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

The DG entitled, ''Evaluating the Habitability of a Nuclear Power Plant Control Room during a Postulated Hazardous Chemical Release,'' is temporarily identified by its task number, DG–1387 (ADAMS Accession No. ML21119A157). The proposed revision of this guide (Revision 2) presents up-to-date and defense-in-depth guidance using the latest scientific methods and the updated, NRC-endorsed computer code for control room habitability evaluation called HABIT. HABIT is an integrated set of computer codes that the NRC uses to evaluate control room habitability and estimate the control room personnel's exposure to a chemical release. DG–1387 describes an approach that is acceptable to the NRC staff to meet the requirements of part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic licensing of production and utilization facilities,'' appendix A, ''General Design Criteria for Nuclear Power Plants,'' General Design Criterion 19, ''Control Room,'' for evaluating the habitability of a nuclear power plant control room during a postulated hazardous chemical release.

Revision 1 of RG 1.78 endorsed an earlier version of the HABIT code, which is described in NUREG/CR–6210, Supplement 1, ''Computer Codes for Evaluation of Control Room Habitability (HABIT V1.1),'' issued October 1998 (ADAMS Accession No. ML063480558). More recently, the NRC staff endorsed a newer version of the HABIT code in NUREG–2244, ''HABIT 2.2: Description of Models and Methods,'' issued May 2021 (ADAMS Accession No. ML21120A069). NUREG–2244 is incorporated into Revision 2 of this proposed guide.

The staff is also issuing for public comment a draft regulatory analysis (ADAMS Accession No. ML21119A159). The staff developed the regulatory analysis to assess the value of revising RG 1.78 as well as alternative courses of action.

III. Backfitting, Forward Fitting, and Issue Finality

Issuance of DG–1387, if finalized, would not constitute backfitting as defined in 10 CFR 50.109, ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests''; would not constitute forward fitting as that term is defined and described in MD 8.4; or affect the issue finality of any approval issued under 10 CFR part 52, ''Licenses, certifications, and approvals for nuclear power reactors.'' As explained in DG–1387, applicants and licensees would not be required to comply with the positions set forth in DG–1387.

Dated: July 23, 2021.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

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

[FR Doc. 2021–16096 Filed 7–27–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287; NRC–2021–0127]

Duke Energy Carolinas, LLC; Duke Energy; Oconee Nuclear Station, Units 1, 2, and 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Subsequent license renewal application; opportunity to request a hearing and to petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering an application for the subsequent license

renewal of Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, which authorize Duke Energy Carolinas, LLC (Duke Energy or the applicant) to operate Oconee Nuclear Station (ONS), Units 1, 2, and 3. The renewed licenses would authorize the applicant to operate ONS for an additional 20 years beyond the period specified in each of the current renewed licenses. The current renewed operating licenses for ONS expire as follows: Unit 1 on February 6, 2033, Unit 2 on October 6, 2033, and Unit 3 on July 19, 2034.

DATES: A request for a hearing or petition for leave to intervene must be filed by September 27, 2021.

ADDRESSES: Please refer to Docket ID NRC–2021–0127 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–2021–0127. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–287–0624; 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.
- *Public Library:* A copy of the subsequent license renewal application for ONS can be accessed at the following public library: Seneca Library, 300 E South 2nd St., Seneca, SC 29678.

FOR FURTHER INFORMATION CONTACT: Angela Wu, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2995; email: *Angela.Wu@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC has received an application (ADAMS Package Accession No. ML21158A193) from Duke Energy, dated June 7, 2021, filed pursuant to Section 103 of the Atomic Energy Act of 1954, as amended (the Act), and part 54 of title 10 of the *Code of Federal Regulations* (10 CFR), to renew the operating licenses for ONS at 2,568 megawatts thermal each. The ONS units are pressurized-water reactors designed by Babcock and Wilcox and are located in Seneca, South Carolina. A notice of receipt of the subsequent license renewal application (SLRA) was published in the **Federal Register** on June 25, 2021 (86 FR 33784).

The NRC staff has determined that Duke Energy has submitted sufficient information in accordance with 10 CFR 54.19, 54.21, 54.22, 54.23, 51.45, and 51.53(c), to enable the staff to undertake a review of the application, and that the application is, therefore, acceptable for docketing. The current Docket Nos. 50–269, 50–270 and 50–287 for Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, respectively, will be retained. The determination to accept the SLRA for docketing does not constitute a determination that a subsequent renewed license should be issued and does not preclude the NRC staff from requesting additional information as the review proceeds.

Before issuance of the requested subsequent renewed licenses, the NRC will have made the findings required by the Act and the Commission's rules and regulations. In accordance with 10 CFR 54.29, the NRC may issue a subsequent renewed license on the basis of its review if it finds that actions have been identified and have been or will be taken with respect to: (1) Managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified as requiring aging management review; and (2) time-limited aging analyses that have been identified as requiring review, such that there is reasonable assurance that the activities authorized by the renewed licenses will continue to be conducted in accordance with the current licensing basis and that any changes made to the plant's current licensing basis will comply with the Act and the Commission's regulations.

Additionally, in accordance with 10 CFR 51.95(c), the NRC will prepare an environmental impact statement as a supplement to the Commission's NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants,'' dated June 2013 (ADAMS Accession No. ML13106A241). In considering the SLRA, the Commission must find that the applicable requirements of subpart A of 10 CFR part 51 have been satisfied, and that any matters raised under 10 CFR 2.335 have been addressed. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold public scoping meetings. Detailed information regarding the environmental scoping meetings will be the subject of a separate **Federal Register** notice.

II. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of hearing will be issued.

As required by 10 CFR 2.309, a petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to

rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

A State, local governmental body, Federally recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submission (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC's website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the following procedures.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, that allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class

mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted a request for exemption from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Detailed information about the subsequent license renewal process can be found under the Nuclear Reactors icon at *https://www.nrc.gov/reactors/operating/licensing/renewal.html* on the NRC's website. Copies of the application to renew the operating licenses for ONS are available for public inspection at the NRC's PDR, and at *https://www.nrc.gov/reactors/operating/licensing/renewal/subsequent-license-renewal.html,* the NRC's website while the application is under review. The application may be accessed in ADAMS through the NRC Library on the internet at *https://www.nrc.gov/reading-rm/adams.html* under ADAMS Package Accession No. ML21158A193. As previously stated, persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS may contact the NRC's PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by email to *pdr.resources@nrc.gov.*

Dated: July 22, 2021.

For the Nuclear Regulatory Commission.

Lauren K. Gibson,

Chief, License Renewal Project Branch, Division of New and Renewed Licenses, Office of Nuclear Reactor Regulation.

[FR Doc. 2021–16011 Filed 7–27–21; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92468; File No. SR–ICC–2021–016]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Proposed Rule Change Relating to the ICC Exercise Procedures

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 July 8, 2021, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to revise the Exercise Procedures in connection with the clearing of credit default index swaptions (''Index Swaptions'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICC proposes revising the Exercise Procedures in connection with the clearing of Index Swaptions. The Exercise Procedures supplement the provisions of Subchapter 26R of the ICC Clearing Rules (the ''Rules'') with respect to Index Swaptions [3] and provide further detail as to the manner in which Index Swaptions may be exercised by Swaption Buyers, the manner in which ICC will assign such exercises to Swaption Sellers, and certain actions that ICC may take in the event of technical issues. ICC proposes to make the changes effective following Commission approval of the proposed rule change. The proposed revisions are described in detail as follows.

ICC proposes changes related to certain fallback measures included in the Exercise Procedures. ICC proposes to amend Paragraph 2.6, which includes procedures to address a failure of the electronic system established by ICC for exercise (''Exercise System Failure''). In such case, Paragraph 2.6 currently provides ICC with the following options: (i) Cancel and reschedule the Exercise Period (*i.e.,* the period on the expiration date of an Index Swaption during which the Swaption Buyer may deliver an exercise notice to ICC to exercise all or part of such Index Swaption); (ii) determine that automatic exercise will apply; and/or (iii) take such other action as ICC determines to be appropriate to permit exercising parties to submit exercise notices and to permit ICC to assign such notices. The proposed changes remove the ability to cancel and reschedule the Exercise Period and renumber the following options accordingly.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Pursuant to an Index Swaption, one party (the ''Swaption Buyer'') has the right (but not the obligation) to cause the other party (the ''Swaption Seller'') to enter into an index credit default swap transaction at a pre-determined strike price on a specified expiration date on specified terms. In the case of Index Swaptions cleared by ICC, the underlying index credit default swap is limited to certain CDX and iTraxx index credit default swaps that are accepted for clearing by ICC, and which would be automatically cleared by ICC upon exercise of the Index Swaption by the Swaption Buyer in accordance with its terms.

ICC maintains the ability to effect an automatic exercise under Paragraph 2.8, which addresses the situation where ICC will automatically exercise on the expiration date each open position (of all exercising parties) in an Index Swaption that is determined by ICC to be ''in the money'' on such date. Whether an Index Swaption is ''in the money'' is currently based on the average of the end-of-day (''EOD'') price of the underlying CDS contract on the preceding business day and on the expiration date, and where relevant, also based on the average of the EOD price on the preceding business day and on the expiration date of each single name constituent contract with respect to which an Existing Restructuring [4] has occurred. Under the proposed changes, whether an Index Swaption is ''in the money'' is based on the relevant market-observed prices for the underlying CDS contract determined by ICC using the intraday market data available to it at the time, or the EOD price of the underlying CDS contract on the expiration date established at any Intercontinental Exchange, Inc. (''ICE'') clearinghouse, and where relevant, also based on the last available ICE EOD price of each single name constituent contract with respect to which an Existing Restructuring has occurred. Such changes provide ICC with additional flexibility, as ICC need not wait until EOD to execute an automatic exercise, and allow this fallback measure to coincide with the timing of the Exercise Period.[5]

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [6] and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad–22.[7] In particular, Section 17A(b)(3)(F) of the Act [8] requires that the rule change be consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest. ICC proposes changes related to certain fallback measures in the Exercise Procedures. Removing the option to cancel and reschedule the Exercise Period under Paragraph 2.6 would streamline and simplify ICC's procedures in the case of an Exercise System Failure, thereby reducing the potential for confusion regarding ICC's practices under such circumstances. Moreover, to provide consistency where possible in the event of an Exercise System Failure, amended Paragraph 2.8 allows the timing of automatic exercise to coincide with the timing of the Exercise Period. Accordingly, in ICC's view, the proposed rule change will facilitate understanding of how unforeseen operational or technical issues are handled and promote preparedness by market participants to enhance the implementation of the Exercise Procedures, thereby promoting the prompt and accurate clearing and settlement of the contracts cleared by ICC, including Index Swaptions, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[9]

The amendments would also satisfy relevant requirements of Rule 17Ad-22.[10] Rule 17Ad–22(e)(1) [11] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions. The Exercise Procedures supplement the provisions of Subchapter 26R of the Rules with respect to Index Swaptions and further ensure that ICC's Rules clearly reflect the terms and conditions applicable to Index Swaptions. As described above, the proposed revisions would support the clearing of Index Swaptions by ICC by providing additional consistency to market participants and simplifying the procedures in the case of an Exercise System Failure. The proposed rule change would continue to support the legal basis for ICC's clearance of Index Swaptions and operation of the exercise and assignment process, including addressing situations where there are operational or technical issues. As such, the proposed rule change would satisfy the requirements of the Rule 17Ad–22(e)(1).[12]

Rule 17Ad–22(e)(17) [13] requires, in relevant part, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to manage its operational risks by (i) identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls; and (ii) ensuring that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity. The Exercise Procedures allow ICC to manage the operational risks associated with the exercise and assignment process by establishing procedures for the exercise and assignment of Index Swaptions and including fallback measures, which help mitigate the impact from operational or technical issues and ensure that the system has a high degree of security, resiliency, operational reliability, and adequate, scalable capacity. The proposed changes remove the option to cancel and reschedule an Exercise Period, which would reduce the potential for confusion regarding ICC's practices under such circumstances. The proposed changes also provide ICC with additional flexibility for determining whether an Index Swaption is ''in the money'' such that ICC need not wait until EOD to execute an automatic exercise to provide consistency where possible in the case of an Exercise System Failure. ICC believes that these amendments would streamline and simplify ICC's procedures in the event of an Exercise System Failure and help mitigate the impact from operational or technical issues. The proposed rule change is therefore reasonably designed to meet the requirements of Rule 17Ad–22(e)(17).[14]

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. The proposed changes to the Exercise Procedures will apply uniformly across all market participants. Therefore, ICC does not

[4] An Existing Restructuring is defined in ICC Rule 26R–319(c) and is applicable upon the occurrence of an M(M)R Restructuring Credit Event with respect to an Index Swaption for which the DC Credit Event Announcement or Regional CDS Committee Restructuring Announcement occurs on or prior to the expiration date.

[5] The Exercise Period starts at the Swaption Exercise Start Time (with respect to an Index Swaption referencing a CDX.NA index, 9:00 a.m., New York time and referencing an iTraxx Europe index, 9:00 a.m., London time) and ends at the Swaption Exercise Cut-Off Time (with respect to an Index Swaption referencing a CDX.NA index, 11:00 a.m., New York time and referencing an iTraxx Europe index, 4:00 p.m., London time) under the Exercise Procedures.

[6] 15 U.S.C. 78q–1.

[7] 17 CFR 240.17Ad–22.

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] *Id.*

[10] 17 CFR 240.17Ad–22.

[11] 17 CFR 240.17Ad–22(e)(1).

[12] *Id.*

[13] 17 CFR 240.17Ad–22(e)(17)(i)–(ii).

[14] *Id.*

believe the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–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.

All submissions should refer to File Number SR–ICC–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 such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation.*

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–ICC–2021–016 and should be submitted on or before August 18, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–15993 Filed 7–27–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92466; File No. SR–NASDAQ–2021–040]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Establish the ''Extended Trading Close'' and a New ''Extended Trading Close'' Order Type

July 22, 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 July 12, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Equity 4, Rule 4702 and Rule 4703, and add Rule 4755, to establish the ''Extended Trading Close'' and new ''ETC Eligible LOC'' and ''Extended Trading Close'' Order Types, as is 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 Exchange proposes to adopt new Equity 4, Rule 4755[3] to establish the ''Extended Trading Close.'' The Extended Trading Close will allow Participants an additional opportunity to access liquidity in Nasdaq-listed securities at the Nasdaq Official Closing Price for a limited period of time after the Nasdaq Closing Cross[4] or the LULD Closing Cross,[5] (collectively, the ''Closing Cross'') concludes. The Exchange also proposes to amend Rule 4702 and Rule 4703 to establish new ''ETC Eligible LOC'' and ''Extended Trading Close'' Order Types that may

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] References herein to Nasdaq Rules in the 4000 Series shall mean Rules in Nasdaq Equity 4.

[4] The ''Nasdaq Closing Cross'' refers to Nasdaq's process for determining the price at which it will execute orders at the close and for executing those orders, as set forth in Rule 4754.

[5] The ''LULD Closing Cross'' refers to Nasdaq's modified process for determining the price at which it will execute orders at the close, following a Trading Pause, as set forth in Rule 4120(a), which exists at or after 3:50 p.m. and before 4:00 p.m., as well as the process for executing those orders, as set forth in Rule 4754(b)(6).

participate in the Extended Trading Close.

Extended Trading Close

As defined in proposed new Rule 4755(a)(5), the Extended Trading Close will be the process, described in new Rule 4755, during which ETC Eligible Orders [6] may match and execute at the Nasdaq Official Closing Price, as determined by the Closing Cross, for a five minute period immediately following the Closing Cross.

The Extended Trading Close will commence immediately upon the conclusion of the Closing Cross and it will continue until 4:05 p.m. ET on a regular trading day, or 1:05 p.m. ET on a day when Nasdaq closes early.[7] The Extended Trading Close will not occur for a security on any day when insufficient interest exists in the System to conduct the Closing Cross for that security or when the Exchange invokes contingency procedures due to a disruption that prevents execution of the Closing Cross.[8] Likewise, the Exchange will cancel executions in a security that occur in the Extended Trading Close to the extent that the Exchange nullifies the Closing Cross in that security pursuant to the rules governing clearly erroneous transactions, as set forth in Rule 11890.

On a continuous basis during the Extended Trading Close, the System will match orders in Nasdaq-listed securities [9] and execute them at the Nasdaq Official Closing price (as determined by the Closing Cross), unless the last sale price during After Hours Trading,[10] or the best After Hours Trading bid (offer) price, of a Nasdaq-listed security subject to an order participating in the Extended Trading Close is higher (lower) than the Nasdaq Official Closing Price by the greater of 0.5% or $0.01, in which case the System will suspend executions of matched orders in the Extended Trading Close for that security unless or until the After Hours Trading last sale prices or best After Hours Trading bid (offer) price of the security returns to within the greater of the 0.5%/$0.01 thresholds prior to the conclusion of the Extended Trading Close (at which point executions would resume). This limitation will help to mitigate the risk that orders in Nasdaq-listed securities which participate in the Extended Trading Close will execute at a price that is no longer reflective of the value of the security. (From time to time, Nasdaq management may modify the 0.5%/$0.01 thresholds described above upon prior notice to market Participants.) Furthermore, the Exchange proposes that at any time during the Extended Trading Close, Participants are free to modify or cancel their ETC Eligible Orders if the thresholds that the Exchange proposes do not meet their needs or if they wish to do so based on movements in After Hours Trading prices. For example, after the Closing Cross occurs, an issuer may release material news about a company that causes its After Hours Trading price for its stock to vary significantly from the Closing Cross Price. In that instance, a Participant may no longer wish to participate in the Extended Trading Close and receive the Nasdaq Official Closing price for an ETC Eligible Order in that stock; accordingly, the Participant may cancel its ETC Eligible Order, to the extent that the Order has not already been fully matched and executed, and place an order for the stock in the After Hours market. Nonetheless, as stated previously, a significant move in the price of a security in After Hours Trading will result in suspension of the Extended Trading Close.

The Exchange proposes to cancel any portion of an ETC Eligible Order that remains unexecuted at the conclusion of the Extended Trading Close, or for which the System has suspended execution, due to price deviation, where that suspension remains active as of the conclusion of the Extended Trading Close.

All ETC Eligible Orders executed in the Extended Trading Close will be trade reported anonymously and disseminated via the consolidated tape.

Order Types Eligible To Participate in the Extended Trading Close

The Exchange proposes to allow two Order Types to participate in the Extended Trading Close: (1) Limit-on-Close (''LOC'') Orders; and (2) Extended Trading Close (''ETC'') Orders.[11]

ETC Eligible LOC Orders

First, the Exchange proposes to amend Rule 4702(b)(12) to provide for LOC Orders in Nasdaq-listed securities to participate in the Extended Trading Close to the extent that such LOC Orders are entered through RASH or FIX and remain unexecuted, in whole or part, in the Closing Cross (an ''ETC Eligible LOC Order'').[12] The System will not include LOC Orders in the Extended Trading Close that Participants did not duly submit prior to the Nasdaq Closing Cross or LULD Closing Cross, in accordance with Rule 4702(b)(12)(A), or which are unexecutable in the Extended Trading Close due to the fact that they have limit prices that fall outside of the Nasdaq Official Closing Price.[13]

ETC Eligible LOC Orders will match and execute in the Extended Trading Close in time priority against other ETC Eligible LOC Orders and ETC Orders, with ETC Eligible LOC Orders receiving new timestamps upon entry into the Extended Trading Close and prioritized amongst each other and ETC orders based on the time the system received each order into the Extended Trading Close. For example, assume that the Closing Cross Price for a security is $10.00 per share and that an ETC

[6] As discussed below, the Exchange proposes to define, in Rule 4755, an ''ETC Eligible Order(s)'' as an ''ETC Order(s)'' or an ''ETC Eligible LOC Order(s).''

[7] The starting times for the Extended Trading Close are not exact insofar as the Closing Cross is not instantaneous and the System requires a brief period of time to complete the Closing Cross for each security. Typically, the processing of the Closing Cross begins at 4:00 p.m. ET, or at 1:00 p.m. ET on days when Nasdaq closes early.

[8] *See* Rule 4754(b)(7).

[9] Only orders in Nasdaq-listed securities will be eligible to participate in the Extended Trading Close. The Exchange proposes to exclude securities listed on other primary listing markets. As a primary listing market, Nasdaq is committed to investing in and enhancing the Closing Cross process for Nasdaq-listed issuers, their shareholders, investors, and all Participants involved in the robust price discovery and liquidity process that the Closing Cross serves. Moreover, Nasdaq notes that the vast majority of Participants looking to trade at the closing price participate in the primary listing market's closing auction and do not route orders to non-primary market listing destinations.

[10] For purposes of this proposal, the term ''After Hours Trading'' refers to trading in a Nasdaq-listed security that commences immediately following the conclusion of the Nasdaq Closing Cross or the LULD Closing Cross, during Post-Market Hours, as that term is defined in Equity 1, Section 1(a)(9).

[11] If short sale orders in securities subject to Regulation SHO are permitted to execute in the Closing Cross, then the System will also permit short sale executions in such securities to occur in the Extended Trading Close. Conversely, the System will reject short sale orders in securities if short sale orders in such securities were not permitted to execute in the Closing Cross.

[12] By default, all LOC Orders in Nasdaq-listed securities will be set to participate in the Extended Trading Close in the event that the LOC Orders are not fully executed during the Closing Cross. However, a Participant may opt to exclude its LOC Orders from participating in the Extended Trading Close. When ETC eligibility is disabled, the System will simply cancel LOC Orders in Nasdaq-listed securities that remain unexecuted after the Closing Cross occurs. Also, if Participants select a time-in-force for their LOC Orders in Nasdaq-listed securities that continues after the Closing Cross occurs, then if such LOC Orders remain unexecuted after the Closing Cross, the Exchange will cause the remaining unexecuted shares to bypass the Extended Trading Close and participate in After Hours Trading.

[13] A Post-Only Order, Midpoint Peg Post-Only Order, Supplemental Order, or Market Maker Peg Order may not operate as an ETC Eligible LOC Order, insofar as their respective underlying order characteristics are incompatible with participation in the ETC. An ETC Eligible LOC Order will be rejected if it has been assigned a Pegging Attribute due to the fact that the Pegging Order Attribute operates only during Market Hours.

Eligible LOC Order to buy 100 shares (Order 1) remains unexecuted as of the conclusion of the Closing Cross, such that it will be re-entered for participation in the ETC, receiving a new timestamp. When the ETC commences, the NBBO is $9.95 x $10.05. After the ETC begins, a second Participant enters Order 2, an ETC Order to buy 2,000 shares, with a minimum quantity condition of 500 shares. A third Participant then enters Order 3, an ETC Order to buy 500 shares. A fourth Participant then enters Order 4, an ETC Order to sell 200 shares. Order 4 will then execute against Orders 1 and 3 for 200 shares at $10.00 per share (Order 1 is fully executed and Order 3 has 400 shares remaining). Order 4 does not execute against Order 2 because Order 4 does not satisfy the minimum quantity condition of Order 2. A fifth Participant enters Order 5, which is an ETC Order to sell 500 shares. Order 5 will then execute against Order 2 for 500 shares at $10.00 per share, as Order 5 satisfies the minimum quantity condition of Order 2. Finally, a sixth Participant enters Order 6, an ETC order to sell 3,000 shares, with a minimum quantity condition of 3,000 shares. Order 6 posts as no resting ETC Eligible LOC Orders or ETC Orders satisfies the Order's minimum quantity condition.

As discussed above, during the Extended Trading Close, ETC Eligible LOC Orders will continuously match against other ETC Eligible LOC Orders and ETC Orders and execute at the Nasdaq Official Closing price, as determined by the Closing Cross, except that the System will suspend executions of ETC Eligible LOC Orders whenever the After Hours Trading last sale price or the best After Hours Trading bid or offer of the Nasdaq-listed securities that are subject to the ETC Eligible LOC Orders deviate the greater of 0.5% or $0.01 from the Nasdaq Official Closing Prices for those securities. (From time to time, Nasdaq management may modify these thresholds upon notice to market Participants.) The System will resume executions during the Extended Trading Close if and when the After Hours Trading last sale price or the After Hours Trading best bid (offer) price of the Nasdaq-listed security returns to within these 0.5%/$0.01 thresholds (or within such other thresholds as Nasdaq management may determine, upon prior notice to market Participants). When the Extended Trading Close ends, the System will cancel any unexecuted shares of ETC Eligible LOC Orders as well as any shares of ETC Eligible LOC Orders for which executions remain suspended as of that time, due to price deviations. A Participant may modify or cancel an ETC Eligible LOC Order (unless already executed) at any time during the Extended Trading Close.

ETC Orders

In addition to ETC Eligible LOC Orders, Nasdaq proposes to introduce a new Order Type—the Extended Trading Close or ''ETC'' Order—that will be eligible for entry and execution exclusively during the Extended Trading Close.[14] [15]

Like an ETC Eligible LOC Order, an ETC Order must be in a Nasdaq-listed security, and the Exchange will execute it at the Nasdaq Official Closing Price, as determined by the Closing Cross. A Participant may enter, cancel, or modify an ETC Order at any time during the Extended Trading Close. The System will execute an ETC Order only if the System is able to match it against another ETC Order or an ETC Eligible LOC Order during the Extended Trading Close. Moreover, as noted above, if during the Extended Trading Close, the After Hours Trading last sale price or After Hours Trading best bid or offer of the Nasdaq-listed security subject to the ETC Order deviates the greater of 0.5% or $0.01 from the Nasdaq Official Closing Price for that security, as determined by the Closing Cross, then the System will suspend execution of the ETC Order, unless and until the After Hours Trading last sale price or the After Hours Trading best bid (offer) price of the Nasdaq-listed security returns to within these 0.5%/$0.01 thresholds (or within such other thresholds as Nasdaq management may determine, upon prior notice to market Participants) during the Extended Trading Cross (at which point executions would resume). If an ETC Order remains unmatched or its execution remains suspended when the Extended Trading Close concludes, then the System will cancel the ETC Order.

The System will match an ETC Order in time priority amongst other ETC Eligible LOC Orders and ETC Orders during the Extended Trading Close. Participants may modify or cancel unexecuted ETC Orders at any time after entry. A Participant may enter an ETC Order with a Minimum Quantity Attribute.[16]

The ETC Order Imbalance Indicator

To facilitate participation in the Extended Trading Close, Nasdaq proposes to disseminate electronically to Participants an ''ETC Order Imbalance Indicator,'' beginning at 4:00:05 p.m. (or 1:00:05 p.m. on a day when Nasdaq closes early), and continuing in 5 second intervals thereafter until the Extended Trading Close concludes at 4:05 p.m. (or 1:05 p.m. on a day when Nasdaq closes early). The ETC Order Imbalance Indicator will convey to Participants the symbol and total number of matched and executed shares in the Extended Trading Close (as of the time of dissemination of the ETC Order Imbalance Indicator), as well as total size of any ETC Imbalance (exclusive of Orders with Minimum Quantity instructions) [17] and the buy/sell direction of any ETC Imbalance.

Implementation

The Exchange currently intends to introduce the Extended Trading Close, and begin accepting ETC Orders, during the Fourth Quarter of 2021. At least 30 days prior to launching the Extended Trading Close, and beginning to accept ETC Orders, the Exchange will publish a Nasdaq Trader Alert announcing the launch date.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5) of the Act,[19] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market

[14] On any day when no Extended Trading Close occurs, *i.e.,* if there is insufficient interest to conduct a Closing Cross for a security or if the Exchange invokes contingency procedures, the System will not accept entry of an ETC Order.

[15] The Exchange proposes to amend Rule 4703(a) to add a new time-in-force applicable to ETC Orders. A time-in-force of ''ETC'' will mean that an order is designated to activate upon commencement of the Extended Trading Close and deactivate upon the conclusion of the Extended Trading Close.

[16] Rule 4703(e) provides for two types of Minimum Quantity Attributes—one that provides for the minimum quantity requirement to be satisfied by a single order, and a second that allows for it to be satisfied by aggregating multiple orders. Only the first type of Minimum Quantity Attributes may be used with an ETC Order. Thus, a Participant that enters an ETC Order with a minimum quantity requirement of 500 shares may specify that its order match and execute in the ETC against another ETC Eligible Order of 500 shares but not several ETC Eligible Orders of smaller sizes that, in aggregate, add up to 500 shares.

[17] The Exchange proposes to exclude ETC Eligible Orders with Minimum Quantity instructions from this calculation of the size of the ETC Imbalance because the size of such Orders may be misleading to Participants, given that such Orders will not execute if the Minimum Quantity instruction is not satisfied.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

system, and, in general to protect investors and the public interest.

The proposal is consistent with the Act because it would create an additional opportunity for Participants to execute orders in Nasdaq-listed securities at the Closing Cross price for a limited time period after the Closing Cross concludes. For Participants with LOC Orders that do not execute in full in the Closing Cross, the Extended Trading Close will give those LOC Orders another opportunity to execute at the Nasdaq Official Closing Price, as determined by the Closing Cross, before the After Market Trading price moves far away from it. Likewise, Participants will have an opportunity to access liquidity at the Nasdaq Official Closing Price (as determined by the Closing Cross) even if they did not participate in the Closing Cross. By increasing opportunities for Participant to execute their orders at the Nasdaq Official Closing Price (as determined by the Closing Cross), the Exchange will allow them to execute sizable orders without market impact as a complement to the Closing Cross and as an alternative to After Hours Trading that can be less liquid than Market Hours trading.

The Exchange believes it is consistent with the Act to provide for LOC Orders entered through the RASH and FIX protocols to roll over into the ETC automatically, if unexecuted in full during the Closing Cross, because Nasdaq typically assumes a more active role in managing the order flow submitted by users of the RASH and FIX protocols. Allowing these Participants to have their remaining LOC orders automatically participate in the Extended Trading Close will provide these Participants an additional opportunity for execution at the Nasdaq Official Closing Price (as determined by the Closing Cross), and it reflects the order flow management practices of these Participants. In contrast, users of the OUCH and FLITE protocols generally assume a more active role in managing their order flow. Having unexecuted shares of LOC orders canceled and requiring that an ETC Order be sent after the Closing Cross in order to participate in the Extended Trading Close reflects the order flow management practices of these Participants.

The Exchange proposes to make participation in the Extended Trading Close optional for those Participants that wish to continue the current System practice of cancelling LOC Orders that remain unexecuted after the Closing Cross, or by designating LOC Orders to participate in After Hours Trading if they remain unexecuted after the Closing Cross. Therefore, as proposed, Participants can opt-out from having their ETC-Eligible LOC Orders participate in the Extended Trading Close, while their LOC Orders with a time-in-force that continues after the Closing Cross will automatically bypass the Extended Trading Close. Furthermore, the Exchange proposes to allow Participants to modify or cancel ETC Eligible LOC Orders and ETC Orders at any time after the Extended Trading Close begins, should they choose to do so. The System will automatically cancel any portion of ETC Eligible LOC Orders and ETC Orders that remain unexecuted at the conclusion of the Extended Trading Close.

Moreover, as a means of mitigating the risk that the After Market Trading price of a Nasdaq-listed security will rapidly and substantially deviate from the Nasdaq Official Closing Price for the security (as determined by the Closing Cross), and thus cause orders in the Extended Trading Close to execute at prices that no longer reflect the value of the security, the Exchange proposes to suspend executions of matched orders in a security in the Extended Trading Close whenever and for as long as the After Hours Trading last sale price or best bid or offer of that security deviates the greater of 0.5% or $0.01 from the Nasdaq Official Closing price for the security, as determined by the Closing Cross. (From time to time, Nasdaq management may modify these thresholds upon prior notice to market Participants.) If during the Extended Trading Close, the After Market Hours Trading price or best bid or offer of a security returns to within the 0.5%/$0.01 thresholds (or such other thresholds as Nasdaq management may set, upon prior notice to market Participants), then the System will resume execution of ETC Eligible Orders. The System will cancel any shares of ETC Eligible Orders for which executions remain suspended as of the conclusion of the Extended Trading Close.

The Nasdaq Closing Cross (as well as the LULD Closing Cross) is a robust price discovery and liquidity mechanism in the national market system. The mechanism is used by a diverse set of Participants for a diverse set of reasons. The growth in participation over the years is testament to the value the Closing Cross provides to the market and the Participants in the market. As described above, the Extended Trading Close will be complementary to the Closing Cross and LULD Closing Cross and is not intended or expected to be a substitute for the Closing Cross or the LULD Closing Cross. Instead it will provide a simple additional mechanism for Participants who seek additional liquidity at the Nasdaq Official Closing Price, as determined by the Closing Cross, after regular market hours trading has completed. Nasdaq does not expect the Extended Trading Close to have an impact on the participation in the Nasdaq Closing Cross or the LULD Closing Cross. Nasdaq notes that a number of off-exchange trading venues already offer their participants the ability to receive the Nasdaq Official Closing Price for their orders after the Closing Cross occurs, and that such functionality has grown popular with certain Participants. Nasdaq intends for the Extended Trading Close to be an alternative to these off-exchange offerings, that will be available to all Nasdaq Participants.

Additionally, Nasdaq will also disseminate an ETC Imbalance Indicator to help inform participation in the Extended Trading Close, which is something that off-exchange venues do not provide. The proposed dissemination of an ETC Imbalance Indicator is consistent with the Act because it will provide for the Extended Trading Close to be transparent with respect to the liquidity that is available to match and execute in it. The Exchange believes it is consistent with the Act to exclude ETC Eligible Orders with Minimum Quantity instructions from the calculation of the size of the ETC Imbalance because the size of such Orders may be misleading to Participants, given that such Orders will not execute if the Minimum Quantity instruction is not satisfied.

As with the Closing Cross and any other facet of its market, Nasdaq will surveil the Extended Trading Close for any unfair or manipulative trading practices.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal will promote competition among trading venues for on-close and post-close orders in Nasdaq-listed securities.

Nasdaq notes that participation in the Extended Trading Close is completely voluntary. Any Participant that does not wish for its unexecuted LOC Orders to participate in the Extended Trading Close will be able to avoid doing so by disabling this functionality for LOCs, which will cause the System to cancel

the unexecuted LOC Orders after the Closing Cross concludes, or by also selecting a time-in-force of ''Closing Cross/Extended Hours,'' which will cause the unexecuted LOC Orders to commence After Hours Trading immediately after the Closing Cross ends, and bypass the Extended Trading Close. Participants may also modify or cancel their ETC Eligible Orders during the Extended Trading Close.

Nasdaq believes that it is appropriate to limit participation in the Extended Trading Close to orders in Nasdaq-listed securities. As a primary listing market, Nasdaq is committed to investing in and enhancing the Closing Cross process for Nasdaq-listed issuers, their shareholders, investors, and all Participants involved in the robust price discovery and liquidity process that the Closing Cross serves. Moreover, the vast majority of Participants looking to trade at the closing price participate in the primary listing market's closing auction and do not route orders to non-primary market listing destinations.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2021–040 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–2021–040. 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–2021–040 and should be submitted on or before August 18, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–15991 Filed 7–27–21; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92470; File No. SR–BX–2021–031]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 2 at Section 4, Obligations of Market Makers and Lead Market Makers and Section 5, Market Maker Quotations

July 22, 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 July 19, 2021, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 2 at Section 4, Obligations of Market Makers and Lead Market Makers, and Section 5, Market Maker Quotations. The Exchange also proposes a technical amendment to Options 1, Section 1, Definitions.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend BX Options 2 at Section 4, Obligations of Market Makers and Lead Market Makers, and Section 5, Market Maker Quotations. Currently, the Exchange requires Market Makers [3] and Lead Market Makers [4] to enter bids and offers for the options to which they are registered, except in an assigned options series listed intra-day on the Exchange.[5] Quotations must meet the legal quote width requirements specified in Options 2, Section 4(f)(4) and Options 2, Section 5(d)(2).[6] On a daily basis, a Market Maker must make markets consistent with the applicable quoting requirements. Market Makers associated with the same Options Participant [7] are collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as BX may announce in advance, for which that Options Participant's assigned options series are open for trading.[8] Notwithstanding the foregoing, a Market Maker is not required to make two-sided markets pursuant to Options 2, Section 5(d)(1) in any Quarterly Option Series, any adjusted option series,[9] and any option series with an expiration of nine months or greater.[10] Lead Market Makers associated with the same Options Participant, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as BX may announce in advance, for which that Option Participant's assigned options series are open for trading. Lead Market Makers are required to make two-sided markets pursuant to Options 2, Section 5 in any Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater.[11] Finally, a Directed Market Maker is subject to the requirements within Options 2, Section 10(a)(3)(A).[12]

An Options Participant is required to meet each market making obligation separately.[13] Currently, Options 2, Section 5(d)(1) states, ''A Market Maker who is also the Lead Market Maker, pursuant to Options 2, Section 4, will be held to the Lead Market Maker obligations in options series in which the Lead Market Maker is assigned and will be held to Market Maker obligations in all other options series where assigned. A Market Maker who receives a Directed Order, as described in Options 3, Section 10, shall be held to the standard of a Directed Market Maker as described in Options 2, Section 10.'' Also, Options 2, Section 4(j), applicable to Lead Market Makers, provides, ''A Market Maker who is also the Lead Market Maker, pursuant to Options 2, Section 4, will be held to the Lead Market Maker obligations in options series in which the Lead Market Maker is assigned and will be held to Market Maker obligations in all other options series where assigned pursuant to Options 2, Section 5(d).''

Today, the Exchange calculates whether a Participant that is assigned in an options series as both a Lead Market Maker and a Market Maker has met its quoting obligations as Lead Market Maker and Market Maker, respectively, by aggregating all quotes submitted through the Specialized Quote Feed [14] interface from the Participant, whether the quote was submitted by the Participant in its capacity as Lead Market Maker or Market Maker.

The Exchange proposes to amend its calculation to only consider quotes submitted through the Specialized Quote Feed interface utilizing badges [15] and options series [16] assigned to a Lead Market Maker when calculating whether a Participant acting as a Lead Market Maker has satisfied the requirements to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as BX may announce for which that Participant's assigned options series are open for trading. Similarly, the Exchange proposes to only consider quotes submitted through the Specialized Quote Feed interface utilizing badges and options series assigned to a Market Maker when calculating whether a Participant acting as a Market Maker has satisfied the requirements to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as BX may announce for which that Participant's assigned options series are open for trading. With this proposed change, an Options Participant that is a Market Maker in an options series where the Options Participant is also assigned as the Lead Market Maker, pursuant to Options 2, Section 4, in an options series will be

[3] The term ''BX Options Market Maker'' or ''Options Market Maker'' means an Options Participant registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Options 2 of these Rules. *See* Options 1, Section 1(a)(10).

[4] Approved BX Options Market Makers may become Lead Market Makers. Only one Lead Market Maker may be allocated to an options class. *See* Options 2, Section 3(A).

[5] Options 2, Section 4(j) and Options 2, Section 5(d)(1).

[6] Options 2, Section 4(f)(4) and Options 2, Section 5(d)(2) describe the required bid/ask differentials for Lead Market Makers and Market Makers, respectively.

[7] The term ''Options Participant'' or ''Participant'' mean a firm, or organization that is registered with the Exchange pursuant to Options 2A of these Rules for purposes of participating in options trading on BX Options as a ''BX Options Order Entry Firm'' or ''BX Options Market Maker.'' *See* Options 1, Section 1(a)(40).

[8] Options 2, Section 5(d)(1)(A).

[9] An adjusted option series is defined as an option series wherein one option contract in the series represents the delivery of other than 100 shares of underlying stock or Exchange-Traded Fund Shares (''Adjusted Options Series''). *See* Options 2, Section 4(j)(1)(a) and Options 2, Section 5(d)(1)(A)(i).

[10] Options 2, Section 4(j)(1) and Options 2, Section 5(d)(1)(A).

[11] Options 2, Section 4(j)(1).

[12] Directed Market Makers, associated with the same Options Participant, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as BX may announce in advance, for which that Options Participant's assigned options series are open for trading. An Options Participant shall be considered directed in all assigned options once the Options Participant receives a Directed Order in any option in which they are assigned and shall be considered a Directed Market Maker until such time as an Options Participant notifies the Exchange that they are no longer directed. Notwithstanding the foregoing, an Options Participant shall not be required to make two-sided markets in any Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater. Notwithstanding the obligations specified herein, a Directed Market Maker may still receive a participation entitlement in such series if it elects to quote in any Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater series and otherwise satisfies the requirements of Options 3, Section 10.

[13] *See* Options 2, Section 5(d)(1). Today, the Exchange aggregates all quotes submitted through the Specialized Quote Feed interface from the Participant, regardless of whether the quote was submitted by the Participant in its capacity as Lead Market Maker or Market Maker.

[14] ''Specialized Quote Feed'' or ''SQF'' is an interface that allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses into and from the Exchange. Features include the following: (1) Options symbol directory messages (*e.g.,* underlying instruments); (2) system event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. *See* Options 3, Section 7(e)(1)(B).

[15] The term ''badge'' means an account number, which may contain letters and/or numbers, assigned to BX Market Makers. A BX Market Maker account may be associated with multiple badges. *See* Options 1, Section 1(a)(6).

[16] BX currently utilizes a badge with an associated options series to designate a Lead Market Maker assigned in an options series and a badge with an associated options series to designate a Market Maker assigned in an option series.

held to both the Lead Market Maker and Market Maker obligations, pursuant to Options 2, Section 5(d), separately, in that options series. The Exchange will consider whether an Options Participant, acting as both Lead Market Maker and Market Maker in an assigned options series, has complied with each requirement by only considering quotes in the respective badges.

By way of example,

Current Quoting obligation methodology:

Lead Market Maker firm 123 is assigned five badges: 123A, 123B, 123C, 123D and 123E.

Badge 123A is designated the Lead Market Maker badge and badge 123B–E are designated as Market Maker badges.

Today, all quoting activity from all 5 badges is aggregated in determining if Firm 123 complied with the requirement to provide two-sided quotations in 90% of the cumulative number of seconds for which that Participant's assigned options series are open for trading. The higher of the two obligations is required today.

Proposed Quoting obligation methodology:

Lead Market Maker firm 123 is assigned five badges: 123A, 123B, 123C, 123D and 123E.

Badge 123A is designated the Lead Market Maker badge and badge 123B–E are designated as Market Maker badges.

As proposed only quoting activity from badge 123A (and excluding badges 123B–E) would be counted toward the requirement to provide two-sided quotations in 90% of the cumulative number of seconds for which that Participant's assigned options series are open for trading.

All other badges (123B–E), excluding badge 123A, would be counted toward the requirement to provide two-sided quotations in 60% of the cumulative number of seconds for which that Participant's assigned options series are open for trading.

An Options Participant may have only one Lead Market Maker badge per option series.

The below example explains how the Exchange aggregates quotes from Lead Market Makers, in their assigned options series, to determine compliance with quoting requirements, which will not be changing pursuant to this proposal. The same calculation applies to quotes from Market Makers in their assigned options series.

Under the proposal, and as is the case today, by way of example, assume Lead Market Maker Firm ABC is assigned in five symbols across 2 different badges:

Badge 123A and B is assigned in symbols QQQ and SPY, respectively.

Badge 124A, B and C is assigned in symbols IBM, GM, and MSFT, respectively.

Quotes submitted through the Specialized Quote Feed interface from the Firm ABC's Lead Market Maker badges from all 5 symbols will be counted in determining compliance with Firm ABC's requirement to provide two-sided quotations in 90% of the cumulative number of seconds for which Firm ABC's assigned options series are open for trading.

If Firm ABC Lead Market Maker badge 123A quotes symbol QQQ at 95% and badge 123B quotes symbol SPY at 90% and Firm ABC Lead Market Maker badge 124A quotes IBM at 85%, badge 124B quotes GM at 95%, and badge 124C quotes MSFT at 90% then Firm ABC will have met its requirement to provide two-sided quotations in 90% of the cumulative number of seconds for which Firm ABC's assigned options series are open for trading because the percentage across the 5 symbols is 91%.

Technical Amendments

The Exchange proposes a technical amendment to Options 1, Section 1, Definitions. Specifically, the Exchange proposes to amend Options 1, Section 1(a)(10) which contains the term ''BX Options Market Maker'' or ''Options Market Maker.'' The Exchange proposes to amend the term ''mean'' to ''means.''

Also, the Exchange proposes to amend Options 2, Section 4(j) to correct an inaccurate citation to Options 2, Section 4 subsection (f)(4)–(6). Subsections (f)(5) and (6) do not exist. The Exchange proposes to amend the citation to Options 2, Section 4 subsection (f)(4) which contains intra-day bid/ask differentials.

Implementation

The Exchange proposes to implement this rule change on August 2, 2021. The Exchange has issued an Options Regulatory Alert notifying Options Participants of this change.[17]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5) of the Act,[19] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by requiring Lead Market Makers and Market Makers to separately meet quoting requirements as both a Lead Market Maker and Market Maker respectively, when the Options Participant is assigned in both roles in an options series.

The Exchange's proposal to separately calculate Market Maker and Lead Market Maker quoting obligations where the Participant is assigned as both Lead Market Maker and Market Maker in an options series is consistent with the Act. Specifically, the Exchange's proposal would only consider quotes submitted through the Specialized Quote Feed interface utilizing badges and options series assigned to a Lead Market Maker when calculating whether a Participant acting as a Lead Market Maker has satisfied the requirements to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as BX may announce for which that Participant's assigned options series are open for trading. Similarly, the Exchange's proposal would only consider quotes submitted through the Specialized Quote Feed interface utilizing badges and option series assigned to a Market Maker when calculating whether a Participant acting as a Market Maker has satisfied the requirements to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as BX may announce for which that Participant's assigned options series are open for trading.

The proposed change for calculating the Lead Market Maker requirement separate from the Market Maker requirement, where a Participant is assigned in both roles in an options series, would ensure that the Participant quotes the requisite number of seconds in an assigned options series, when acting as both Lead Market Maker and Market Maker. This would ensure that an Options Participant adds the requisite amount of liquidity in that assigned options series in exchange for certain benefits offered by the Exchange to the Options Participant, such as enhanced Lead Market Maker allocation [20] and favorable pricing,[21] in addition to the Options Participant fulfilling other market making obligations specified in Options 2, Section 4(a) and (b).[22]

[17] *See* Options Regulatory Alert 2021–36.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] *See* Options 3, Section 10(a)(1)(C)(1)(b) and Options 3, Section 10(a)(1)(C)(2)(ii).

[21] *See* Options 7, Pricing Schedule.

[22] In registering as a Market Maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Ordinarily, Market Makers are expected to: (1) During trading hours, a Market

Continued

Technical Amendments

The Exchange's proposal to amend Options 1, Section 1(a)(10), which contains the term ''BX Options Market Maker'' or ''Options Market Maker,'' to amend the term ''mean'' to ''means'' is a non-substantive amendment. Also, the Exchange's proposal to amend Options 2, Section 4(j) to correct an inaccurate citation is a non-substantive amendment. Correcting these technical amendments will bring greater clarity to BX's Rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Rather, the proposal would ensure that Options Participants that are assigned in an options series as both the Lead Market Maker and Market Maker, respectively, are meeting the same quoting obligations as other Options Participants who are assigned solely as either the Lead Market Maker or Market Maker in an option series. Also, this proposal would ensure that an Options Participant quotes the requisite number of seconds in an assigned options series, when acting as both Lead Market Maker and Market Maker, respectively, thereby adding the requisite amount of liquidity in exchange for certain benefits provided by the Exchange such as enhanced Lead Market Maker allocation [23] and favorable pricing,[24] in addition to fulfilling its other market making obligations specified in Options 2, Section 4(a) and (b).[25]

Technical Amendments

The Exchange's proposal to amend Options 1, Section 1(a)(10), which contains the term ''BX Options Market Maker'' or ''Options Market Maker,'' to amend the term ''mean'' to ''means'' is a non-substantive amendment. Also, the Exchange's proposal to amend Options 2, Section 4(j) to correct an inaccurate citation is a non-substantive amendment. Amending these rules does not impose an undue burden on competition because the corrections will bring greater clarity to BX's Rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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 [26] and Rule 19b–4(f)(6) thereunder.[27]

A proposed rule change filed under Rule 19b–4(f)(6) [28] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[29] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. Waiving the operative delay will allow the Exchange to amend, without delay, its rules regarding Market Maker quoting obligations to ensure that member organizations assigned in an options series as both the Lead Market Maker and Market Maker would have the same quoting obligations as member organizations who are assigned solely as either Lead Market Maker or Market Maker in an option series. In addition, such waiver will permit technical amendments, which bring greater clarity to BX's rules, to be effective without undue delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby designates the proposed rule change to be operative upon filing.[30]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2021–031 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2021–031. 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

Maker must maintain a two-sided market, pursuant to Section 5(d)(1) of Options 2, in those options in which the Market Maker is registered to trade, in a manner that enhances the depth, liquidity and competitiveness of the market. (2) Engage, to a reasonable degree under the existing circumstances, in dealings for their own accounts when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of (or demand for) a particular option contract, or a temporary distortion of the price relationships between option contracts of the same class. (3) Compete with other Market Makers in all options in which the Market Maker is registered to trade. (4) Make markets that will be honored for the number of contracts entered into BX Options' System in all options in which the Market Maker is registered to trade. (5) Update quotations in response to changed market conditions in all options in which the Market Maker is registered to trade. (6) Maintain active markets in all options in which the Market Maker is registered. (7) Honor all orders that the Trading System routes to away markets pursuant to Options 5 of these Rules. Options Market Makers should not effect purchases or sales on BX Options except in a reasonable and orderly manner. *See* Options 2, Section 4(a) and (b).

[23] *See* note 20 above.

[24] *See* note 21 above.

[25] *See* note 22 above.

[26] 15 U.S.C. 78s(b)(3)(A).

[27] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange 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.

[28] 17 CFR 240.19b–4(f)(6).

[29] 17 CFR 240.19b–4(f)(6)(iii).

[30] 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).

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 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2021–031 and should be submitted on or before August 18, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–15994 Filed 7–27–21; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17043 and #17044; Florida Disaster Number FL–00168]

Administrative Declaration of a Disaster for the State of Florida

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Florida dated 07/22/2021.

Incident: Tropical Storm Elsa.

Incident Period: 07/08/2021.

DATES: Issued on 07/22/2021.

Physical Loan Application Deadline Date: 09/20/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 04/22/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Alachua.

Contiguous Counties:

Florida: Bradford, Columbia, Gilchrist, Levy, Marion, Putnam, Union.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.250
Homeowners without Credit Available Elsewhere	1.625
Businesses with Credit Available Elsewhere	5.760
Businesses without Credit Available Elsewhere	2.880
Non-Profit Organizations with Credit Available Elsewhere	2.000
Non-Profit Organizations without Credit Available Elsewhere	2.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	2.880
Non-Profit Organizations without Credit Available Elsewhere	2.000

The number assigned to this disaster for physical damage is 17043 8 and for economic injury is 17044 0.

The State which received an EIDL Declaration # is Florida.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2021–15997 Filed 7–27–21; 8:45 am]

BILLING CODE 8026–03–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2020–0037]

Determination on Action and Ongoing Monitoring: Vietnam's Acts, Policies, and Practices Related to Currency Valuation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Based on an agreement reached between the Department of the Treasury (Treasury) and the State Bank of Vietnam (SBV) regarding Vietnam's currency practices, the U.S. Trade Representative has determined that no action under the Section 301 investigation is warranted at this time because Vietnam's agreement with Treasury provides a satisfactory resolution of the matter subject to this investigation. The U.S. Trade Representative, in coordination with Treasury, will monitor Vietnam's implementation of its commitments under the agreement and associated measures.

FOR FURTHER INFORMATION CONTACT: For questions concerning the investigation, contact Michael T. Gagain, Assistant General Counsel, 202–395–9529, or Marta M. Prado, Acting Assistant U.S. Trade Representative for Southeast Asia and the Pacific, 202–395–6216.

SUPPLEMENTARY INFORMATION:

I. Proceedings in the Investigation

The U.S. Trade Representative initiated an investigation of Vietnam's acts, policies, and practices related to the valuation of its currency pursuant to Section 302(b)(1)(A) of the Trade Act of 1974, as amended (the Trade Act), on October 2, 2020. *See* 85 FR 63637 (Oct. 8, 2020) (notice of initiation). On the same date, USTR requested consultations with Vietnam. Consultations were held on December 23, 2020. The Section 301 Committee solicited public comments, and held a public hearing on December 29, 2020. *See* 85 FR 75397 (Nov. 25, 2020).

On January 15, 2021, in consultation with Treasury, based on the information obtained during the investigation, and taking account of public comments and the advice of the Section 301 Committee and Advisory Committees, the U.S. Trade Representative determined that Vietnam's acts, policies, and practices related to currency valuation, including excessive foreign exchange market interventions and other related actions, taken in their totality, are actionable under Sections 301(b)(1)(A) and 304(a) of the Trade Act. *See* 86 FR 6732 (Jan. 22, 2021) (actionability notice). The U.S. Trade Representative's determination was accompanied by a comprehensive public report (the Report). The Report is posted on the USTR website at *https://ustr.gov/sites/default/files/enforcement/301Investigations/Vietnam_Currency_301_Actionability_Report_Jan_15_21.pdf.*

In particular, the U.S. Trade Representative determined:

1. Vietnam's acts, policies, and practices with respect to currency valuation, including excessive foreign exchange market interventions and other related actions, taken in their totality and as discussed in further

[31] 17 CFR 200.30–3(a)(12).

detail in the Report, are unreasonable in light of U.S. and international norms that exchange rate policy should not be undertaken to gain an unfair competitive advantage in international trade, should not artificially enhance a country's exports and restrict its imports in ways that do not reflect the underlying competitiveness, should not prevent exchange rates from reflecting underlying economic and financial conditions, and should not prevent balance of payments adjustment;

2. Vietnam's acts, policies, and practices that contribute to undervaluation of its currency through excessive foreign exchange market interventions and other related actions burden or restrict U.S. commerce; and, accordingly,

3. The acts, policies, and practices under investigation are actionable under Section 301(b) of the Trade Act.

II. Determination on Action

Sections 301(b) and 304(a)(1)(B) of the Trade Act provide that if the U.S. Trade Representative determines that an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts U.S. commerce, the U.S. Trade Representative shall determine what action, if any, to take under Section 301(b). Where an agreement or measures provide a satisfactory resolution of the matter subject to investigation, the U.S. Trade Representative may determine under Section 304 that no action is appropriate. Under Section 306 of the Trade Act, in such circumstances the U.S. Trade Representative must monitor the agreement or measures, and may take action at a future time upon a finding that the implementation has not been satisfactory.

In its December 2020 and April 2021 semiannual foreign exchange reports to Congress, Treasury determined that Vietnam satisfied the three criteria in Section 701 of the Trade Facilitation and Trade Enforcement Act of 2015 regarding Vietnam's currency practices, which triggered enhanced bilateral engagement between Treasury and the SBV on this issue.

On July 19, 2021, Treasury and the SBV issued a joint statement announcing that they had reached an agreement. The joint statement provides, *inter alia,* that:

> Treasury and the SBV have had constructive discussions in recent months through the enhanced engagement process, and reached agreement to address Treasury's concerns about Vietnam's currency practices as described in Treasury's Report to Congress on the Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States.
>
> . . . Vietnam confirms that it is bound under the Articles of Agreement of the IMF to avoid manipulating its exchange rate in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage and will refrain from any competitive devaluation of the Vietnamese dong. The SBV is also making ongoing efforts to further modernize and make more transparent its monetary policy and exchange rate framework. In support of these efforts, the SBV will continue to improve exchange rate flexibility over time, allowing the Vietnamese dong to move in line with the stage of development of the financial and foreign exchange markets and with economic fundamentals, while maintaining macroeconomic and financial market stability.
>
> The SBV will continue to provide necessary information for Treasury to conduct thorough analysis and reporting on the SBV's activities in the foreign exchange market in Treasury's semiannual Report to Congress on the Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States.

See Joint Statement from the U.S. Department of the Treasury and the State Bank of Vietnam (July 19, 2021), *https://home.treasury.gov/news/press-releases/jy0280.*

The U.S. Trade Representative has found that that the Treasury-SBV agreement and the measures of Vietnam called for in the agreement provide a satisfactory resolution of the matter subject to investigation. Accordingly, the U.S. Trade Representative has determined under Section 304 of the Trade Act that no action at this time is appropriate in this investigation. The Trade Representative's determination was made in consultation with Treasury, and takes into account the advice of the interagency Section 301 Committee and public comments and Advisory Committee advice received during the investigation.

III. Ongoing Monitoring

Pursuant to Section 306(a) of the Trade Act, the U.S. Trade Representative, in coordination with Treasury, will monitor Vietnam's implementation of its commitments under the agreement and associated measures. Pursuant to Section 306(b) of the Trade Act, if the U.S. Trade Representative in consultation with Treasury subsequently considers that Vietnam is not satisfactorily implementing the agreement or associated measures, then the U.S. Trade Representative will consider further action under Section 301.

Greta Peisch,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2021–16095 Filed 7–27–21; 8:45 am]

BILLING CODE 3290–F1–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Membership in the National Parks Overflights Advisory Group

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

ACTION: Solicitation of applications.

SUMMARY: By **Federal Register** notice on May 6, 2021, the Federal Aviation Administration (FAA) and the National Park Service (NPS) invited interested persons to apply to fill one existing and one upcoming vacancy on the National Parks Overflights Advisory Group (NPOAG). This notice informs the public of the selection made for the one upcoming vacancy representing air tour operator concerns. No selection was made for the existing opening representing Native American tribal concerns so this notice also invites persons interested in that opening to apply.

DATES: Persons interested in applying for the NPOAG opening representing Native American concerns will need to apply by August 31, 2021.

FOR FURTHER INFORMATION CONTACT: Keith Lusk, Special Programs Staff, Federal Aviation Administration, Western-Pacific Region Headquarters, 777 S Aviation Boulevard, Suite 150, El Segundo, CA 90245, telephone: (424) 405–7017, email: *Keith.Lusk@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–181, and subsequently amended in the FAA Modernization and Reform Act of 2012. The Act required the establishment of the advisory group within one year after its enactment. The NPOAG was established in March 2001. The advisory group is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator of the FAA and the Director of NPS (or their designees) serve as ex officio members of the

group. Representatives of the Administrator and Director serve alternating 1-year terms as chairman of the advisory group.

In accordance with the Act, the advisory group provides ''advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) At the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands.''

Membership

The current NPOAG is made up of one member representing general aviation, three members representing the commercial air tour industry, four members representing environmental concerns, and two members representing Native American interests. Current members of the NPOAG are as follows:

Melissa Rudinger representing general aviation; John Becker, James Viola, and Eric Lincoln representing commercial air tour operators with one upcoming opening due to Eric Lincoln's 3-year term ending; Dick Hingson, Les Blomberg, Robert Randall, and John Eastman representing environmental interests; and Carl Slater represents Native American tribes with one current opening.

Selections

Eric Lincoln has been chosen for another 3-year term as the air tour operator representative. NPOAG members' 3-year terms commence on the publication date of this **Federal Register** notice. No selection was made for the additional opening to represent Native American concerns. The FAA and NPS invite persons interested in applying for this remaining opening on the NPOAG to contact Mr. Keith Lusk (contact information is written above in **FOR FURTHER INFORMATION CONTACT**). Requests to serve on the NPOAG must be made to Mr. Lusk in writing and postmarked or emailed on or before August 31, 2021. The request should indicate whether or not you are a member of, or have an affiliation with, a federally recognized Native American tribe. The request should also state what expertise you would bring to the NPOAG as related to issues and concerns with aircraft flights over national parks and/or tribal lands. The term of service for NPOAG members is 3 years. Current members may re-apply for another term. On August 13, 2014, the Office of Management and Budget issued revised guidance regarding the prohibition against appointing or not reappointing federally registered lobbyists to serve on advisory committees (79 FR 47482).

Therefore, before appointing an applicant to serve on the NPOAG, the FAA and NPS will require the prospective candidate to certify that they are not a federally registered lobbyist.

Issued in El Segundo, CA, on July 21, 2021.

Keith Lusk,

Program Manager, Special Programs Staff, Western-Pacific Region.

[FR Doc. 2021–15978 Filed 7–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2021–0085]

Qualification of Drivers; Exemption Applications; Implantable Cardioverter Defibrillators (ICDs)

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

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from three individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against operation of a commercial motor vehicle (CMV) by persons with a 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 (transient loss of consciousness), dyspnea (shortness of breath), collapse, or congestive heart failure. If granted, the exemptions would enable these individuals with ICDs to operate CMVs in interstate commerce.

DATES: Comments must be received on or before August 27, 2021.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket ID FMCSA–2021–0085 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number, FMCSA–2021–0085, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2021–0085), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/,* insert the docket number FMCSA–2021–0085 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed,

click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2021–0085, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The three individuals listed in this notice have requested an exemption from 49 CFR 391.41(b)(4). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard found in § 391.41(b)(4) states that a person is physically qualified to drive a CMV if that person 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.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. The advisory criteria states that ICDs are disqualifying due to risk of syncope.

III. Qualifications of Applicants

Willard Drysdale

Mr. Drysdale is a CMV driver in Minnesota. An October 7, 2020, letter from his cardiologist reports that in 2018, his pacemaker was upgraded to an ICD for preventive measures, that he was asymptomatic concerning his cardiac history at his last evaluation in 2019, and that he has not required any device therapies for tachycardia.

William Edwards

Mr. Edwards is a CMV driver in New York State. A March 31, 2021, letter from his cardiac specialists reports that he is being treated with a biventricular ICD that was implanted in March 2020, and the device has never needed to deliver therapy.

Francisco Garcia

Mr. Garcia is a CMV driver in New Jersey. A March 4, 2021, letter from his cardiologist reports that his ICD was implanted for preventive measures, he has never had a sustained arrhythmia, and he has never passed out. His physician and the electrophysiologist who implanted his defibrillator both agree that it would be safe for Mr. Garcia to drive a CMV.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021–16092 Filed 7–27–21; 8:45 am]

BILLING CODE 4910–EX–P

[1] These criteria may be found in 49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section D. *Cardiovascular: § 391.41(b)(4),* paragraph 4, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

DEPARTMENT OF THE TREASURY

[Docket No. TTB–2021–0007; Notice No. 204]

Promoting Competition in the Beer, Wine, and Spirits Markets

AGENCY: Department of the Treasury; Alcohol and Tobacco Tax and Trade Bureau.

ACTION: Request for Information.

SUMMARY: The Department of the Treasury is issuing this Request for Information (RFI) to solicit input regarding the current market structure and conditions of competition in the American markets for beer, wine, and spirits, including an assessment of any threats to competition and barriers to new entrants.

DATES: Responses should be received by August 18, 2021 to be assured of complete consideration.

ADDRESSES: You may submit comments on this proposal to the Department of the Treasury's Alcohol and Tobacco Tax and Trade Bureau (TTB) by using one of the following methods:

Federal e-Rulemaking Portal: You may send comments via the online comment form posted with this document within Docket No. TTB–2021–0007 on ''*Regulations.gov*,'' the Federal e-rulemaking portal, at *https://www.regulations.gov.* A direct link to that docket is available under Notice No. 204 on the TTB website at *https://www.ttb.gov/laws-and-regulations/all-rulemaking.* You may attach supplemental files to comments submitted via *Regulations.gov*.

U.S. Mail: You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.

You may submit comments on this proposal as an individual or on behalf of a business or other organization. Your comment must reference Notice No. 204 and must be submitted or postmarked by the closing date shown in the **DATES** section of this document.

Confidentiality and Disclosure of Comments

All submitted comments and attachments are part of the rulemaking record and are subject to public disclosure. Do not enclose any material in your comments that you consider confidential or that is inappropriate for disclosure.

TTB will post, and you may view, copies of this document, its supporting materials, and any comments TTB receives about this proposal within the related *Regulations.gov* docket. In general, TTB will post comments as submitted, and it will not redact any identifying or contact information from the body of a comment or attachment.

Please contact TTB's Regulations and Rulings division by email using the web form available at *https://www.ttb.gov/contact-rrd,* or by telephone at 202–453–2265, if you have any questions regarding comments on this proposal or to request copies of this document, its supporting materials, or the comments received in response.

FOR FURTHER INFORMATION CONTACT: Michael Hoover, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; 202–453–1039, ext. 135.

SUPPLEMENTARY INFORMATION: On July 9, 2021, President Biden issued an Executive Order on Promoting Competition in the American Economy. E.O. 14036, 86 FR 36987 (July 14, 2021). Section 5(j) directed the Secretary of the Treasury, in consultation with the Attorney General and the Chair of the Federal Trade Commission (FTC), to submit a report within 120 days ''assessing the current market structure and conditions of competition [for beer, wine, and spirits], including an assessment of any threats to competition and barriers to new entrants.'' The report is to include discussion of unlawful trade practices; patterns of consolidation in production, distribution, or retail markets; and ''any unnecessary trade practice regulations of matters such as bottle sizes, permitting, or labeling that may unnecessarily inhibit competition.''

Further, Section 5(k) of the Order directs the Treasury Secretary, through the Administrator of the Alcohol and Tobacco Tax and Trade Bureau (TTB), to consider within 240 days rulemaking updating TTB's trade practice regulations, revising or rescinding any regulations that ''unnecessarily inhibit competition,'' and ''reducing any barriers that impede market access for smaller and independent brewers, winemakers, and distilleries.''

Consequently, to inform these efforts, we are seeking comment on these topics from participants in the beer, wine, and spirits markets, consumer groups, public interest groups, and interested private parties.

Dated: July 23, 2021.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2021–16115 Filed 7–27–21; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0045]

Agency Information Collection Activity: VA Request for Determination of Reasonable Value

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 27, 2021.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0045'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0045'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–21.

Title: VA Request for Determination of Reasonable Value (VA Forms 26–1805, and 26–1805–1).

OMB Control Number: 2900–0045.

Type of Review: Revision of a currently approved collection.

Abstract: VA utilizes Form 26–1805 (paper form) and 26–1805–1 (digital form) for lenders to request an appraisal and assign an appraiser (*i.e.,* ''ordering'' an appraisal), which ultimately provides the appraiser with the authority to be on the property to conduct the appraisal (*i.e.,* an engagement letter). This information collection request seeks to expand this data collection clearance to encompass a modernized, end-to-end appraisal management process. Under this revised ICR, VA will not only capture information from lenders around when an appraisal has been ordered (current VA Form 26–1805), but will also capture information and workflow associated with the assignment, scheduling, and review of an appraisal by VA or a lender. This new process will be consistent with the rest of the mortgage industry, and will align VA's appraisal process with the industry standard.

Affected Public: Individuals or households.

Estimated Annual Burden: 585,000 hours.

Estimated Average Burden per Respondent: 57 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 650,000.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–15981 Filed 7–27–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activity: Statement of Assurance of Compliance With 85 Percent Enrollment Ratios

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 27, 2021.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Title 38 United States Code (U.S.C.) 3680A(d) and 38 Code of Federal Regulations (CFR) 21.4201

Title: Statement of Assurance of Compliance with 85 Percent Enrollment Ratios, VA Form 22–10215 and VA Form 22–10215a.

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: This form will be used to satisfy requirements as outlined. The Department of Veterans Affairs (VA) is authorized to pay education benefits to Veterans and other eligible persons pursuing approved programs of education under chapters 30, 31, 32, 33, and 35 of title 38, U.S.C. and chapter 1606 of title 10, U.S.C.

As part of the benefits authorization process, Code of Federal Regulations (CR) Title 38§ 21.4201 places restrictions on enrollment based on the percentage of students receiving financial support in any approved program. Except as otherwise provided by regulation, VA shall not approve an enrollment in any course for an eligible Veteran, not already enrolled, for any period during which more than 85 percent of the students enrolled in the course are having all or part of their tuition fees or other charges paid for them by the educational institution or by VA under title 38, U.S.C., or under title 10, U.S.C. This is known as the 85/15 Rule and is applicable to Institutions of Higher Learning (IHLs) and Non-College Degree postsecondary schools (NCDs).

The requirements apply to all courses, not otherwise exempt or waiver offered by all educational institutions, regardless whether the institution is degree-granting, proprietary profit, proprietary nonprofit, eleemosynary, public and/or tax-supported.

These schools are required to submit information necessary to determine if their programs of training are approved for the payment of VA educational assistance. This specified information is submitted either to VA or to the State Approving Agency (SAA) having jurisdiction over that school.

Affected Public: Individuals and households.

Estimated Annual Burden: 40,000 hours.

Estimated Average Burden per Respondent: 60 minutes.

Frequency of Response: Quarterly.

Estimated Number of Respondents: 10,000.

By direction of the Secretary:

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–16007 Filed 7–27–21; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 86 Wednesday,
No. 142 July 28, 2021

Part II

Federal Communications Commission

47 CFR Part 64
Rates for Interstate Inmate Calling Services; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 12–375, FCC 21–60; FRS 35683]

Rates for Interstate Inmate Calling Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) reforms its rules for inmate calling services by taking the following steps. The Commission eliminates a separate rate cap for collect calling. The Commission lowers the interim interstate rate caps to $0.12 for prisons and $0.14 for jails with an average daily population of 1,000 or more incarcerated people. The Commission reforms the current treatment of site commission payments to permit recovery only of the portions of such payments related specifically to calling services and requires them to be separately listed on bills. Site commission payments that are legally mandated may be passed through to consumers, without any markup, and site commission payments that result from contractual obligations between facilities and providers are recoverable only up to $0.02 per minute for both prisons and jails with average daily populations of 1,000 incarcerated people or more. The Commission caps, for the first time, international calling rates at the applicable total interstate rate cap, plus the amount paid by the calling services provider to its underlying wholesale carriers for completing international calls. The Commission adopts a process for providers to follow when seeking waivers of the rate caps for interstate and international calling services; reforms the ancillary service third-party transaction fee caps for calls that are billed on a single per-call basis and charges for transferring or processing third-party financial transactions; adopts a new mandatory data collection; and reaffirms providers' obligations regarding functionally equivalent access for incarcerated people with hearing and speech disabilities, delegating authority to its Consumer and Governmental Affairs Bureau (CGB) to undertake a separate data collection to help the Commission resolve critically important disability access issues.

DATES: This rule is effective October 26, 2021. Amendatory instructions 5 and 6, concerning §§ 64.6110 and 64.6120, respectively, are delayed indefinitely. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for the amendment to § 64.6110 and the addition of § 64.6120.

The delegations of authority to the Wireline Competition Bureau (WCB), the Office of Economics and Analytics (OEA), and CGB (see section III.H.3 of **SUPPLEMENTARY INFORMATION**) are effective on July 28, 2021.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Scott, Disability Rights Office of the Consumer and Governmental Affairs Bureau, at (202) 418–1264 or via email at *michael.scott@fcc.gov* regarding portions of the Third Report and Order relating specifically to the provision of communications services to incarcerated people with hearing and speech disabilities and Simon Solemani, Pricing Policy Division of the Wireline Competition Bureau, at (202) 418–2270, or via email at *Simon.Solemani@fcc.gov* regarding other portions of the Report and Order.

SUPPLEMENTARY INFORMATION: The amendment to § 64.6110 and the addition of § 64.6120 are delayed pending OMB approval. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for these amendments.

This is a summary of the Commission's Third Report and Order, FCC 21–60, released May 24, 2021. This summary is based on the public redacted version of the document, the full text of which can be obtained from the following internet address: *https://docs.fcc.gov/public/attachments/FCC-21-60A1.pdf.*

Synopsis

I. Introduction

1. Unlike virtually everyone else in the United States, incarcerated people have no choice in their telephone service provider. Instead, their only option typically is to use a service provider chosen by the correctional facility, and once chosen, that service provider typically operates on a monopoly basis. Egregiously high rates and charges and associated unreasonable practices for the most basic and essential communications capability—telephone service—impedes incarcerated peoples' ability to stay connected with family and loved ones, clergy, and counsel, and financially burdens incarcerated people and their loved ones. Never have such connections been as vital as they are now, as many correctional facilities have eliminated in-person visitation in response to the COVID–19 pandemic.

2. In August 2020, the Commission unanimously adopted the Fourth Further Notice of Proposed Rulemaking (*2020 ICS FNPRM*) proposing to reduce interstate rates and, for the first time, to cap international rates. Today, the Commission moves forward as proposed, lowering interstate rates and charges for the vast majority of incarcerated people, limiting international rates for the first time, and making other reforms to its rules.

3. Specifically, the Report and Order:

- Lowers the interstate interim rate caps of $0.21 per minute for debit and prepaid calls from prisons and jails with 1,000 or more incarcerated people to new lower interim caps of $0.12 per minute for prisons and $0.14 per minute for larger jails.
- Reforms the current treatment of site commission payments to permit recovery only of the portions of such payments related specifically to calling services and requires them to be separately listed on bills.
  - Where site commission payments are mandated by federal, state, or local law, providers may pass these payments through to consumers, without any markup, as an additional component of the new interim interstate per-minute rate caps.
  - Where site commission payments result from contractual obligations or negotiations with providers, providers may recover from consumers no more than the $0.02 per minute for prisons and $0.02 per minute for larger jails, as proposed in the *2020 ICS FNPRM.*
  - Therefore, consistent with the proposal in the *2020 ICS FNPRM,* the maximum total interstate rate caps are $0.14 per minute for prisons and $0.16 per minute for jails with 1,000 or more incarcerated people.
- Eliminates the current interim interstate collect calling rate cap of $0.25 per minute resulting in a single uniform interim interstate maximum rate cap of $0.21 per minute for all calls for all facilities, consistent with the proposal in the *2020 ICS FNPRM.*
- Caps, for the first time, international calling rates at the applicable total interstate rate cap, plus the amount paid by the calling services provider to its underlying wholesale carriers for completing international calls, consistent with the *2020 ICS FNPRM.*
- Reforms the ancillary service third-party transaction fee caps for (1) calls that are billed on a single per-call basis, and (2) charges for transferring or

processing third-party financial transactions, as proposed in the *2020 ICS FNPRM.*

• Adopts a new mandatory data collection to obtain more uniform cost data based on consistent prescribed allocation methodologies to determine reasonable permanent cost-based rate caps for facilities of all sizes, as suggested in the *2020 ICS FNPRM.*

• Reaffirms providers' obligations regarding functionally equivalent access for incarcerated people with hearing and speech disabilities, consistent with the *2020 ICS FNPRM* and federal law.

4. The Commission expects today's actions to have immediate meaningful and positive impacts on the ability of incarcerated people and their loved ones to satisfy our universal, basic need to communicate. Although the Commission uses various terminology throughout this item to refer to the intended beneficiaries of the actions herein, unless context specifically indicates otherwise, these beneficiaries are broadly defined as the people placing and receiving inmate calling services (ICS) calls, whether they are incarcerated people, members of their family, or other loved ones and friends. The Commission also may refer to them, generally, as consumers.

II. Background

5. Access to affordable communications services is critical for everyone in the United States, including incarcerated members of our society. Studies have long shown that incarcerated people who have regular contact with family members are more likely to succeed after release and have lower recidivism rates. Because correctional facilities generally grant exclusive rights to service providers, incarcerated people must purchase service from ''locational monopolies'' and subsequently face rates far higher than those charged to other Americans.

A. Statutory Background

6. The Communications Act of 1934, as amended (Communications Act or Act) divides regulatory authority over interstate, intrastate, and international communications services between the Commission and the states. Section 2(a) of the Act empowers the Commission to regulate ''interstate and foreign communication by wire or radio.'' This regulatory authority includes ensuring that ''[a]ll charges, practices, classifications, and regulations for and in connection with'' interstate or international communications services are ''just and reasonable'' in accordance with section 201(b) of the Act. Section 201(b) also provides that ''[t]he Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out'' these provisions.

7. Section 2(b) of the Act preserves states' jurisdiction over ''charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service.'' The Commission is thus ''generally forbidden from entering the field of intrastate communication service, which remains the province of the states.'' Stated differently, section 2(b) ''erects a presumption against the Commission's assertion of regulatory authority over intrastate communications.''

8. Section 276 of the Act directs the Commission to prescribe regulations that ensure that payphone service providers, including inmate calling services providers, ''are fairly compensated for each and every completed intrastate and interstate call using their payphone.'' Although the Telecommunications Act of 1996 (1996 Act) amended the Act and ''chang[ed] the FCC's authority with respect to some intrastate activities,'' with respect to section 276, the U.S. Court of Appeals for the District of Columbia Circuit has held that ''the strictures of [section 2(b)] remain in force.'' Accordingly, that court concluded that section 276 does not authorize the Commission to determine ''just and reasonable'' rates for intrastate calls, and that the Commission's authority under that provision to ensure that providers ''are fairly compensated'' both for intrastate and interstate calls does not extend to establishing rate caps on intrastate services.

B. History of Commission Proceedings Prior to 2020

9. In 2003, Martha Wright and her fellow petitioners, current and former incarcerated people and their relatives and legal counsel (Wright Petitioners), filed a petition seeking a rulemaking to address ''excessive'' inmate calling services rates. The petition sought to prohibit exclusive inmate calling services contracts and collect-call-only restrictions in correctional facilities. In 2007, the Wright Petitioners filed an alternative petition for rulemaking in which they emphasized the urgency of the need for Commission action due to ''exorbitant'' inmate calling services rates. The Wright Petitioners proposed benchmark rates for interstate long distance inmate calling services calls and reiterated their request that providers offer debit calling as an alternative option to collect calling. The Commission sought and received comment on both petitions.

10. In 2012, the Commission commenced an inmate calling services rulemaking proceeding by releasing the *2012 ICS FNPRM* seeking comment on, among other matters, the proposals in the Wright Petitioners' petitions and whether to establish rate caps for interstate inmate calling services calls.

11. In the *2013 ICS Order,* in light of record evidence that rates for calling services used by incarcerated people greatly exceeded the reasonable costs of providing those services, the Commission adopted interim interstate rate caps of $0.21 per minute for debit and prepaid calls and $0.25 per minute for collect calls. Under the Commission's rules, ''Debit Calling'' means ''a presubscription or comparable service which allows an Inmate, or someone acting on an Inmate's behalf, to fund an account set up [through] a Provider that can be used to pay for Inmate Calling Services calls originated by the Inmate.'' ''Prepaid Calling'' means ''a presubscription or comparable service in which a Consumer, other than an Inmate, funds an account set up [through] a Provider of Inmate Calling Services. Funds from the account can then be used to pay for Inmate Calling Services, including calls that originate with an Inmate.'' ''Collect Calling'' means ''an arrangement whereby the called party takes affirmative action clearly indicating that it will pay the charges associated with a call originating from an Inmate Telephone.'' In the First Mandatory Data Collection, the Commission required all inmate calling services providers to submit data on their underlying costs so that the agency could develop permanent rate caps. In *2014,* the Commission sought comment on reforming charges for services ancillary to the provision of inmate calling services and on establishing rate caps for both interstate and intrastate calls. Ancillary service charges are fees that providers assess on calling services used by incarcerated people that are not included in the per-minute rates assessed for individual calls.

12. The Commission adopted a comprehensive framework for interstate and intrastate inmate calling services in the *2015 ICS Order,* including limits on ancillary service charges and permanent rate caps for interstate and intrastate inmate calling services calls in light of ''egregiously high'' rates for inmate calling services calls. Because of continued growth in the number and dollar amount of ancillary service charges that inflated the effective price paid for inmate calling services, the

Commission limited permissible ancillary service charges to only five types and capped the charges for each: (1) Fees for Single-Call and Related Services—billing arrangements whereby an incarcerated person's collect calls are billed through a third party on a per-call basis, where the called party does not have an account with the inmate calling services provider or does not want to establish an account; (2) Automated Payment Fees—credit card payment, debit card payment, and bill processing fees, including fees for payments made by interactive voice response, web, or kiosk; (3) Third-Party Financial Transaction Fees—the exact fees, with no markup, that providers of calling services used by incarcerated people are charged by third parties to transfer money or process financial transactions to facilitate a consumer's ability to make account payments via a third party; (4) Live Agent Fees—fees associated with the optional use of a live operator to complete inmate calling services transactions; and (5) Paper Bill/Statement Fees—fees associated with providing customers of inmate calling services an optional paper billing statement. The Commission relied on sections 201(b) and 276 of the Act to adopt rate caps for both interstate and intrastate inmate calling services. The Commission relied on sections 201(b) and 276 of the Act to adopt rate caps for both interstate and intrastate inmate calling services. The Commission set tiered rate caps of $0.11 per minute for prisons; $0.14 per minute for jails with average daily populations of 1,000 or more; $0.16 per minute for jails with average daily populations of 350 to 999; and $0.22 per minute for jails having average daily populations of less than 350. The Commission calculated these rate caps using industry-wide average costs based on data from the First Mandatory Data Collection and stated that this approach would allow providers to ''recover average costs at each and every tier.'' The Commission did not include site commission payments in its permanent rate caps, finding these payments were not costs reasonably related to the provision of inmate calling services. The Commission also readopted the interim interstate rate caps it had adopted in 2013, and extended them to intrastate calls, pending the effectiveness of the new rate caps, and sought comment on whether and how to reform rates for international inmate calling services calls. At the same time, the Commission adopted a Second Mandatory Data Collection to identify trends in the market and form the basis for further reform as well as an annual filing obligation requiring providers to report information on their current operations, including their interstate, intrastate, and international rates as well as their ancillary service charges.

13. In the *2016 ICS Reconsideration Order,* the Commission reconsidered its decision to entirely exclude site commission payments from its 2015 permanent rate caps. The Commission increased those permanent rate caps to account for claims that certain correctional facility costs reflected in site commission payments are directly and reasonably related to the provision of inmate calling services. The Commission set the revised rate caps at $0.13 per minute for prisons; $0.19 per minute for jails with average daily populations of 1,000 or more; $0.21 per minute for jails with average daily populations of 350 to 999; and $0.31 per minute for jails with average daily populations of less than 350.

C. Judicial Actions

14. In January 2014, in response to providers' petitions for review of the *2013 ICS Order,* the D.C. Circuit stayed the application of certain portions of the *2013 ICS Order* but allowed the Commission's interim rate caps to remain in effect. Later that year, the court held the petitions for review in abeyance while the Commission proceeded to set permanent rates. In March 2016, in response to providers' petitions for review of the *2015 ICS Order,* the D.C. Circuit stayed the application of the *2015 ICS Order*'s permanent rate caps and ancillary service charge caps for Single Call Services while the appeal was pending. Single-Call Services mean ''billing arrangements whereby an Inmate's collect calls are billed through a third party on a per-call basis, where the called party does not have an account with the Provider of Inmate Calling Services or does not want to establish an account.'' Later that month, the court stayed the application of the Commission's interim rate caps to intrastate inmate calling services. In November 2016, the D.C. Circuit also stayed the *2016 ICS Reconsideration Order,* pending the outcome of the challenge to the *2015 ICS Order.*

15. In 2017, in *GTL* v. *FCC,* the D.C. Circuit vacated the permanent rate caps adopted in the *2015 ICS Order.* First, the panel majority held that the Commission lacked the statutory authority to cap intrastate calling services rates. The court explained that the Commission's authority over intrastate calls is, except as otherwise provided by Congress, limited by section 2(b) of the Act and nothing in section 276 of the Act overcomes this limitation. In particular, section 276 ''merely directs the Commission to 'ensure that all providers [of calling services to incarcerated people] are fairly compensated' for their inter- and intrastate calls,'' and it ''is not a 'general grant of jurisdiction' over intrastate ratemaking.'' The court noted that it ''need not decide the precise parameters of the Commission's authority under § 276.''

16. Second, the D.C. Circuit concluded that the ''Commission's categorical exclusion of site commissions from the calculus used to set [inmate calling services] rate caps defie[d] reasoned decision making because site commissions obviously are costs of doing business incurred by [inmate calling services] providers.'' The court noted that some site commissions were ''mandated by state statute,'' while others were ''required by state correctional institutions'' and were thus also a ''condition of doing business.'' The court directed the Commission to ''assess on remand which portions of site commissions might be directly related to the provision of [inmate calling services] and therefore legitimate, and which are not.'' The court did not reach the providers' remaining arguments ''that the exclusion of site commissions denies [them] fair compensation under [section] 276 and violates the Takings Clause of the Constitution because it forces providers to provide services below cost.'' Instead, the court stated that the Commission should address these issues on remand when revisiting the categorical exclusion of site commissions. Judge Pillard dissented from this view, noting that site commissions are not legitimate simply because a state demands them.

17. Third, the D.C. Circuit held that the Commission's use of industry-wide averages in setting rate caps was arbitrary and capricious because it lacked justification in the record and was not supported by reasoned decision making. Judge Pillard also dissented on this point, noting that the Commission has ''wide discretion'' under section 201 of the Act to decide ''which costs to take into account and to use industry-wide averages that do not necessarily compensate 'each and every' call.'' More specifically, the court found the Commission's use of a weighted average per-minute cost to be ''patently unreasonable'' given that such an approach made calls with above-average costs unprofitable and thus did ''not fulfill the mandate of § 276 that 'each and every''' call be fairly compensated.

Additionally, the court found that the *2015 ICS Order* ''advance[d] an efficiency argument—that the larger providers can become profitable under the rate caps if they operate more efficiently—based on data from the two smallest firms,'' which ''represent[ed] less than one percent of the industry,'' and that the *Order* did not account for conflicting record data. The court therefore vacated this portion of the *2015 ICS Order.*

18. Finally, the court remanded the ancillary service charge caps. The D.C. Circuit held that ''the Order's imposition of ancillary fee caps in connection with interstate calls is justified'' given the Commission's ''plenary authority to regulate interstate rates under § 201(b), including 'practices . . . for and in connection with' interstate calls.'' The court held that the Commission ''had no authority to impose ancillary fee caps with respect to intrastate calls.'' Because the court could not ''discern from the record whether ancillary fees can be segregated between interstate and intrastate calls,'' it remanded the issue so the Commission could determine whether it could segregate ancillary fee caps on interstate calls (which are permissible) and on intrastate calls (which are impermissible). The court also vacated the video visitation annual reporting requirements adopted in the *2015 ICS Order.*

19. In December 2017, after it issued the *GTL* v. *FCC* opinion, the D.C. Circuit in *Securus* v. *FCC* ordered the *2016 ICS Reconsideration Order* ''summarily vacated insofar as it purports to set rate caps on inmate calling service'' because the revised rate caps in that *2016 Order* were ''premised on the same legal framework and mathematical methodology'' rejected by the court in *GTL* v. *FCC.* The court remanded ''the remaining provisions'' of that *Order* to the Commission ''for further consideration . . . in light of the disposition of this case and other related cases.'' As a result of the D.C. Circuit's decisions in *GTL* and *Securus,* the interim rate caps that the Commission adopted in 2013 ($0.21 per minute for debit/prepaid calls and $0.25 per minute for collect calls) remain in effect for interstate inmate calling services calls.

D. 2020 Rates and Charges Reform Efforts

20. *2020 ICS Order on Remand and FNPRM.* In February 2020, the Wireline Competition Bureau (Bureau or WCB) issued a public notice seeking to refresh the record on ancillary service charges in light of the D.C. Circuit's remand in *GTL* v. *FCC.* This Public Notice was published in the **Federal Register**. In the *Ancillary Services Refresh Public Notice,* the Bureau sought comment on ''whether each permitted [inmate calling services] ancillary service charge may be segregated between interstate and intrastate calls and, if so, how.'' The Bureau also sought comment on any steps the Commission should take to ensure, consistent with the D.C. Circuit's opinion, that providers of interstate inmate calling services do not circumvent or frustrate the Commission's ancillary service charge rules. The Bureau also defined jurisdictionally mixed services as '' '[s]ervices that are capable of communications both between intrastate end points and between interstate end points' '' and sought comment on, among other issues, how the Commission should proceed if any permitted ancillary service is ''jurisdictionally mixed'' and cannot be segregated between interstate and intrastate calls.

21. In August 2020, the Commission adopted the *2020 ICS Order on Remand* and *2020 ICS FNPRM.* The Commission responded to the court's remands and took action to comprehensively reform inmate calling services rates and charges. First, the Commission addressed the D.C. Circuit's directive that the Commission consider whether ancillary service charges—separate fees that are not included in the per-minute rates assessed for individual inmate calling services calls—can be segregated into interstate and intrastate components for the purpose of excluding the intrastate components from the reach of the Commission's rules. The Commission found that ancillary service charges generally are jurisdictionally mixed and cannot be practicably segregated between the interstate and intrastate jurisdictions except in the limited number of cases where, at the time a charge is imposed and the consumer accepts the charge, the call to which the service is ancillary is clearly an intrastate call. As a result, the Commission concluded that inmate calling services providers are generally prohibited from imposing any ancillary service charges other than those permitted by the Commission's rules, and providers are generally prohibited from imposing charges in excess of the Commission's applicable ancillary service fee caps.

22. Second, the Commission proposed rate reform of the inmate calling services within its jurisdiction. As a result of the D.C. Circuit's decisions, the interim interstate rate caps of $0.21 per minute for debit and prepaid calls and $0.25 per minute for collect calls that the Commission adopted in 2013 remain in effect today. Commission staff performed extensive analyses of the data it collected in the Second Mandatory Data Collection as well as the data in the April 1, 2020, annual reports. In the *2015 ICS Order,* the Commission directed that the Second Mandatory Data Collection be conducted ''two years from publication of Office of Management and Budget (OMB) approval of the information collection.'' The Commission received OMB approval in January 2017, and **Federal Register** publication occurred on March 1, 2017. Accordingly, on March 1, 2019, inmate calling services providers submitted their responses to the Second Mandatory Data Collection. WCB and the Office of Economics and Analytics (OEA) undertook a comprehensive analysis of the Second Mandatory Data Collection responses, and conducted multiple follow-up discussions with providers to supplement and clarify their responses, in order to conduct the data analysis upon which the proposals in the August *2020 ICS FNPRM* are based. Based on that analysis, the Commission proposed to lower the interstate rate caps to $0.14 per minute for debit, prepaid, and collect calls from prisons and $0.16 per minute for debit, prepaid, and collect calls from jails. In so doing, the Commission used a methodology that addresses the flaws underlying the Commission's 2015 and 2016 rate caps (which used industry-wide averages to set rate caps) and that is consistent with the mandate in section 276 of the Act that inmate calling services providers be fairly compensated for each and every completed interstate call. The Commission's methodology included a proposed 10% reduction in GTL's costs to account, in part, for seemingly substantially overstated costs. The Commission also proposed to adopt a waiver process that would permit providers to seek waivers of the proposed rate caps on a facility-by-facility or contract basis if the rate caps would prevent a provider from recovering the costs of providing interstate inmate calling services at a facility or facilities covered by a contract. The *2020 ICS FNPRM* also proposed ''to adopt a rate cap formula for international inmate calling services calls that permits a provider to charge a rate up to the sum of the inmate calling services provider's per-minute interstate rate cap for that correctional facility plus the amount that the provider must pay its underlying international service provider for that

call on a per-minute basis (without a markup).'' The Commission explained that this cap ''would enable inmate calling services providers to account for widely varying costs,'' be consistent with the ''just and reasonable' standard in section 201(b) of the Act, and comport with the ''fair compensation'' provision of section 276 of the Act.

23. In response to the *2020 ICS FNPRM,* the Commission received over 90 comments and reply comments and 9 economic studies. Filers included providers of calling services to incarcerated people, public interest groups and advocates for the incarcerated, telecommunications companies, organizations representing individuals who are deaf or hard of hearing, and providers of telecommunications relay service.

24. *Intrastate Rate Reform Efforts.* By April 1 of each year, inmate calling services providers file annual reports with the Commission that include rates, ancillary service charges, and site commissions. In an effort to compare interstate inmate calling services rate levels with intrastate rate levels, Commission staff analyzed the intrastate rate data submitted as part of the providers' April 1, 2020, annual reports. Commission staff's review revealed that intrastate rates for debit or prepaid calls exceed interstate rates in 45 states, with 33 states allowing rates that are at least double the Commission's interstate cap and 27 states allowing ''first-minute'' charges that can be more than 25 times that of the first minute of an interstate call. For example, one provider reported a first-minute intrastate rate of $5.34 and additional per-minute intrastate rates of $1.39 while reporting the per-minute interstate rate of $0.21 for the same correctional facility. Similarly, another provider reported a first-minute intrastate rate of $6.50 and an additional per-minute intrastate rate of $1.25 while reporting the per-minute interstate rate of $0.25 for the same correctional facility. Further, Commission staff identified instances in which a 15-minute intrastate debit or prepaid call costs as much as $24.80—almost seven times more than the maximum $3.15 that an interstate call of the same duration would cost.

25. In light of these data, in September 2020, former Chairman Pai and Brandon Presley, then president of the National Association of Regulatory Utility Commissioners (NARUC), jointly sent a letter to the co-chairs of the National Governors Association urging state governments to take action to reduce intrastate rates and related fees. At least one state has enacted a law to reduce intrastate inmate calling services rates and fees, at least one state commenced a regulatory proceeding aimed at reducing intrastate inmate calling services rates and fees, and several states are considering legislation.

III. Third Report and Order

26. In this Third Report and Order, the Commission takes several important steps to provide significant financial relief to incarcerated people and their families, all substantially consistent with the *August 2020 ICS FNPRM,* except where the record evidence requires the Commission to take a more conservative approach. The Commission takes these actions now in light of the exigent circumstances facing incarcerated people as they continue to deal with hardships related to the COVID–19 pandemic. First, the Commission reforms per-minute inmate calling services rates on an interim basis, capping interstate rates at $0.12 per minute for prisons and $0.14 per minute for larger jails. Second, the Commission reforms the current treatment of site commissions by adopting two distinct interim site commission-related rate components reflecting the different types of site commissions: Site commission payments that providers are obligated to pay under formally codified laws or regulations; and payments that providers agree, by contract, to make. Third, the Commission caps international calling rates for the first time. These and other reforms adopted here will enable consumers—incarcerated people and their families—to obtain essential communications capability at just and reasonable rates while the Commission remains faithful to its obligations under section 276 of the Act.

27. The reforms the Commission adopts today reflect its findings, as detailed below, regarding the monopoly power that each calling service provider has over the individual correctional facilities it serves; the numerous negative impacts the providers' exercise of that market power has had on incarcerated people, their families and communities, and society as a whole; and the substantial record evidence of the need for at least interim reforms to the Commission's rate caps and related regulations. In these circumstances, to the extent the record permits, the Commission exercises its authority under section 201(b) of the Act to ''prescribe such rules and regulations as may be necessary'' to ensure that ''[a]ll charges [and] practices . . . for and in connection with [interstate and international] communication service'' by wire or radio are 'just and reasonable.' '' This provision provides the Commission with ample authority to regulate the interstate and international rates and the practices of providers of calling services for incarcerated people, including setting interim rate caps for interstate and international calls given that providers have monopoly power in the facilities they serve. The Commission has previously exerted jurisdiction over rates where it found it necessary to constrain monopoly power exercised by competitive LECs.

28. Although the record makes clear that the current interim rate caps for calling service to prisons and larger jails are unreasonably high, limitations in the reported data—arising in significant part from shortcomings in certain providers' responses to the Second Mandatory Data Collection—make the Commission wary of establishing permanent rate caps based on the current record. The Commission also declines to consider ICSolutions' proposal that the Commission forbear from the requirement that calling services providers contribute to the Universal Service Fund. The Commission has already addressed forbearance from universal service contribution obligations in the inmate calling services context in a separate proceeding, and the Commission declines to revisit that matter in this proceeding. Nor does the record allow the Commission to reasonably set permanent or even new interim interstate rate caps for jails with less than 1,000 average daily population, adjust its caps on ancillary service fees beyond the new cap on fees for single-call services and third-party financial transaction fees, or ensure that incarcerated people with disabilities have any greater access to functionally equivalent communications capabilities than they have today. The Commission therefore institutes a Mandatory Data Collection to provide the Commission and interested parties with more complete and accurate data regarding the costs of providing inmate calling services. The Commission anticipates that those data, in combination with the record developed in response to the attached Fifth Further Notice of Proposed Rulemaking (Fifth FNPRM), will enable the Commission to take these important steps in the near future. The Commission also delegates authority to the Consumer and Governmental Affairs Bureau (CGB) to undertake a separate data collection related to service providers' costs and other key aspects of their provision of telecommunications relay services

(TRS) and other assistive technologies if necessary to help the Commission resolve the critically important disability access issues the Commission explores in the Fifth FNPRM, published elsewhere in this issue of the **Federal Register**.

A. Unique Marketplace for Telephone Services Provided to Incarcerated People

29. The Commission has previously determined that providers of telephone services to incarcerated people have monopoly power in the facilities they serve. The Commission reaffirms this long-established finding, one that applies equally not only to the rates and charges for calling services provided to incarcerated people, including ancillary services, but also to providers' practices associated with their provision of calling services. Indeed, ICSolutions requests that the Commission investigate providers' compliance with the interim rate caps, in addition to other instances of asserted noncompliance. While this rulemaking proceeding is the wrong vehicle to address ICSolution's first two concerns, the Commission welcomes suggestions on how to revise its rules to better detect noncompliance, which the Commission seeks as part of the Fifth FNPRM, published elsewhere in this issue of the **Federal Register**.

30. The record demonstrates, as the Commission previously found and reiterated in the *August 2020 ICS FNRPM,* that incarcerated people have no choice in the selection of their calling services provider. For these consumers, the relevant market is the incarcerating facility. The authorities responsible for prisons or jails typically negotiate with the providers of inmate calling services and make their selection without input from the incarcerated people who will use the service. Once the facility makes its choice—often resulting in contracts with providers lasting several years into the future—incarcerated people in such facilities have no means to switch to another provider, even if the chosen provider raises rates, imposes additional fees, adopts unreasonable terms and conditions for use of the service, or offers inferior service. On the contrary, correctional authorities exercise near total control over how incarcerated people are able to communicate with the outside world. This control extends to control over visitation rights, the use of traditional mail and courier services, and the ability to use any form of electronic communication. Indeed, the only way an incarcerated person may legally communicate with the outside world is with the explicit permission of the correctional authority. Therefore, no competitive forces within the facility constrain providers from charging rates that far exceed the costs such providers incur in offering service.

31. Some commenters argue the market for inmate calling services is competitive because providers of those services bid against each other to win contracts with correctional facilities. GTL, in particular, makes much of this claim. Because correctional officials typically allow only one provider to serve any given facility, however, there are no competitive constraints on a provider's rates once it has entered into a contract to serve a particular facility. Some experts representing inmate calling services providers recognize this to be the case. The Commission has observed that ''because the bidder who charges the highest rates can afford to offer the confinement facilities the largest location commissions, the competitive bidding process may result in higher rates.'' Thus, even if there is ''competition'' in the bidding market as some providers assert, it is not the type of competition the Commission recognizes as having an ability to ''exert downward pressure on rates for consumers.''

B. Impact on Consumers and Society

32. The Commission has long recognized the far-ranging consequences that high calling rates inflict on incarcerated people, their families, and society as a whole. The record in this proceeding confirms that excessive telephone rates continue to impose an unreasonable burden on the ability of incarcerated people—one of the most economically disadvantaged segments of our population—to maintain vital connections with the outside world. And reduced prison visitation as a result of the COVID–19 pandemic has made these consequences even more dire, exacerbating the urgent need for inmate calling rate reform.

33. A national survey identified the cost of phone calls as the primary barrier preventing incarcerated people from keeping in touch with loved ones. As one commenter sums it up: ''A sentence to jail or prison should not include the additional punishment of being cut off from family, friends, legal assistance, and community resources.'' Studies confirm that incarcerated people who have regular contact with family members are more likely to succeed after release and have lower recidivism rates because they are able to maintain vital support networks.

34. The high cost of calling services causes damaging consequences not only for incarcerated people but also for their families. The record suggests that as many as 34% of families go into debt to keep in touch with an incarcerated family member. Some low-income families are forced ''to choose between calling an incarcerated family member and buying essential food and medicines.'' Rate reform will reduce these financial burdens and also promote increased communication which preserves essential family ties, allowing incarcerated people ''to parent their children and connect with their spouses, helping families stay intact,'' and decreasing the trauma suffered by children whose parents have been incarcerated.

35. The benefits of lowering inmate calling services rates also ripple throughout communities and society in other tangible and intangible ways. For example, making communications less costly and easier to use for incarcerated people promotes their ability to plan for housing, employment, and successful integration into communities once released from prison. In financial terms, increased communication helps reduce repeated incarceration, which benefits society by saving millions of dollars in incarceration-related costs annually. Additionally, the record shows that the ability to communicate regularly with families ''reduces foster placement of children of incarcerated people, which result[s] in measurable savings to society of tens of millions of dollars per year.''

36. The COVID–19 pandemic has intensified the need to reform inmate calling services rates. Even before the pandemic, it could be impractical, costly, and time-prohibitive for family members to make regular visits to those in prisons often located hundreds of miles away. But as a result of the pandemic, most jails and prisons have prohibited or severely limited in-person visitation. Thus, telephone calls have become even more of ''an essential lifeline for connection''—adding to the exigency and importance of the reforms that the Commission adopts today.

C. Interim Interstate Rate Cap Components

37. In the *2020 ICS FNRPM,* the Commission proposed to adopt permanent interstate rate caps of $0.14 per minute for all calls from prisons and $0.16 per minute for all calls from jails. These proposed caps included an allowance of $0.02 per minute added to provider-related rate caps of $0.12 and $0.14 per minute, respectively, to account for the costs correctional facilities incur that are reasonably related to the provision of inmate

calling services. The proposed rate caps generated extensive debate in the record, with providers contending that the available data do not justify any reduction in the existing interstate rate caps of $0.21 per minute for debit and prepaid calls, and public interest groups suggesting even lower rates than those the Commission proposed. Although collect calls are subject to a separate rate cap of $0.25 per minute under the existing interim interstate caps, as discussed below, the Commission and the parties on record agree that there is no longer a need to maintain this distinction.

38. After carefully considering the record, including data from the Second Mandatory Data Collection and commenting parties' analyses of those data, and refining its analysis based on record feedback, the Commission takes the following actions. First, as proposed in the *2020 ICS FNRPM,* the Commission eliminates a separate rate cap for all collect calls. Second, the Commission adopts new interim provider-related interstate rate caps of $0.12 per minute for calling services provided to incarcerated people in prisons and $0.14 per minute for calling services provided to incarcerated people in larger jails, as proposed in the *2020 ICS FNPRM.* As the Commission explains below, and in recognition of the concerns raised by various commenters, the Commission does not establish new interim rate caps for jails having average daily populations below 1,000. Those facilities remain subject to the maximum total per-minute rate cap of $0.21. The Commission refrains from adopting new interim rate caps for jails with average daily populations below 1,000, which remain subject to the interstate total per-minute rate cap of $0.21. Next, the Commission adopts new interim facility-related rate caps associated with site commission payments. Together, these rate cap components result in new lower total interstate rate caps that will remain interim in status, pending a further data collection which the Commission also adopts today in order to facilitate the Commission's adoption of permanent interstate rate caps.

39. Consistent with the *2020 ICS FNPRM,* the new interim interstate rate cap components will apply to all calls that a provider identifies as interstate as well as to all calls that the provider cannot definitively identify as intrastate, as determined through the application of the Commission's traditional end-to-end jurisdictional analysis. Securus asks that the Commission forbear from enforcing the end-to-end analysis reflected in the Enforcement Bureau's November 2020 Enforcement Advisory to per-minute interstate rates. The Commission declines to do so at this time. As the Commission explains in the Order on Reconsideration published elsewhere in this issue of the **Federal Register**, the end-to-end analysis is, and has been, the generally applicable jurisdictional standard for determining the jurisdiction of a telephone call in the absence of an express Commission determination that some other method is permissible. As the Commission has never expressly permitted another method of jurisdictional classification for inmate calling services calls, the end-to-end analysis continues to apply to those calls. Under this analysis, the jurisdictional nature of a call ''depends on the physical location of the endpoints of the call and not on whether the area code or NXX prefix of the telephone number, or the billing address of the credit card associated with the account, are associated with a particular state.'' Thus, to the extent that a provider cannot determine that the physical endpoints of a call are within the same state, that provider must not exceed the Commission's new interim interstate rate caps for that call. The use of physical endpoints for determining the appropriate rate cap for a call, including related ancillary services charges, does not, however, preclude the use of telephone number or other proxies, where permitted by the Commission or state or local authorities, in determining the appropriate taxing jurisdiction for such calls. It similarly has no bearing on the use of permissible proxies or other good faith estimates for federal or state Universal Service Fund contributions or similar regulatory fees or assessments for jurisdictionally indeterminant calling services.

1. Eliminating Separate Rate Caps for Collect Calls

40. Consistent with the proposal in the *2020 ICS FNPRM,* the Commission eliminates the separate interim rate cap that has applied to interstate collect calls since 2013. The record overwhelmingly supports this action, which recognizes the limited role that collect calls play in today's inmate calling services marketplace and the relatively small, if any, difference in cost between collect and non-collect inmate calling services calls.

41. Under the interim rate caps the Commission first adopted in 2013, interstate debit and prepaid calls are capped at $0.21 per minute, while interstate collect calls are capped at $0.25 per minute. In the *2015 ICS Order,* the Commission adopted a two-year phasedown for collect calls, after which rate caps for those calls were to be the same as those of debit and prepaid calls. The Commission found that the number of collect calls had dropped significantly over the preceding few years and predicted that the number of collect calls ''will most likely be at a nominal level in two years.'' Although this phasedown was vacated by the D.C. Circuit in *GTL* as part of that court's larger vacatur of the *2015 ICS Order,* the court did not criticize the Commission's phasedown of collect calls.

42. In the *2020 ICS FNPRM,* the Commission proposed to eliminate the distinct rate cap for collect calls, given ''the absence of any data demonstrating a material difference in the costs of providing these different types of calls.'' Commenters overwhelmingly support this proposal, with both providers and public interest groups agreeing that there is no longer any need for a separate rate cap for collect calls. Both Securus and GTL point out that collect call volumes continue to decline. And commenters agree that there are no longer significant cost differences between collect calls and debit or prepaid calls. Indeed, the record provides no support for a separate rate cap for collect calls, and comments make clear that eliminating the ''collect-only'' rate cap will benefit all stakeholders by making it easier for providers to administer, and for consumers to understand, rate caps for interstate and international calls.

43. The Commission finds that the lack of cost disparity in providing prepaid, debit, or collect calling services, coupled with the low and ever-diminishing demand for collect calls and the benefits to all stakeholders from having a single cap for all calls from a facility, support ending the distinction between prepaid, debit, and collect calling rates. The Commission therefore eliminates the separate interim cap for interstate collect calls for jails with average daily populations below 1,000 that remain subject to the 2013 interim rate caps. As a result of this change, all interstate calls from jails with average daily populations below 1,000 will be subject to a single, uniform, interim rate cap of $0.21 per minute. All interstate calls from prisons and larger jails will be subject to the new uniform interim rate caps the Commission adopts today for each type of facility, without regard to whether the interstate calls are collect, debit, or prepaid, as those terms are defined in its rules.

2. Setting a Threshold of 1,000 Average Daily Population for Larger Jails

44. The Commission adopts an average daily population threshold of

1,000 or greater to differentiate larger jails from smaller jails and apply its new interim provider-related and facility-related rate caps to larger jails, while leaving jails with average daily populations below 1,000 subject to the existing total interim rate cap of $0.21 per minute for all interstate calls. This larger jail threshold is aligned with the approach the Commission adopted in 2015, when it likewise used an average daily population of 1,000 to distinguish between rate cap tiers. In the 2015 ICS Order, the Commission adopted 1,000 average daily population as the larger jail size threshold. As one commenter points out, many of the cost analyses in the record segment jails by reference to the same 1,000 average daily population figure, a fact that supports the Commission's decision to set the average daily population threshold at 1,000 here. Numerous commenters have advanced the 1,000 average daily population figure to segment their own data analyses and resultant proposals, and none have criticized this cutoff as irrational or unduly difficult to administer. Although some commenters have argued that turnover may provide a more accurate indicator of costs, the Commission has not received turnover rate data in the record and must work with the data provided. However, the Commission finds that the cost data available from jails with average daily populations less than 1,000, including turnover and admission rates, deserves further investigation, and specifically seek such data in the Fifth FNPRM the Commission issues today accompanying this Report and Order. Providers shall calculate average daily population in accordance with section 64.6000 of the Commission's rules, which specifies that average daily population means ''the sum of all inmates in a facility for each day of the preceding calendar year, divided by the number of days in the year.''

45. The Commission's decision to exclude jails having average daily populations below 1,000 from the new interim caps is based on record evidence suggesting that providers incur higher costs per minute for jails with average daily populations below 1,000 than for larger jails. Securus asserts that ''small jails are more expensive to serve than larger jails.'' Securus points to its cost study showing ''a strong and consistent relationship between cost and facility size.'' Pay Tel also broadly argues that inmate calling services ''costs vary substantially based on facility size.'' More specifically, Pay Tel explains that its ''experiences regarding its costs of providing ICS'' demonstrate that costs increase ''in terms of jail'' average daily population, providing further evidence that providers incur greater costs to serve smaller jails. The Commission agrees with these commenters that, based on the current record, providers appear to incur somewhat higher costs in serving jails with average daily populations less than 1,000 than larger jails and the Commission finds this evidence credible and sufficient to support a cutoff of 1,000 average daily population for distinguishing larger jails from those with average daily populations below 1,000 for purposes of applying the Commission's new interim rate caps.

46. The data before the Commission preclude any specific determination of the extent to which the costs of providing calling services vary with jail size, and the Commission therefore disagrees with the Public Interest Parties' assertion that ''size does not impact costs,'' at least on the basis of this record. For example, the Second Mandatory Data Collection did not collect data on turnover rates so the Commission cannot determine how that variable affects providers' or facilities' costs. Given this, the Commission takes a bifurcated approach with regard to its new interim rate caps for jails. First, because the Commission is convinced that providers' costs of serving larger jails are likely below the industry average for all jails, the Commission uses the available data to set interim provider-related rate caps for larger jails. These interim caps are separate from those the Commission sets for prisons. Second, because the available data do not allow the Commission to quantify the extent to which providers' cost of serving jails with average daily populations below 1,000 exceed the industry average, the Commission defers further rate cap setting with respect to these jails until such time as the Commission is able to gather and analyze additional cost information. In the Fifth FNPRM, published elsewhere in this issue of the **Federal Register**, the Commission seeks detailed information on provider costs associated with serving jails with average daily populations below 1,000. On the record before the Commission, the Commission finds it reasonable and appropriate to exclude these jails from the new interim rate caps it adopts today for interstate calls. As explained in Part III.C.2 above, the Commission also uses the 1,000 average daily population threshold to distinguish larger jails for purposes of the facility-related rate component.

3. Accounting for Provider Costs

47. *Deciding to Adopt Separate Interim Interstate Provider-Related Rate Caps for Prisons and Larger Jails.* In the *2020 ICS FNPRM,* the Commission found that the reported data showed greater variations from mean costs for jails than for prisons (and therefore a greater standard deviation from the mean for jails than for prisons). A mean is the arithmetic average of numbers in a distribution. A standard deviation is a measure of dispersion calculated as the square root of the average of the squared differences from the mean. These greater variations from mean costs were one reason that led the Commission to propose a higher interstate rate cap for jails than for prisons. After analyzing the record, consistent with the proposal in the *2020 ICS FNPRM,* the Commission adopts separate interim interstate provider-related rate caps for prisons and larger jails.

48. As set forth in Appendix B, the Commission's refined analysis suggests that it costs service providers approximately 22% more to provide calling services in jails than in prisons. That analysis also shows greater variations from mean costs for jails. At least one commenter provides credible evidence that providers generally incur higher costs to serve jails than prisons and therefore ''support[s] the Commission's proposal to establish separate rate ceilings for prisons and jails.'' Pay Tel agrees that the evidence demonstrates greater costs per minute for jails than prisons, and explains that its examination of the reported costs of three of the six providers that serve both types of facilities shows that the costs of serving jails are roughly 40% higher. Securus also concludes that, for jails, costs per minute decrease as facility size increases, and that costs per minute for prisons are lower than for jails.

49. Not all commenters agree with drawing a distinction between prisons and jails. The Public Interest Parties point out that some providers have argued that there are no real cost differences between serving prisons and jails and therefore there is no basis for a separate, higher cap for jails. They urge that the Commission moves towards a unitary rate structure that would ''eliminate the multi-tier rate structure for jails'' and create a ''unified rate cap for prisons and jails.'' Although the record indicates that some jails bear the characteristics the Commission otherwise associates with prisons, on this record the Commission is not persuaded that these situations are the norm, and it finds that, overall, the evidence suggests higher provider costs

at jails than prisons. At the same time, the Commission rejects the notion that it should delay any action until the Commission collects more detailed cost data. The Commission has sufficient record evidence now to set interim rate caps for prisons and larger jails, consistent with its obligations and authority under the Act. The Commission therefore finds it appropriate to set different interstate provider-related rate caps for prisons than for jails on an interim basis. The Commission does not, however, distinguish between prisons and larger jails for purposes of its facility-related rate component designed to recover portions of contractually prescribed site commission payments. As explained in Part III.C.4 below, there is record support that the same facility-related allowance for prisons and larger jails is appropriate, and the Commission proceeds that way on an interim basis. To the extent that the record developed in response to the Fifth FNPRM, published elsewhere in this issue of the **Federal Register**, reveals that the Commission should distinguish between prisons and larger jails, the Commission will revisit that at such time as it develops permanent rate caps.

50. *Methodology.* As with any exercise in cost-based ratemaking, setting reasonable interim interstate provider-related rate caps for inmate calling services requires a determination of the costs providers incur in providing those services. Traditionally, agencies have set regulated rates through company-specific cost-of-service studies that measure the regulated firms' total cost of providing the regulated service using the firms' accounting data. The costs of service include operating expenses (*e.g.,* operating, maintenance and repair, and administrative expenses), depreciation expenses (the loss of value of the firm's assets over time due to wear and tear and obsolescence), cost of capital (the cost incurred to finance the firm's assets with debt and equity), and income and other tax expenses. Regulators often establish rules that specify how costs, including those arising from affiliate transactions, are to be accounted for, apportioned between the firms' regulated operations and nonregulated operations, and assigned to, or allocated among, different jurisdictions and services.

51. The Commission's approach toward regulating inmate calling services rates has been less prescriptive. The Commission, to date, has not adopted accounting rules for calling service providers. Nor has it specified complex rules for directly assigning or allocating a provider's and its affiliates' costs between their calling services operations and nonregulated operations, or assigning or allocating a provider's calling services costs to or among the providers' contracts or facilities. And it did not require calling service providers to submit cost of service studies requiring each provider to show in detail each step of its costing process.

52. Instead, the Commission has relied on data obtained through Mandatory Data Collections to set reasonable cost-based rate caps for inmate calling services. The Second Mandatory Data Collection, in particular, required every calling service provider to submit detailed information regarding its operations, costs, and revenues, including: (1) Lists of its inmate calling services contracts and the correctional facilities to which they apply; (2) the average daily populations, number of calls annually, and minutes of use annually at each of those facilities; (3) the direct costs of providing inmate calling services on a total company basis and at each of those facilities; and (4) the indirect costs of providing inmate calling services on a total company basis. Direct costs are costs that are ''completely attributable'' to a particular service such as inmate calling services. Indirect costs are all costs related to a service other than direct costs and include ''overhead, depreciation, or other costs that are allocated among different products or services.'' Determining a company's indirect costs requires a calculation: Subtracting the company's indirect costs from its total costs. Providers were required to provide information about costs in several steps. First, providers had to identify which of their and their corporate affiliates' total costs were directly attributable to inmate calling services and which were directly attributable to other operations. Providers were then required to allocate the remainder of their costs and their affiliates' total costs—the costs identified as indirect costs or overhead—between inmate calling services and other, nonregulated, operations. Providers were then required to allocate the inmate calling services portion of their direct costs to specific facilities but were not required to allocate their indirect costs to specific facilities.

53. In the *2020 ICS FNPRM,* the Commission proposed to use data from the Second Mandatory Data Collection, as compiled into a database by Commission staff, to calculate the costs each provider incurs in providing inmate calling services under each of its contracts for prisons and jails separately. The Commission proposed to calculate the mean (or arithmetical average) of those costs, add one standard deviation to that mean, and use the resulting sum to determine the provider cost portions of the interstate rate caps. The Commission reasoned that this ''mean contract costs per minute . . . plus one standard deviation'' methodology would allow the vast majority of providers to recover at least their reported costs under each of their contracts.

54. *Reliance on Data from the Second Mandatory Data Collection.* As proposed in the *2020 ICS FNPRM,* the Commission's interim rate cap methodology begins with the calculation of mean contract costs paid per minute in the provision of calling services to incarcerated people. To perform this calculation, the Commission relies on the 2018 data submitted in response to the Second Mandatory Data Collection, as supplemented and clarified by the providers in response to follow-up discussions with Commission staff, as the Commission proposed in the *2020 ICS FNPRM.* This approach reflects both the robustness and the limitations of the data submitted in response to the Second Mandatory Data Collection. On the one hand, those data provide an unprecedented wealth of information about the inmate calling services industry and individual calling service providers. The reported information allows the Commission to perform sophisticated analyses that help the Commission estimate the providers' actual costs of providing interstate inmate calling services.

55. On the other hand, as the Commission explained in the *2020 ICS FNPRM,* the collected data have certain limitations. First, although the Commission had sought facility-level data in the Second Mandatory Data Collection, in many instances, providers reported data only at the contract level, reflecting the fact that ''many providers assess their inmate calling services operations on a contract-by-contract basis, although many contracts include multiple correctional facilities.'' Given the lack of facility-level data, the Commission proposed to analyze the information on a contract, rather than a facility, basis and sought comment on this approach. Second, the Commission recognized that some providers had interpreted different steps in the cost reporting instructions for the Second Mandatory Data Collection in different ways. The Commission sought comment on the submitted data and asked commenters to identify other data issues for consideration.

56. The Public Interest Parties argue that the 2018 data ''provide more than sufficient evidence to support immediate rate reform.'' The Commission agrees. As the Public Interest Parties' expert asserts, variations in internal cost records among providers affect how costs are reported, not the overall level of costs. In other words, the lack of uniformity in cost data reporting need not result in further delay in the Commission's rate reform efforts. Further, as explained in Appendix A, providers' reports of call minutes and revenues are likely to be accurate down to the level of the contract. All providers bill on a per-minute basis, and revenue tracking, and thus reported revenues, are also likely to be reliable because providers are incentivized to accurately track them. Accordingly, the Commission finds the reported minutes of use and revenue data to be reliable and suitable for setting interim interstate rate caps.

57. Certain providers argue that the 2018 cost data from the Second Mandatory Data Collection are unsuitable for setting new rate caps. Securus, for example, contends that the Commission should not rely on the 2018 data because providers did not report their costs using a consistent methodology. In particular, Securus emphasizes that because providers were not required to, and did not, disclose how they calculated their direct costs or how they allocated indirect costs between regulated and nonregulated services, ''each company's measure of 'costs' is unique to itself and inconsistent with that of every other company.'' Pay Tel and its outside consultant highlight ''numerous inconsistencies in the manner in which costs were reported'' which, they argue, make the data unsuitable for cost-based ratemaking. Pay Tel's outside consultant points to providers' differing understandings of how to report direct and indirect costs and the accuracy of reported direct costs based on the chosen allocator for those costs. For its part, GTL finds it unsurprising that ''there are differences in the data among [inmate calling services] providers given the different reporting methodolog[ies] because no uniform accounting is required or necessary.'' GTL also notes that calling service providers are not subject to Part 32 accounting rules or any other uniform system of accounts. The Commission does not find these concerns sufficient to justify abandoning any reforms at this time, and find that ''variations in internal cost records and lack of a common methodology'' do not preclude the Commission from lowering egregiously high interstate rates now on an interim basis while waiting to obtain more reliable and consistent cost data. In sum, the 2018 data from the Second Mandatory Data Collection are the best data available upon which the Commission may, and does, reasonably rely here.

58. The limitations in the cost data identified in the record do, however, warrant a departure from the approach the Commission proposed in the *2020 ICS FNPRM.* That approach was premised on the Commission's ability to calculate providers' collective mean contract costs of providing inmate calling services to prisons and jails with a high degree of accuracy. Based on that premise, the Commission proposed relying on single measures of the industry-mean costs of providing calling services to permanently cap the interstate rates for prisons and jails, respectively.

59. After carefully considering the record, including providers' criticisms of the approach proposed in the *2020 ICS FNPRM,* the Commission takes a different approach than the one the Commission originally proposed and rely on the costs providers reported in response to the Second Mandatory Data Collection to develop separate zones, or ranges, of cost-based rates for prisons and larger jails from which the Commission selects the respective interim interstate provider-related rate caps. First, the costs, as reported in response to the Second Mandatory Data Collection, allow the Commission to calculate ceilings—or upper bounds—above which any interstate rate caps for prisons and larger jails would be unreasonably high. Second, the Commission adjusts the reported data to correct for outliers and contracts with reported costs that are significantly higher than other providers. These adjusted data allow the Commission to calculate floors—or lower bounds—below which any interstate rate caps for prisons and larger jails could be perceived as unreasonably low on the current record. These upper and lower bounds thus establish zones of reasonableness from which the Commission selects the interim interstate provider-related rate caps.

60. The approach the Commission takes here is fully consistent with judicial precedent and a logical outgrowth from the approach proposed in the *2020 ICS FNPRM.* Courts widely recognize that an agency may reasonably rely on the best available data where perfect information is unavailable. Indeed, the Supreme Court has recognized that the available data may not always settle a particular issue and that in such cases an agency must use its judgment to move from the facts in the record to a policy conclusion. Here, the Commission applies its judgment to the record before it and reach results that rationally connect ''the facts found and the choice[s] made.'' Importantly, by setting lower bounds that adjust for anomalies in the reported data, the Commission minimizes its reliance on data that the Commission finds inaccurate or unreliable.

61. The Commission recognizes, of course, that its reliance on imperfect data is not ideal, but a lack of perfect data is not fatal to agency action. The D.C. Circuit has held that an agency's decision should be upheld when from ''among alternatives all of which are to some extent infirm because of a lack of concrete data, [the agency] has gone to great lengths to assemble the available facts, reveal its own doubts, refine its approach, and reach a temporary conclusion.'' Here, the Commission has undertaken a robust analysis of all the data in the record and fully accounted for why the rate methodology it employs is reasonable, despite some providers' failure to meaningfully respond to Commission data requests and inaccuracies in their reported data. In the process, the Commission explains its misgivings about reliance on certain data and lays out its rationale for adopting these rate caps as an interim step, with a commitment going forward to collect further data to be used to set permanent rate caps.

62. GTL and Pay Tel claim that the absence of the Commission's underlying work papers limits their ''ability to comment on the methodology'' proposed in the *2020 ICS FNPRM* and prevents them from determining whether the adjustments to the data proposed in that *FNPRM* are appropriate. The Commission finds these assertions to be meritless. The record in this proceeding contradicts these views, as do the comments GTL and Pay Tel themselves offer concerning the Commission's methodology and treatment of data. Contrary to these providers' claims, the database on which the calculations in the *2020 ICS FNPRM* relied was made available to interested parties in this proceeding, subject to the terms of a protective order; and the record reflects that at least two parties have been able to replicate the Commission's rate cap analysis on their own, on the basis of the data available to them. The Commission also refers to this inmate calling services database as the ''dataset.'' The Commission made the

underlying data available and specified its analytical approach. The Commission is not required to do more.

63. *Allocation of Indirect Costs Based on Minutes of Use.* Consistent with the approach proposed in the *2020 ICS FNPRM,* the Commission's rate cap methodology relies on providers' collective mean contract costs per paid minute of use, plus one standard deviation. Because the instructions for the Second Mandatory Data Collection did not require providers to allocate their indirect costs (including their overhead costs) of providing inmate calling services among contracts, the Commission needs to adopt a mechanism for allocating those costs. These overheads include costs attributable to inmate calling services and to particular contracts, but not reported as such by the provider. In the *2020 ICS FNRPM,* the Commission proposed allocating the providers' indirect costs of providing inmate calling services among contracts based solely on relative minutes of use, a method that apportions a provider's indirect costs among its individual calling services contracts in proportion with each contract's share of the total minutes of use reported by that provider. The Commission sought comment on this proposal and on whether a different allocator would more effectively capture how costs are caused. The Commission adopts the proposed minute of use method of allocation for its new interim rate caps as one of only two reasonable allocation methods based on the current record.

64. Parties disagree whether minutes of use provides an appropriate method for allocating indirect costs, with some comments pointing out its shortcomings and others supporting its use. Although several parties argue that minutes of use does not provide an appropriate allocation method, its independent analysis shows that, while imperfect, minutes of use provides the most reasonable allocator given the data before the Commission. Specifically, after examining seven potential allocators—minutes of use, average daily population, number of calls, revenue, contracts, facilities, and direct costs—for allocating providers' indirect costs among contracts, the Commission finds minutes of use both reasonable and preferable to each potential alternative. Although none of these allocators fully capture the reasons for which providers incur inmate calling services costs, minutes of use constitutes the best available allocator under the circumstances because it produces plausible per-minute rates while ensuring that most calling services contracts would remain commercially viable, even assuming the accuracy of providers' reported costs.

65. The Commission calculated the per-minute caps that would apply under each potential allocator to compare the allocators. The Commission refers to these per-minute caps as ''implied rate caps.'' The Commission's calculations employed the mean contract costs per minute plus one standard deviation methodology proposed in the *2020 ICS FNPRM.* For simplicity, the Commission performed these calculations collectively for all facilities, rather than separately for different types or sizes of facilities. The Commission finds that only minutes of use ($0.149) and number of calls ($0.208) produce results below the current cap for prepaid and debit calls. In contrast, the implied per-minute rate caps for the revenue ($0.333), direct costs ($2.417), average daily population ($11.114), facilities ($303.685), and contracts ($318.636) allocators all suggest that interstate inmate calling services rate caps are presently unreasonably low, a proposition that not even any of the providers has tried to argue. This disparity is one of the reasons the Commission finds that minutes of use and number of calls are the only plausible allocators among the available alternatives. The Commission recognizes, as Securus and Pay Tel point out, allocating indirect costs based on minutes of use results in relatively uniform costs per minute in comparison to the other allocation methods. The Commission also agrees that this relative uniformity will necessarily result in a lower standard deviation from the mean for a minutes of use allocator than for any alternative method. The standard deviation the Commission calculates for minutes of use ($0.056) is significantly lower than those for each of the other potential allocators. But the implied rate caps for revenue ($0.220 = $0164 + $0.056) and direct costs ($0.284 = $0228 + $0.0506) would exceed current interstate rate levels if the standard deviation for those allocators were reduced to $0.056, and the implied rate caps for average daily population ($0.789), facilities ($16.485), and contracts ($18.499) would exceed those levels even without any standard deviation component.

66. Understanding that there is an element of circularity in using a minutes-based cost allocator when setting per-minute rate caps, the Commission further evaluated whether each potential allocator produces per-minute costs that are consistent with the rates currently set by providers. Specifically, the Commission calculated the percentage of contracts for which the provider reported per-minute revenues that are greater than the per-minute costs allocated to each contract under each allocator. Minutes of use yielded a higher percentage of viable contracts than did any other cost allocator. Minutes of use yielded 87.3% of contracts with per-minute provider revenues greater than their per-minute allocated costs. The next closest allocators are direct costs at 81.6% and number of calls at 81.3%. This confirms that minutes of use is the allocator that is most consistent with provider cost recovery, as it is illogical to assume that providers are entering into a significant number of contracts that are not commercially viable (*i.e.,* that do not allow providers to recover their costs). The Commission therefore finds minutes of use preferable to number of calls and use it in its provider-related rate caps calculations. The comparison of its per-minute cap to per-minute revenues is not subject to the objection that using a per-minute allocator will produce relatively uniform costs per minute in comparison to the other allocation methods.

67. The Commission recognizes that its choice of allocator is affected, in part, by its decision to continue to require providers to charge per-minute rates for inmate calling services. The Commission also rejects most of the cost allocators for additional reasons that are not subject to the objection that using a per-minute allocator will produce relatively uniform costs per minute in comparison to the other allocation methods. For example, use of the facility and direct cost allocator would require throwing out substantial amounts of data, while the remaining data would include egregious flaws, making any resulting cost allocation arbitrary. This critique applies to a more limited extent to average daily population, but it would still be a poor choice relative to the alternatives of call minutes or number of calls. Another example is the Commission's exclusion of the revenue allocator. But changing that rate structure would likely impose significant burdens on providers, and the Commission finds no basis for requiring such a change in connection with its adoption of new interim rate caps. The Commission also cannot meaningfully assess, on the record before it, how different rate structures would affect incarcerated persons and their families. The Commission therefore defers action on alternative rate structures—under which calling services consumers might be charged a predetermined monthly fee for

unlimited calls, for example—pending the development of a more complete record in response to the Fifth FNPRM, published elsewhere in this issue of the **Federal Register**. This reasoning again is not subject to the objection that using a per-minute allocator will produce relatively uniform costs per minute in comparison to the other allocation methods.

68. Some commenters contend that the available data preclude the Commission from allocating providers' costs with sufficient precision to support any changes in interstate rate caps. Pay Tel emphasizes that ''the observed inability of many [inmate calling services] providers to track and assign direct costs'' results in high levels of indirect costs to be allocated, which makes providers' costs appear more ''homogenous'' across locations and contracts than is actually the case. The Commission agrees there is some merit in these observations, particularly that the collected data appears to obscure cost differences between prisons and jails. Securus's outside experts are particularly critical of using minutes of use as the only allocator, arguing that ''the majority of [providers'] costs, which include connectivity to the facilities, developing and implementing the call platform, on-site equipment and SG&A [(selling, general, and administrative expenses)], do not vary by the number of minutes.''

69. The Commission finds that such issues do not require it to postpone reforming its interstate rate caps pending the availability of better data that might allow the Commission to allocate providers' indirect costs in a more cost-causative manner. The Commission is not required to pursue ''the perfect at the expense of the achievable.'' The Commission finds that the better course is to adopt interim interstate provider-related rate caps for prisons and larger jails now, using the available data, while requiring that providers submit more accurate, consistent, and disaggregated data that will allow the Commission to set permanent interstate provider-related rate caps for all correctional facilities that more closely reflect providers' costs of serving individual correctional facilities. As the D.C. Circuit has explained, ''[w]here existing methodology or research in a new area of regulation is deficient, the agency necessarily enjoys broad discretion to attempt to formulate a solution to the best of its ability on the basis of available information.'' Consistent with this principle, the Commission chooses ''to use the best available data, and to make whatever adjustments appear[ ] necessary and feasible'' to ensure that interstate inmate calling services rates are just and reasonable.

70. The Commission independently rejects the ''use of direct costs to allocate indirect costs'' and related approaches at this time. Pointing to its own cost-tracking processes, Pay Tel argues that allocating indirect costs based on directly attributable costs would be ''not only reasonable and consistent with prior Commission conclusions'' but also ''consistent with how [inmate calling services] providers incur costs.'' Although the Commission agrees that allocating indirect costs based on directly attributable costs could yield reasonable results when providers have properly identified their directly attributable costs, the data from many of the providers fall far short of that mark. Indeed, allocation by direct costs would require the Commission to ignore all data submitted by the two providers that reported no direct costs. The providers that did not report direct costs are [REDACTED]. Similarly, this approach also would allocate essentially all of GTL's costs on the basis of bad debt, a measure that bears little, if any, relationship to the reasons GTL incurs costs in its provision of inmate calling services. Alone among providers, GTL reported a bad debt expense as their only identifiable direct cost. The evidence supports no relationship between bad debt expense and cost causation, and the bad debt expense amounts only to [REDACTED], making any related assumptions even more speculative. Accordingly, the Commission finds allocating indirect costs based on direct costs would provide less reliable results than allocating indirect costs based on minutes of use. The Commission likewise rejects the use of facilities to allocate costs, as providers often failed to report costs for individual facilities where multiple facilities were supplied under a single contract. In light of the drawbacks to these approaches, the Commission has a higher degree of confidence in providers' reported minutes of use by contract.

71. The Commission similarly declines at this time to divide indirect costs into ''shared costs'' and ''common costs'' and develop separate allocators for each set of costs, as Securus suggests, because the available data do not allow the Commission to make such granular distinctions. The available data do not allow the Commission to analyze or allocate costs on the basis that Securus suggests. What Securus identifies as ''common costs'' most closely tracks the ''indirect costs'' reported in the Second Mandatory Data Collection. The Commission likewise rejects any allocation key based on percentages of total company revenue. The Commission has long disclaimed this allocation methodology because it fails to provide a reliable method for determining costs, given that ''revenues measure only the ability of an activity to bear costs, and not the amount of resources used by the activity.''

72. *Accurate Analysis Compels Adjustments to GTL's Reported Cost Data.* As the Commission recognized in the *2020 ICS FNPRM,* the critical question posed by its reliance on the available data is how to address the various issues reflected in the cost data reported by GTL, the largest provider of inmate calling services, with an estimated market share approaching 50%. One estimate from 2017 placed GTL's market share between 46% and 52.9% before it acquired Telmate, a company whose market share was between 1.9% and 3.1%. The Commission's internal analysis suggests GTL's share is around [REDACTED]. The Commission finds that GTL's cost data does not reflect its actual costs of providing inmate calling services and may overstate those costs. Given GTL's market share, including GTL's cost data as reported in the Commission's calculations for the entire industry, significantly affects the results. The Commission concludes that it must make certain adjustments to GTL's reported data if the Commission is to arrive at a more accurate estimate of industry costs. Courts have upheld the Commission's exclusion or substitution of flawed or inadequate data when the Commission has explained the evidence and demonstrated a rational connection between the facts found and the choice made, as the Commission does here.

73. On a company-wide basis, GTL's reported unit costs, which do not rely on cost allocation, are higher than those of all but one (much smaller) provider, and are nearly [REDACTED] the average of all the other providers excluding GTL. Unit costs are measured as the quotient of reported total costs and reported minutes. This remains true for GTL's allocated costs per minute for prisons or larger jails—both are higher than nearly all other providers' allocated costs, regardless of facility type. Despite being the largest provider, and commanding a disproportionate share of the larger contracts, GTL reports an average contract per-minute cost of [REDACTED], approximately [REDACTED] times larger than its nearest peers in size, Securus and CenturyLink, and more than [REDACTED] times larger than the average contract per-minute costs of the

next largest provider, ICSolutions. These results are inconsistent with the record evidence establishing that providers are able to achieve significant economies of scale. As the largest inmate calling services provider, GTL should be better enabled to spread its fixed costs over a relatively large portfolio of contracts relative to other providers, especially because GTL serves a higher proportion of larger facilities than other providers. Instead, taking GTL's reported costs at face value would imply that it does not achieve economies of scale. The record does not provide any explanation why GTL might incur higher inmate calling services costs than the rest of the industry. GTL's unit costs are also high when compared with the providers that are most like it. GTL's unit costs are nearly [REDACTED] times those of Securus, the second-largest provider, nearly [REDACTED] times those of CenturyLink, and nearly [REDACTED] times those of ICSolutions. Securus's reported unit costs are [REDACTED]; CenturyLink's reported unit costs are [REDACTED]; and ICSolutions' reported unit costs are [REDACTED]. Of equal concern, GTL uniquely reports large losses across all inmate calling services operations, totaling nearly [REDACTED] of GTL's reported costs. GTL's total revenues are [REDACTED] less than its reported costs, suggesting that GTL operates these facilities at a cumulative loss—a result contradicted by GTL's longevity in the market and the depth of its market presence. GTL is the only provider which records making a loss.

74. GTL's accounting practices also require adjustment to its data. Unlike every other provider, GTL reported ''bad debt expense'' as its only cost directly related to the provision of inmate calling services, though it almost certainly incurs other costs that are causally related to providing inmate calling services. As Pay Tel's expert explains, GTL's reported direct costs ''represent only 0.01% of its Total [inmate calling services] costs, effectively reporting a cost structure that is 0% direct and 100% indirect.'' Compounding this problem, GTL allocated its indirect costs between its inmate calling services operations and its other operations based on the percentages of total company revenue each operation generated, which fails to reflect the purposes for which GTL incurs costs.

75. Considering the impact that this cost data provided by the market's largest provider would have on its analysis, the Commission has repeatedly tried to obtain more accurate and complete data from GTL. These efforts began with several calls between staff and GTL representatives that sought to obtain a fuller explanation of the composition of the data provided by GTL in response to the Second Mandatory Data Collection. Following from these efforts, on July 15, 2020, before the release of the *2020 ICS Order on Remand,* the Wireline Competition Bureau directed GTL to provide ''additional documents and information regarding GTL's operations, costs, revenues, and cost allocation procedures'' to supplement GTL's previously filed submissions, and to enable the Commission ''to make a full and meaningful evaluation of GTL's cost data and methodology.'' This directive encompassed 14 separate categories of additional information. GTL's response, however, provided little additional information that would enable the Commission to determine the costs it actually incurs in providing calling services to incarcerated people. Instead, GTL objected to the requests on multiple grounds, routinely asserting that the Bureau sought information that GTL cannot provide and arguing that it does not maintain records that would allow it to respond. These objections included, inter alia, that the Bureau's requests lacked relevance, placed an undue burden on GTL, and were overbroad. Without the requested information, and in light of the issues the Commission describes above, the Commission is unable to take GTL's reported costs at face value in its analyses. Two commenters share its concerns and urge that the Commission adjust GTL's data. Although the Commission recognizes that GTL has not been required to keep, or indeed kept, accounting records that would enable it to isolate the costs it incurs in providing calling services to incarcerated individuals, those facts do not require that the Commission accepts GTL's reported costs at face value. The Commission therefore adjusts GTL's reported cost data with data that more accurately reflect the underlying characteristics of the prisons and larger jails that GTL serves. Specifically, as the Commission explains below, in establishing the lower bounds of its zones of reasonableness the Commission uses a generally accepted statistical tool—the *k*-nearest neighbor method—to replace the data reported for each prison and larger jail contract served by GTL with the weighted average of the data for the three most comparable (*i.e.,* nearest neighbor) contracts served by other providers. The Commission describes this method in greater detail and show its application to GTL's data in Appendix C, below.

76. *Ancillary Service Costs.* In the *2020 ICS FNPRM,* the Commission observed that its proposed rate cap calculations did not account for revenues earned from certain ancillary services even though providers reported the costs of these services as inmate calling services costs in their responses to the Mandatory Data Collection. The Commission sought comment on whether it should exclude the costs of these services from its rate cap calculations.

77. Based on the record before it, the Commission finds that there is no reliable way to exclude ancillary service costs from its provider-related rate cap calculations at this time. Accordingly, those costs will remain as a part of the industry costs that the Commission uses in its calculations of those interim rate caps. The instructions for the Second Mandatory Data Collection required certain ancillary service revenues to be reported separately, but providers were not required to report their ancillary service costs separately from other inmate calling services costs. Further, providers were not required to separately report costs relating to any specific ancillary service, and no commenter has suggested a way of identifying the providers' ancillary service costs. The Public Interest Parties argue that the Commission should deduct all revenues from ancillary services from the costs that go into its per-minute rate cap calculations. The Commission declines to take this step because doing so would lower the rate caps equally for all providers and therefore disproportionately affect those providers having the lowest ancillary service revenues. As a result, the Commission cannot isolate with any degree of accuracy the costs providers incur in providing ancillary services from their overall cost data.

78. The Commission recognizes that this approach will result in interim interstate rate caps that allow for the recovery of costs incurred in the provision of ancillary services that calling services consumers already pay for through separate charges and fees, a result that substantially increases the likelihood that the Commission's interim caps are too high. The Commission intends to collect detailed data on ancillary services costs from each inmate calling services provider in its next data collection and to use those data to set permanent provider-related rate caps that eliminate this problem.

79. *Implementing the Zone of Reasonableness Approach.* The Commission determines the levels of the

interim interstate provider-related rate caps using a zone of reasonableness approach. In the *2020 ICS FNPRM,* the Commission proposed to set separate caps for prisons and all jails at the mean contract costs per paid minute plus one standard deviation, as calculated separately for each of those two categories of facilities. After considering the record, including comments that make clear that limitations in the available data make it impossible for it to estimate true mean contract costs per paid minute with any degree of precision, the Commission finds that a zone of reasonableness approach is particularly well-suited to its task because it will allow the Commission to use different measures of mean contract costs per paid minute to establish separate ranges of rates—one for prisons and another for larger jails—from which the Commission can select just and reasonable interim provider-related rate caps. As a result of its new approach, which differs from the approach proposed in the *2020 ICS FNPRM,* the Commission finds that comments critical of the data analysis, including proposed adjustments to data, underlying the rate caps proposed in the *2020 ICS FNPRM* are now moot.

80. It is well-established that rates are lawful if they fall within a zone of reasonableness. Precedent also teaches that the Commission is ''free, within the limitations imposed by pertinent constitutional and statutory commands, to devise methods of regulation capable of equitably reconciling diverse and competing interests.'' A zone of reasonableness approach allows the Commission to reconcile, to the extent possible on the record before the Commission, the providers' and their customers' competing concerns regarding the rates incarcerated people and those they call pay to communicate. The Commission therefore relies on a zone of reasonableness approach to set rates in this instance, which helps avoid giving undue weight to the assumptions that would lead to either unduly high or unduly low per-minute rate caps.

81. Given the available data, any upper and lower bounds based on those data are necessarily estimates. The Commission finds it likely that its estimates overstate providers' inmate calling services costs. All providers have an incentive to overstate their costs in their responses to the Commission's data collections, as this would lead to higher interstate rate caps, thus resulting in both higher revenues and higher profits. In addition, imprecisions in the instructions for the Second Mandatory Data Collection regarding fundamental steps in the costing process, such as how providers should make sure that their costs of providing inmate calling services exclude all costs properly assignable to their non-inmate calling services operations, enabled providers to inflate their reported costs. The Commission finds that this combination of incentives and reporting latitude almost certainly resulted in some overstatement of the providers' costs of providing inmate calling services. Additionally, because the instructions for the Second Mandatory Data Collection did not require providers to separate the costs they incur in providing ancillary services from their total inmate calling services costs, the Commission's bounds include ancillary services costs for which providers separately recover fees and charges under its rules. Each of these factors skews the cost data upwards, resulting in upper and lower bounds that are likely higher than any bounds based on more accurate data.

82. The Commission's zone of reasonableness approach involves three distinct steps. The Commission begins by using data that providers submitted in response to the Second Mandatory Data Collection to establish upper bounds of potentially reasonable interstate provider-related rate caps for prisons and larger jails, respectively. Because the data the Commission uses in setting the upper bounds significantly overstate the providers' actual mean contract costs per minute of providing inmate calling services beyond the general factors the Commission has just discussed, the Commission then makes reasonable, conservative adjustments to the reported data and use those data to establish the lower bounds of its zones of reasonableness. The Commission describes these adjustments fully in Appendix C, below. Finally, the Commission relies on its analysis of the record evidence and on its agency expertise to pick, from within those zones, reasonable interim interstate provider-related rate caps for prisons and larger jails. The Commission reiterates that while its zone of reasonableness methodology relies on contract-level data, the Commission applies its interim rate caps to individual prisons and jails having average daily populations of 1,000 or more. For these jails, the data derived from a contract-level analysis likely overestimates actual costs. This is because the analysis incorporates jails having average daily populations lower than 1,000 (which the Commission would expect to have higher per-minute costs than larger jails) when such facilities are encompassed by the same contract. The Commission is comfortable with this approach for purposes of determining an interim rate cap for jails having average daily populations of 1,000 or more as it errs on the side of being conservative, while also being consistent with providers' understanding that the average daily population threshold is applied on a per-facility basis.

83. *Determining Upper Bounds for the Zones of Reasonableness.* The Commission finds that the method proposed in the *2020 ICS FNPRM,* taking the sum of the mean contract costs per minute plus one standard deviation relative to that mean, provides a reasonable method for determining the upper bounds of the zones of reasonableness for prisons and for larger jails. One standard deviation from the mean of a normal distribution accounts for approximately 68% of the data, with half of the remaining 32% being above the mean and half below the mean, thus creating an additional buffer that makes it more likely that a provider will be able to recover its costs for any particular contract or facility. Under this approach, using the data submitted by all 12 providers, the mean contract cost per minute for prisons is $0.092, and the standard deviation relative to this mean is $0.041 per minute, resulting in a mean plus one standard deviation of $0.133 per minute. The Commission calculates these statistics for prisons after removing the cost-per-minute outlier related to GTL's contract for [REDACTED]. By comparison, the mean cost per minute for prisons based on the data for the 12 responding providers including this outlier is $0.149, and the standard deviation is $0.658 per minute, resulting in the mean plus one standard deviation being $0.807 per minute. Appendix A explains why the Commission excludes the [REDACTED] contract. Similarly, the mean contract cost per minute for larger jails is $0.100, and the standard deviation from that mean is $0.118 per minute, making the mean plus one standard deviation $0.218 per minute.

84. The Commission finds that these upper bounds overstate, by a wide margin, the providers' actual costs of providing interstate inmate calling services for two reasons beyond the general effects it recounted above. First, at least two providers, GTL and Securus, calculated the return component of their costs using the prices their current owners paid to purchase the companies, rather than the amounts that they and the prior owners had invested in property used to provide interstate inmate calling services. Under rate-of-return ratemaking, a company's cost of

service equals a return component (*i.e.,* allowed rate of return times the company's rate base) plus the expenses the company incurs in providing the regulated service. The use of the sale prices of a company as what amounts to its rate base absent a showing specifically justifying that practice is inconsistent with fundamental ratemaking principles. Use of those purchase prices to calculate GTL's and Securus's costs is inconsistent with the well-established principle that the purchase prices of companies that possess market power ''are not a reliable or reasonable basis for ratemaking.'' Instead, the return component of GTL's and Securus's costs is properly calculated using the original cost of the property they use to provide inmate calling services at the point that property was first dedicated to public use through its use in the provision of inmate calling services. And, contrary to GTL's argument, the Commission has long held that payphone calling providers, including inmate calling services providers, possess monopoly power when (as is the case with GTL and Securus) they have obtained the exclusive right to provide calling services to correctional facilities. The Commission reiterates that finding and, to eliminate any possible doubt, apply it to the purchase prices that GTL and Securus used in calculating the return component of their costs.

85. Second, and more significantly, these upper bounds incorporate GTL's costs as reported, even though (1) GTL admits that it lacks the accounting records that it would need to determine its actual costs of providing inmate calling services and (2) GTL's reported costs far exceed those reported by other providers serving comparable facilities. Despite these shortcomings, the data from the providers' Second Mandatory Data Collection responses provide the best available data for determining the upper bounds of the zones of reasonableness. The Commission therefore uses $0.133 per minute as the upper bound for determining a reasonable interstate provider-related rate cap for prisons and $0.218 per minute as the upper bound for determining a reasonable interstate provider-related rate cap for larger jails. In establishing these upper bounds, the Commission is well aware that the industry's actual mean contract costs of providing inmate calling services plus one standard deviation are significantly lower.

86. *Determining Lower Bounds for the Zones of Reasonableness.* The Commission finds the approach it uses to determine the upper bounds of the zones of reasonableness—relying on data from the Second Mandatory Data Collection and calculating the mean cost per minute plus one standard deviation relative to that mean separately for prisons and larger jails—provides an appropriate starting point for determining the lower bounds of the zones. Because of the shortcomings in the providers' reported data, the Commission adjusts those data using generally accepted statistical tools to remove outlier contracts and to replace GTL's reported data with data derived from contracts comparable to those GTL serves. The related assumptions and adjustments are described at greater length below, and in Appendix C, below. Under this approach, the mean cost per minute for prisons is $0.052, the standard deviation relative to that mean is $0.012, and the mean plus one standard deviation is $0.064 per minute. Similarly, the mean cost per minute for larger jails is $0.065, the standard deviation from that mean is $0.015, and the mean plus one standard deviation is $0.080 per minute. These numbers—$0.064 per minute and $0.080 per minute—constitute the lower bounds of the Commission's zones of reasonableness for prisons and larger jails, respectively.

87. The construction of the lower bound begins by removing three outlying observations that skew the data and that would otherwise render the mean and standard deviation to be less precise measures of the data's central tendency. The central tendency of a distribution refers to the degree to which data is clustered around a central value, frequently measured by the mean, median, or mode. In general, the data's dispersion (as measured by the standard deviation) and central tendency are the main properties defining a distribution. These three outlier contracts report costs of [REDACTED] per minute for larger jails in Williamson, Texas, San Luis, Arizona, and West Texas, Texas, respectively. The outliers the Commission addresses here were identified using the Grubbs method, a statistical approach the Commission describes at length in Appendix C, below. To put these cost levels in context, [REDACTED] per minute is the highest cost per minute for any contract regardless of facility type or size, and [REDACTED] and [REDACTED] per minute are approximately three times and twice as large as the cost per minute for the next highest larger jail contract. Excluding these three outliers, costs per minute for larger jail contracts range from $0.03 to $0.17. As the Commission describes in Appendix A, a single observation from a prison contract reports a cost per minute of [REDACTED], which the Commission concludes is clearly erroneous and omit in entirety. Nothing in the record supports using such extreme costs to set provider-related rate caps. Further, these contracts would remain outliers, even under alternative methods of outlier identification proposed in the record.

88. Next, the Commission substitutes reasonable surrogates for GTL's reported cost data to address significant and unresolved issues with those data, as identified in the *2020 ICS FNPRM* and discussed more fully in this Report and Order. As recounted above, GTL's only reported direct costs for inmate calling services are bad debt costs, although it certainly incurs other direct costs that are causally related to providing inmate calling services. Additionally, GTL's reported total costs per minute are much higher than most other providers' reported total costs per minute, contrary to the Commission's expectation of economies of scale. In fact, GTL's total revenues per minute from prisons are less than its allocated costs per minute, the only provider for which this is true. These issues remain unresolved—and incurable on the record before the Commission—because GTL failed to provide meaningful cost data in its Second Mandatory Data Collection response or in its response to the Bureau's July 15, 2020, Letter, or to suggest any alternative means of assisting the Commission in its efforts to estimate GTL's costs of providing inmate calling services. The Commission finds that the best way to address this situation is to adjust GTL's reported contract-level cost data using the *k*-nearest neighbor method. The Commission describes this method in greater detail and show its application to GTL's data in Appendix C, below. Specifically, the Commission replaces the cost-per-paid-minute data reported for each prison and larger jail contract served by GTL with the weighted average of the data for the three most comparable (*i.e.,* nearest neighbor) contracts served by other providers. To determine a contract's ''neighbors,'' the Commission compares its average daily population, total inmate calling services minutes, total commissions paid, and facility type to all other contracts in its dataset. This approach reasonably preserves the non-cost information GTL reported for the prisons and larger jails it serves, while reducing the likelihood that the cost data for those facilities are overstated to a significant extent. The Commission finds that this approach, in

combination with the removal of outlier observations as described above, provides a reasonable method for determining the lower bounds of the zones of reasonableness.

89. In the *2020 ICS FNPRM,* the Commission proposed to reduce GTL's reported costs by 10% in order to address its data reporting issues, an approach the Commission now abandons in light of convincing opposition in the record. Commenters addressing this proposal were nearly unanimous in rejecting it. Some commenters observe that a 10% decrease would fail to resolve all of the issues presented by GTL's reported data, while others argue this approach suffers fundamental methodological flaws of its own. Instead, the Commission relies on the *k*-nearest neighbor method, rather than alternative methods for addressing the deficiencies in GTL's reported data, because the Commission finds it provides the best approach for setting the lower bounds of the zones of reasonableness. In particular, although the Winsor method also would provide a reasonable method for replacing GTL's data with surrogate data, that method would simply replace GTL's outlier data with the next-highest observation, as opposed to the multifactor comparison provided by the Commission's adopted approach. In other words, the Winsor method would adjust costs downward to the next-highest observation without consideration of whether the contract with the next highest costs is similar in any other dimensions, such as minutes of use or average daily population. The Commission finds the *k*-nearest neighbor method's reliance on three comparable contracts makes it a superior tool for addressing the dataset before the Commission because it identifies a greater degree of similarity between observations.

90. The Commission also considered removing all of GTL's data from its lower bound calculations, an approach on which the Commission sought comment in the *2020 ICS FNPRM.* The Commission finds this approach too sweeping, however, because it would exclude all of GTL's prisons and larger jails from its analysis. GTL's Second Mandatory Data Collection response includes extensive non-cost information on these facilities, regarding matters such as average daily population and paid minutes of use, that depict the inmate calling services operations of roughly [REDACTED] of all prisons and larger jails, or roughly [REDACTED] of the reported average daily population for those facilities. Excluding this information from its analysis would create a significantly incomplete picture of the industry, resulting in considerably less accurate estimates of industrywide mean contract costs. Additionally, the remaining contract information from GTL's data provides necessary distinguishing characteristics that informed the Commission's selection of the nearest neighboring contracts.

91. *Determining Interim Interstate Provider-Related Rate Caps for Prisons and Larger Jails.* The upper bound of the zone of reasonableness for the provider-related rate cap for prisons is $0.133 per minute and the lower bound is $0.0643 per minute. For larger jails, the upper bound is $0.218 per minute and the lower bound is $0.0802 per minute. Based on its analysis of the available information, the Commission finds that $0.12 per minute will provide a reasonable interim interstate provider-related rate cap for prisons and that $0.14 per minute will provide a reasonable interim interstate provider-related rate cap for larger jails. Significantly, its analysis confirms that these interim interstate rate caps will allow most, if not all, providers to recover their costs (as reported in their responses to the Second Mandatory Data Collection and allocated among their contracts as described above) of providing interstate calling services to incarcerated people. And, because those fully distributed costs likely overstate the actual costs of providing inmate calling services under any particular contract, the Commission finds it unlikely that any provider will be unable to recover its actual costs of providing interstate inmate calling services under any contract. To the extent that there are some small number of situations where a provider cannot recover its actual costs of providing interstate inmate calling services under the Commission's interim caps, the Commission adopts a waiver process that will allow it to grant relief from those caps if the Commission finds such relief is warranted based on its analysis of data that allows it to more accurately and precisely identify that provider's cost of providing interstate inmate calling services than can be achieved using the data currently before the Commission.

92. A provider-related rate cap component of $0.12 per minute for prisons is $0.02 above the midpoint between the upper and lower bounds of the zone of reasonableness (approximately $0.10). The providers' incentives to overstate costs provide a compelling reason to set the rate cap significantly below that upper bound. The Commission finds that removal of outliers as reflected in the lower bound number based on its statistical approach to be appropriate as a general matter, given the need to measure the central tendency of the data as accurately as possible. The Commission is reluctant to give this adjustment too much weight at this time, however, because the Commission does not know the precise reason why these outlier estimates are so high. Although the Commission also finds the adjustment to GTL's costs to be fully justified, the Commission is reluctant to place too much weight on this adjustment because this is an empirical approximation relying on the consistency and validity of the contract data reported by all other firms. After closely examining the imperfect data reported by providers that have an incentive to overstate their costs, and after developing the calculation of both of the upper and lower bounds, the Commission finds that an interim provider-related rate component of $0.12 per minute for prisons will allow providers to recover their actual costs of providing inmate calling services at those facilities, a conservative choice thereby ensuring that the providers will receive reasonable compensation for their services.

93. Likewise, the Commission finds that an interim rate cap of $0.14 per minute for larger jails will enable providers to recover their costs of providing interstate inmate calling services. In selecting this value, the Commission assigns significant weight to the result from the cost study conducted by Securus's outside consultant. This estimate, suggesting that Securus's cost of serving larger jails is at most [REDACTED] per minute, is based on highly disaggregated cost data and a relatively sophisticated set of cost allocation procedures tailored specifically to the business of providing inmate calling services and appears to be consistent with cost-causation principles. This number is the maximum per-minute cost estimate among the estimates Securus's consultant developed for Securus's larger jails, and the Commission finds that it provides a cushion large enough for providers to earn at least a normal risk-adjusted rate of return. Further, because there are relatively few providers for larger jails, as compared to the larger number of both large and small providers that serve jails with average daily populations less than 1,000, the Commission would expect a small variance in the true per-minute costs of providing inmate calling services at larger jails, relative to the overall variance. A rate cap of $0.14 per minute provides an even larger cushion,

further ensuring that providers will have the opportunity to recover actual costs.

94. A provider-related rate cap component of $0.14 per minute for larger jails is just below the midpoint between the upper and lower bounds of the zone of reasonableness (approximately $0.15), but still well above the lower bound of approximately $0.08. As with prisons, the providers' incentives to overstate their costs provide a compelling reason to set a rate cap significantly below the upper bound. The Commission again is reluctant to place too much weight on the GTL data adjustment for the reasons discussed regarding prisons. After closely examining the data, the Commission finds that an interim provider-related rate component of $0.14 per minute for larger jails will enable the majority of providers to recover their actual costs of providing inmate calling services at those facilities. Further, the Commission notes that this $0.02 differential between the rates the Commission selects for prisons and larger jails approximates the 22% cost differential shown in the record.

95. As the Commission describes in Appendix A, the Commission finds that setting the provider-related rate component at these levels for prisons and larger jails will allow providers at substantially all facilities to recover their reported costs. Analysis of contract revenues and underlying contract characteristics also suggests a significant majority of these contracts would be viable at the Commission's proposed caps. The responses to the Second Mandatory Data Collection provide data for 129 prisons and 182 larger jails. Following the process outlined in Appendix A, the Commission finds that 66 prisons and 15 larger jails reported per-minute costs above the respective interim provider-related rate caps. Looking at these outliers more closely, however, reveals that all but three of these facilities (66 prisons and 12 larger jails) are served by GTL, which lacked the records to accurately determine its costs of providing calling services to incarcerated people. This alone creates doubt as to whether these facilities should be viewed as legitimate outliers, rather than simply illustrations of the issues the Commission observes throughout GTL's reported data. Repeating this analysis after adjusting GTL's cost data using the *k*-nearest neighbor approach used to set the lower bound shows that all of GTL's facilities would have per-minute costs below the interim interstate provider-related rate caps. The remaining facilities (three larger jails) all exhibit per-minute costs that exceed their per-minute revenues, suggesting that the actual costs of providing inmate calling services to them are lower than the Commission's estimates. Finally, the Commission reiterates that to the extent the actual costs of serving a facility exceed the applicable interim rate cap, a provider may request a waiver using the process set forth in this Report and Order. As indicated in the *2020 ICS FNPRM,* ''the Commission has permitted inmate calling services providers to file a petition for a waiver if it believed it could not recover its costs under the Commission-adopted rate caps.'' The Commission refines its waiver procedure today.

96. The record supports these interim rate cap choices. The cost study presented by Securus's outside consultant estimates that Securus incurs maximum per-minute costs of [REDACTED] to serve prisons and [REDACTED] to serve larger jails, exclusive of site commissions. Although the Commission finds that these figures are overstated to the extent they calculate the return component of Securus's costs using the prices its current owners paid to purchase the company, the study's cost estimates suggest that interim provider-related rates caps of $0.12 for prisons and $0.14 for larger jails will provide a cushion large enough for the providers at those facilities to earn at least a normal risk-adjusted rate of return on their capital investment in providing inmate calling services. As the [REDACTED] per minute cost has been specifically developed for providers at these largest jails, and there are relatively few of these providers, the Commission would not expect there to be a big variance in the true per-minute costs of providing inmate calling services at these jails. Although the Commission does not agree with every aspect of this study, the Commission finds that a number of factors support its credibility and that it therefore provides valuable supporting evidence that the rate caps the Commission chooses here provide an adequate interim allowance for differences among providers and markets, relative to the average inmate calling services costs reflected in the data filed in response to the Second Mandatory Data Collection.

97. The Commission's analysis of the mean per-minute revenues from prisons and larger jails further corroborates its choices. As discussed in Appendix A, its revenue analysis indicates that it will be commercially viable for providers to serve the vast majority of prisons and larger jails under the provider-related rate caps the Commission adopts today. For example, as the Appendix illustrates, approximately 74% of prisons and 65% of larger jails have reported per-minute revenues net of site commissions under those interim caps. Revenues net of site commissions are reported revenues minus reported site commission payments. Because profit-maximizing firms are unlikely to bid for contracts at which they will operate at a loss, this suggests the interim interstate caps will not undermine providers' profitability. The Commission expects these revenues to cover costs of service below $0.12 per-minute for prisons and $0.14 per minute for larger jails, because higher costs would make such contracts unprofitable, and providers would have no reason to voluntarily accept such terms. And a large portion of the remaining prisons and larger jails—those with per-minute revenues that are higher than $0.12 and $0.14 per minute, respectively—have allocated per-minute costs less than the applicable interim provider-elated rate caps, which likewise suggests they will remain profitable under those caps. In total, therefore, the Commission's interim rate caps will allow approximately 81% of all prison contracts and approximately 96% of all larger jail contracts to cover the costs the providers reported in response to the Second Mandatory Data Collection. These percentages would be even higher if the Commission were to exclude the providers' costs of providing ancillary services and otherwise rely on the providers' actual, rather than reported, costs. These percentages are also higher if the Commission allows for the increased call minutes that will likely result because its new interim caps will, by lowering prices, increase call volumes. And these cost recovery figures ignore that all costs are likely overstated, such that there is further reason to believe these percentages would be even higher in practice.

4. Accounting for Correctional Facility Costs

98. Based on the record, the Commission adopts additional new interim rate cap components (the facility-related rate components) reflecting two different types of site commission payments—those required under codified law or regulations and those payments prescribed under negotiated contracts—made to correctional facilities. At the outset, and as explained in greater detail in this section, the Commission emphasizes that the facility-related rate components are interim reforms reflecting the limitations of the record before the

Commission and the current regulatory backdrop. Site commission payments are payments made by calling services providers to correctional facilities and broadly encompass any form of monetary payment, in-kind payment requirement, gift, exchange of services or goods, fee, technology allowance, product or the like. They can be expressed in a variety of ways, including as per-call or per-minute charges, a percentage of revenue, or a flat fee. The *2020 ICS FNPRM* proposed to permit providers to recover an additional $0.02 per minute for all types and sizes of facilities to account for the costs correctional facilities incur that are directly related to the provision of inmate calling services. The Commission adopts a modified version of that proposal based on record evidence that $0.02 per minute for every facility may not permit recovery of all legitimate facility costs related to inmate calling services, and may not be required at others. For the time being, the Commission declines to adopt defined facility-related rate components for jails with average daily populations below 1,000. Instead, for prisons and larger jails only, the Commission adopts two distinct interim site commission-related rate components reflecting different types of site commissions: Site commission payments that providers are obligated to pay under laws or regulations and payments that providers agree, by contract, to make. In referring to ''law or regulation'' the Commission means state statutes and laws and regulations that are adopted pursuant to state administrative procedure statutes where there is notice and an opportunity for public comment such as by a state public utility commission or similar regulatory body with jurisdiction to establish inmate calling rates, terms and conditions. The Commission specifically does not intend to include ''regulations'' for which no formal administrative process occurred prior to adoption, and the Commission also does not intend to include contractual negotiations that are merely approved or endorsed by state or local law. This approach to defining what are, by default, laws or regulations requiring site commission payments guards against the risk of abuse from a broader definition, given evidence that state and local correctional facilities might themselves be able to create so-called 'rules' or 'regulations' outside of formal process—simply by exercising their discretion regarding site commission payments in a different manner—and thereby evade the analytical differences underlying this distinction in the Commission's interim rules. To the extent that a scenario arises that falls outside the Commission's definition that a provider or correctional institution believes should be treated as a qualifying law or regulation, it is free to seek a waiver where the Commission can conduct a careful case-by-case review to ensure no evasion or abuse is occurring.

99. First, with regard to the former type of site commission, the Commission adopts an interim legally mandated facility rate component that reflects payments that providers make to correctional facilities pursuant to law or regulation that operates independently of the contracting process between correctional institutions and providers. These mandatory payments take varied forms, including per-call charges or prescribed revenue percentages, and may be imposed on calling service providers by state governments through statutes or regulations. Securus argues that this statute is a ''general fee provision'' that should be treated as a mandatory tax or fee rather than a site commission subject to the Commission's interim reforms here. As explained above, providers are free to seek a waiver if they believe that a law or regulation should not be treated as a legally mandated site commission but the Commission does not have sufficient information to make particular factual determinations in this Report and Order about any particular state mandated payment. The Commission confirms that its interim rate reforms do not include Mandatory Taxes or Fees as defined in the Commission's rules. Given the ''mandatory'' nature of these payments, for the purpose of the interim actions the Commission takes herein and based solely on the current record, the Commission recognizes them as a cost that providers must incur to provide calling services, consistent with section 276's fair compensation provision. For now, providers may recover the costs of these payments, without any markup, as a separate component of the total permissible interstate and international rate caps the Commission adopts today. In no event, however, can the total rate cap exceed $0.21 per minute.

100. As with other reforms in this Report and Order, the Commission emphasizes that its adoption of a legally mandated facility rate component is an interim reform that is aimed to balance the need to achieve immediate rate relief in light of the history of this proceeding, the record before it, and the exigent circumstances presented by the COVID–19 pandemic, consistent with the strictures of the D.C. Circuit's decision in *GTL* v. *FCC.* The Commission concludes, for purposes of this interim reform, that adopting a legally mandated facility rate component is consistent with the fair compensation mandate of section 276. The Commission lacks the evidence, however, to determine on a permanent basis whether and what portion of these payments are ''legitimately'' related to the cost of providing the service. The Commission leaves such determinations to its forthcoming action on the Fifth FNPRM, published elsewhere in this issue of the **Federal Register**.

101. Next, the Commission adopts a contractually prescribed facility rate component that permits providers to recover, as a component of their total per-minute interstate and international calling rates for prisons and larger jails, that portion of such site commission payments that the Commission determines for the purpose of this interim action is reasonably related to the facility's cost of enabling inmate calling services at that facility. Site commission payments prescribed under negotiated contracts impose contractual obligations on the provider and, in the Commission's judgment, on the current record, reflect not only correctional officials' discretion as to whether to request site commission payments as part of requests for proposals, and if so in what form and amount, but also providers' voluntary decisions to offer payments to facilities that are mutually beneficial in the course of the bidding and subsequent contracting process. The fact that a state law specifically permits certain correctional facilities to recover site commissions from providers but does not mandate such payments does not change the nature of these discretionary payments. Providers may recover up to $0.02 per minute to account for these facility costs. Where a law or regulation merely allows a correctional facility to collect site commissions, requires a correctional facility to collect some amount of site commission payment but does not prescribe any specific amount, or is not subject to state administrative procedural requirements, site commissions would also fall into the category of a site commission payment prescribed by contract, because the correctional facilities and providers can negotiate, in their discretion, regarding how much the providers will pay in site commissions.

102. To promote increased transparency regarding the total rates charged to consumers of inmate calling services, the Commission requires providers to clearly label a legally mandated facility rate component or a

contractually prescribed facility rate component, as applicable, in the rates and charges portion of a calling services consumer's bill, including disclosing the source of such provider's obligation to pay that facility-related rate component. Providers that make no site commission payments (and thus are not permitted to pass any facility-related rate component on to consumers) are not required to include a facility-related rate component line item on end user bills.

103. Finally, to avoid any confusion, the Commission reiterates that nothing in this section, or any other section of this Report and Order, is intended to result in a higher permissible *total* rate cap for any interstate call from any size facility than the $0.21 that existed for interstate debit and prepaid calls before today and that continues to apply to all providers for all types of calls from jail facilities with average daily populations below 1,000. During the eight-year period that providers have been subject to the $0.21 rate cap for all facilities, they have had the ability to avail themselves of a waiver process if they deemed that rate cap to be insufficient to enable them to recover their inmate calling services costs. With the exception of a single temporary waiver request relating specifically to the interim rate caps dating back to 2014, no other provider has sought a waiver of the $0.21 interstate rate cap claiming that cap fails to permit recovery of that provider's costs at any size facility. The Commission notes that Securus filed a general ''me too'' waiver request in 2014 asking the Commission to extend Pay Tel's limited waiver to all other providers serving the same size jails. The Commission denied Securus's waiver request without prejudice as Securus failed to make an adequate showing for a waiver to be granted, and also failed to provide sufficient, or any, cost and revenue data to support its claims. In addition, a handful of other waiver requests relating to other sections of the inmate calling services rules have also been filed but these waivers typically related to timeframes within which new regulations associated with ancillary services reforms became effective. The absence of further waiver requests over the past eight years leads the Commission to conclude that $0.21 is sufficient for providers to recover their costs, including any costs related to site commission payments. Thus, no provider may assess a provider-related rate component and facility-related rate component that, added together, results in a total interstate rate for any interstate call from any size facility of more than $0.21. Operationally, providers remain free to impose the legally mandated facility rate component at the level specified by the relevant statute or rule. If the resulting cumulative total rate exceeds $0.21 per minute, providers would need to charge a lower provider-related rate. Based on its understanding and awareness of the various state statutes or rules that underlie legally mandated facility rate components, the Commission does not expect this to occur, however. Nevertheless, providers that cannot cover their inmate calling services costs under the $0.21 per minute total maximum rate cap may seek a waiver of the Commission's interim rate caps.

104. As with the provider-related rate caps the Commission adopts today, its decision to allow a $0.02 additive for contractual site commissions and the full pass-through of legally mandated site commissions pursuant to section 276 up to the $0.21 cap are interim steps that the Commission adopts in light of the history of this proceeding, the available record, and the exigent circumstances caused by the COVID–19 pandemic, including the related decision by many prisons and jails to prohibit in-person visitation. Nothing in today's decision limits its ability, on a more complete record and with sufficient notice, to reconsider this treatment of site commission payments, and indeed the Commission seeks detailed comment in the Fifth FNPRM on site commissions, including what portion of all site commission payments, if any, actually represent ''legitimate costs'' connected to inmate calling services.

105. *Background.* The Commission has historically described site commission payments as ''a division of locational monopoly profit.'' Over the past five years, however, the Commission has recognized that site commissions may not always exclusively compensate correctional facilities ''for the transfer of their market power over inmate calling services to the inmate calling services provider;'' in some instances, site commission payments may serve in part to compensate correctional facilities for costs that the facilities ''reasonably incur in the provision of inmate calling services.'' Although the Commission and the D.C. Circuit each have recognized the distinction between portions of these payments, the Commission agrees with commenters, particularly on this record, that it is ''difficult to disentangle which part of the site commission payment goes towards reasonable costs and which portion is due to the transfer of market power.''

106. Although the Commission declined to permit the recovery of any portion of site commission payments to account for facility-related costs in the *2015 ICS Order,* the Commission explained that record evidence suggested that if ''facilities incurred any legitimate costs in connection with [inmate calling services], those costs would likely amount to no more than one or two cents per billable minute.'' In 2016, when the Commission reconsidered its decision to categorically exclude site commissions in the *2015 ICS Order,* it concluded that some facilities likely incur costs directly related to the provision of inmate calling services that may amount to more than one or two cents a minute. The Commission therefore increased the rate caps it had adopted in the *2015 ICS Order* to ''better ensure that providers are able to receive fair compensation for their services'' by adopting an additive to the 2015 rate caps that differed among facility size. The data and other evidence supporting the 2016 facility-cost additives suggested that per-minute facility costs associated with inmate calling services were higher in smaller facilities than in larger ones, so the Commission adopted a tiered framework for site commission payments based on facilities' average daily populations. These rate tiers mirrored the tiers the Commission had used to establish the permanent rate caps adopted in the *2015 ICS Order.*

107. The D.C. Circuit's 2017 vacatur of the *2015 ICS Order* rate caps in *GTL* v. *FCC,* based in part on the finding that the Commission's decision to categorically exclude site commission payments from those rate caps was arbitrary and capricious, led the Commission to ask questions in the *2020 ICS FNPRM* aimed at determining ''which portions of site commissions might be directly related to the provision of inmate calling services and therefore legitimate, and which are not.'' Because the revised rate caps adopted on reconsideration in 2016 to provide for the recovery of site commission costs were based on the same methodology the court had vacated in *GTL* v. *FCC,* the D.C. Circuit also vacated and remanded the *2016 ICS Reconsideration Order.* The *2020 ICS FNPRM* proposed a $0.02 per minute additive based on staff ''analysis of the costs correctional facilities incur that are directly related to providing inmate calling services and that the facilities recover from calling service providers as reflected by comparing provider cost data for facilities with and without site

commissions.'' The Commission sought comment on its analysis, including whether it should vary the allowance for site commission payments based on a facility's average daily population. It also sought comment on whether a $0.02 per minute allowance would be adequate to cover the costs that jails with average daily populations less than 1,000 incur in connection with the provision of interstate and international inmate calling services. The Commission asked correctional facilities to ''provide detailed information concerning the specific costs they incur in connection with the provision of inmate calling services.''

108. *Full Recovery of Site Commissions Is Not Required.* Some providers argue that the Commission must allow for full recovery of all site commission payments because inmate calling services providers ''are required to pay site commissions and have no say in the elimination or substantial reduction of such commissions.'' The Commission disagrees.

109. The D.C. Circuit held that, because the Commission acknowledged that some portion of some providers' site commission payments might represent ''legitimate'' costs of providing inmate calling services, the Commission could not reasonably ''categorically exclude[] site commissions and then set the rate caps at below cost.'' ''Ignoring costs that the Commission acknowledges to be legitimate,'' the court explained, ''is implausible.'' But the court left it to the Commission to determine ''*which portions* of site commissions *might be directly related to the provision of ICS and therefore legitimate,* and which are not.''

110. Under section 201(b), the Commission has a duty to ensure that ''charges'' and ''practices'' ''for and in connection with'' interstate and international telecommunications services—including inmate calling services—are not ''unjust or unreasonable.'' As explained, incarcerated people and the people they call have no choice in their telephone service provider. Instead, each correctional facility has a single provider of inmate calling services that operates as a monopolist within that facility. And very often, correctional authorities award the monopoly franchise for inmate calling services based in part on what portion of inmate calling services revenues a provider has offered to share with the facility. Without effective regulation, providers bidding for a facility's monopoly franchise compete to offer the highest site commission payments, which they then recover through correspondingly higher rates charged to incarcerated people and their families.

111. As discussed in greater detail below, in view of these market dynamics, and based on the record, the Commission rejects the claim that any and all site commission payments that a provider might elect to offer a correctional facility in the course of contract negotiations for the facility's monopoly franchise are ''real, required costs [forced] on [inmate calling services] providers as a condition precedent to the providers' ability to offer [inmate calling services].'' That claim is at odds with well-established principles of ratemaking. And the providers' position has no limiting principle. Under their logic, incarcerated people and the people with whom they communicate by telephone may be forced to pay rates for the calling services they use that cover items wholly unrelated to those services. This cannot be reconciled with the Commission's statutory duty to ensure that incarcerated people and the people with whom they speak are charged ''just and reasonable'' rates for inmate calling services. The claim that any and all site commission payments are costs reasonably related to the provision of interstate and international inmate calling services is particularly implausible with respect to future contracts. At least where site commissions are not required under formally codified laws or regulations, providers of inmate calling services cannot reasonably contend that they are bound to offer, or agree to pay, site commissions that are uneconomical for them on a going forward basis. The record before the Commission suggests that if, in the wake of this Report and Order, providers of inmate calling services should offer to pay site commissions at levels higher than they can recover through interstate and international inmate calling services rates, that is because they expect to profit from obtaining the franchise at a given facility in other ways (*e.g.,* by recovering the cost of the site commission payments they offer through intrastate inmate calling services rates or through revenue generated by providing other, nonregulated services). Even with respect to existing contracts, the Commission disagrees that any and all site commissions that a provider has agreed to pay are costs reasonably related to the provision of interstate and international inmate calling services. As it discusses above, the Commission's proceeding on how to regulate rates for interstate inmate calling services has been underway for many years. Throughout this period, providers have understood that the Commission might seek to bar the recovery of some or all site commissions through interstate rates. Under the circumstances, whatever the providers offered to pay, they offered at their own risk.

112. Neither *GTL* v. *FCC* nor section 276 of the Act compels a different conclusion. As the Commission has observed, and as the court acknowledged in *GTL* v. *FCC,* the Commission is entitled ''to assess on remand which portions of site commissions might be directly related to the provision of [inmate calling services] and therefore legitimate, and which are not.'' Due to the D.C. Circuit's remand on the issue of site commissions, the Commission declines NCIC's recommendation that the Commission simply ''not disturb site commissions.'' To leave the issue of site commissions untouched by the Commission's actions today would be contrary to the Commission's mandate to ensure just and reasonable rates under section 201(b) of the Act. And ''fair'' compensation for providers of inmate calling services, under section 276, does not mean that providers must be able to recover, through rates for interstate and international inmate calling services, revenue-sharing payments that they agree voluntarily to make to encourage a correctional facility to select them as the monopoly franchise holder for inmate calling services (both interstate/international and intrastate) and often other nonregulated services, too.

113. On the present record, the Commission cannot conclude that Commission precedent requires, at least based on current law and policy, that the Commission treat all site commissions *solely* as a division of locational monopoly profits none of which are recoverable through rates, as the United Church of Christ and Public Knowledge urge. The United Church of Christ and Public Knowledge rely on the Commission's conclusion in the *1999 Pay Telephone Order* that site commissions ''should be treated as a form of profit rather than a cost.'' As explained above, while the Commission has *historically* viewed site commissions as a division of monopoly profits, it took a different view in later decisions. UCC and Public Knowledge also argue that the Commission cannot ''treat the costs of communications providers for incarcerated people differently from the costs of communications providers via payphones when the economic

incentives and factual circumstances are nearly identical and both are governed by the same statute.'' As the Commission has recognized since 2002, however, calling services for the incarcerated are ''are economically different than other payphone services.'' The Commission's actions here reflect a reasonable approach to responding to *GTL* v. *FCC* and Commission precedent in the inmate calling services context in light of the current record. For example, in the *1999 Pay Telephone Order* the Commission reasoned that site commission payments are not costs because the ability to offer a site commission payment occurs ''only when a particular payphone location generates a number of calls that exceeds the break-even number of calls'' thereby producing ''additional profit'' that can be paid to the location owner. The *1999 Pay Telephone Order* also expressed confidence that providers reasonably could expect there to be locations where they would be allowed to operate payphones without paying locational rent. On the current record, the Commission is not persuaded that the Commission can apply those conclusions regarding locational rents from the traditional payphone context at the time of the *1999 Pay Telephone Order* to site commission payments in the inmate calling service context today given their tension with the Commission's views regarding the recoverability of certain correctional facility costs in the *2016 ICS Reconsideration Order,* as well as the D.C. Circuit's rejection of the categorical exclusion of site commission payments from recovery in inmate calling service rates at issue in *GTL* v. *FCC.* Thus, while the Commission concludes that full recovery of site commissions is not required, the Commission cannot conclude on the current record, and in light of the current legal treatment of site commissions, that no recovery of site commissions is justified. For this reason, and on the record before it, the Commission disagrees with the Public Interest Parties insofar as they suggest that it may be reasonable to fully exclude site commission payments.

114. *Legally Mandated vs. Contractually Prescribed Site Commission Requirements.* On the record now before it and in light of section 276, the Commission sees a meaningful difference between site commission payments in an amount that is prescribed under formally codified laws or regulations and other site commission payments that ultimately are embodied in contracts with correctional facilities or systems.

115. In *GTL* v. *FCC,* the D.C. Circuit rejected the FCC's categorical exclusion of site commission payments from costs to be recovered through inmate calling services rates in the regulations under review. In significant part, the D.C. Circuit reasoned:

> The FCC's suggestion that site commissions ''have nothing to do with the provision of [inmate calling services],'' Order, 30 FCC Rcd. at 12822 (internal quotation marks omitted), makes no sense in light of the undisputed record in this case. In some instances, commissions are mandated by state statute, Rates for Interstate Inmate Calling Services, 27 FCC Rcd. 16629, 16643 (2012), and in other instances commissions are required by state correctional institutions as a condition of doing business with [inmate calling services] providers, 17 FCC Rcd. at 3252–53. ''If agreeing to pay site commissions is a condition precedent to [inmate calling services] providers offering their services, those commissions are 'related to the provision of [inmate calling services].''' Joint Br. for Pet'rs at 21. And it does not matter that the states may use the commissions for purposes unrelated to the activities of correctional facilities. The [inmate calling services] providers who are required to pay the site commissions as a condition of doing business have no control over the funds once they are paid. None of the other reasons offered by the Commission to justify the categorical exclusion of site commissions passes muster.

As the Commission has already discussed when explaining why the Commission is not required under *GTL* to allow the full recovery of any and all site commissions, as some providers contend, the court's statements rejecting ''the categorical exclusion of site commissions'' from the rate analysis in the *2015 ICS Order* must be interpreted in the context of the court's express recognition that it is ''[up] to the Commission to assess on remand which portions of site commissions might be directly related to the provision of [inmate calling services] and therefore legitimate, and which are not.'' In light of that recognition, the Commission reads the analysis excerpted above as turning on the particularities of the *2015 ICS Order* and its underlying record. The Commission now revisits and revises both its understanding and expectations regarding the operation of the inmate calling services marketplace and its approach to evaluating what nexus to interstate and international inmate calling services is required for a cost to warrant recovery through the rates for those services. The predicates for the Commission's actions regarding site commission payments in this Report and Order thus differ materially from the predicates underlying the D.C. Circuit's analysis in *GTL* v. *FCC.*

116. *More Nuanced Understanding of the Inmate Calling Services Marketplace.* With respect to the inmate calling services marketplace, rather than the two basic scenarios of site commission payments identified by the D.C. Circuit in *GTL* v. *FCC* based on prior Commission decisions, the Commission identifies three conceptual scenarios where site commission payments can arise.

117. First, site commission payments at a specified level sometimes are mandated by state statute or regulation that operate independently of the inmate calling contracting process. As discussed above, some laws permit—but do not require—correctional institutions to collect site commissions, and others require site commission payments but do not specify any particular level. The Commission does not consider those to fall within category one—instead, they fall within category two and/or three (depending on how the correctional institution approaches the request for proposal process). Although some parties have advocated that the Commission preempt or otherwise prohibit the payment of site commissions mandated by state law, the Commission has not yet taken that step. Consequently, as the law stands today and consistent with section 276, it is reasonable to conclude that neither correctional institutions nor providers can avoid the need for site commission payments in this scenario. As explained above, on the current record and based on current law, the Commission only finds that such site commissions satisfy the requirement for fair compensation to providers under section 276 and leave for another day a complete analysis under section 201.

118. Second, there can be situations where the correctional institution's request for proposal, or the like, asks bidders to agree to pay site commissions at a specified level. While facilities may include a site commission component in the request for proposal's description along with other bid ''requirements,'' the Commission understands that most, if not all, requests for proposals include some form of an ''exception'' provision that enables bidding providers to explain why they are deviating from the request for proposal's bidding specifications or requirements, and that gives the issuer the discretion to accept such bids nonetheless. In this scenario, unlike in scenario one, a correctional institution is under no legal compulsion to insist upon receiving site commission payments, or payments at a particular level. If no provider accedes to the institution's request for such payments, the institution will be constrained to

entertain noncompliant offers if it wants the individuals in its custody to have access to interstate and international calling services. Given the well-documented benefits, for communities and correctional institutions alike, in allowing incarcerated people access to calling services, the Commission does not anticipate that correctional facilities would forgo making such calling services available merely because providers decline to pay site commissions at the facilities' desired levels. Such restrictions or denials based on a lack of site commission payments above and beyond the level needed for correctional institutions to recover any costs they incur in making inmate calling services available also could have legal implications that make them unlikely. The Commission therefore anticipates that correctional institutions will not formally insist on site commission payments above the level required to cover the institutions' own costs if the alternative is to go without inmate calling services (and all the other services typically offered by providers) at the facility. To the extent that providers nonetheless offer site commissions above that level, the Commission regards that as a marketplace choice different in kind from the scenario where site commissions at a given level are required by a statute or rule. Thus, if providers offer site commissions at levels that are not recoverable under the Commission's interstate and international rate caps, the Commission believes that they do so as a matter of their own business judgment. Consequently, the Commission does not regard site commissions under the second scenario as a condition precedent of doing business at correctional institutions.

119. Third, in other situations, no state law compels site commission payments and the correctional institution soliciting bids does not request any specific payment (even if it indicates that offers to pay site commissions will influence bid selection). On the current record, the Commission concludes that whether a provider would have ''a realistic chance of winning a contract'' without a site commission payment turns not on any inherent feature of the provision of inmate calling services, but on competing bidders' discretionary business decisions informed by a range of regulatory and marketplace considerations that could affect those entities' judgments about which strategies will prove more or less profitable. Indeed, it is increasingly clear that when providers offer site commission payments as part of their bids, they do so to gain a benefit for themselves, rather than to satisfy a formal precondition of access to a correctional facility. For one, Securus reports that ''it has made commission-free offers a standard offering and attempted to renegotiate contracts with many of its correctional facility partners.'' In addition, a number of jurisdictions have limited or entirely eliminated site commission payments. This undercuts the view that, from the correctional institution's perspective, site commission payments are inherently necessary to allow a provider access to its facilities. Indeed, in San Francisco, incarcerated people and their loved ones pay nothing for their telephone calls—including for site commissions—while the city and GTL have agreed that payment under the contract will not exceed $1,590,616 for the initial term of three years. As one commenter has explained, the ''innovative cost structure'' embodied in this contract ''better reflects the cost of service paid by the vendor to provide access to phones in all county jails.'' While the Commission does not know whether there is some portion of the overall contract that goes to facility costs, the limitation on the overall payment under the contract undercuts the notion that correctional facilities view site commissions as required in all circumstances. Further, and most importantly, the fact that incarcerated people in San Francisco still have access to calling services strongly suggests that facilities do not require these types of payments to continue to allow calling services.

120. Accordingly, with respect to scenarios two and three, the Commission rejects any claim that site commission payments are somehow 'required' or determined by the correctional institution: The Commission finds on this record that providers offer such payments voluntarily, in their own business judgment. Whereas some commenters attempt to analogize site commissions of this kind to payments that landowners demand in exchange for granting access to rights-of-way or the like, the Commission concludes that, at most, inmate calling providers appear concerned about a collective action problem that makes providers, as a group, reluctant to limit or omit site commission payments in their bids for fear that competitors fail to do so, and that correctional institutions will select competitors that do offer site commissions (or offer higher site commissions) instead. A collective action problem of that kind is not sufficient to require that the Commission allow full recovery of site commission payments through end-user rates.

121. *Interim Revisions in the Approach to Evaluating Cost Recovery.* In light of *GTL* v. *FCC* and the record before it, the Commission considers which costs reflected in site commission payments are so related to the provision of inmate calling services that they should be recoverable at the present time and on the current record in light of section 276 under relevant precedent. As the Commission explains below, the section 276 requirement for fair compensation does not mean a provider is entitled to recover the total ''cost'' it claims it incurs in connection with each and every separate inmate calling services call. The Commission thus rejects as inapposite attempts to rely by analogy on what the Commission has done in other contexts under different statutory schemes. Modifying the Commission's approach to cost recovery in this manner on this interim basis accounts for the *GTL* v. *FCC* decision and the legal approach the Commission set out in the *2020 ICS FNPRM.*

122. Prior to the *GTL* v. *FCC* decision, the Commission evaluated cost recovery in a manner that sought to effectuate its theory of legal authority, which relied on the combination of sections 201(b) and 276(b)(1) of the Act. The Commission described its general approach to inmate calling services cost recovery in the *2013 ICS Order,* which ''conclude[d] that only costs that are reasonably and directly related to the provision of [inmate calling services], including a reasonable share of common costs, are recoverable through [inmate calling services] rates consistent with sections 201(b) and 276(b)(1).'' Beyond discussing illustrative examples, the Commission did not otherwise elaborate on the framework for evaluating what costs would or would not be recoverable. Applying that approach in the order under review in *GTL* v. *FCC,* the Commission concluded that ''the site commissions [inmate calling services] providers pay to some correctional facilities are not reasonably related to the provision of [inmate calling services] and should not be considered in determining fair compensation for [inmate calling services] calls,'' going on to quote one party as stating ''that site commissions often 'have nothing to do with the provision' of [inmate calling services].''

123. In light of the *GTL* v. *FCC* decision, it is necessary to update and more thoroughly explain the

Commission's approach to evaluating cost recovery for purposes of these interim reforms. In the *2020 ICS FNPRM,* the Commission did not propose revisiting whether section 276(b)(1) represented a grant of regulatory authority for the Commission to prevent excessive inmate calling services rates. Rather, the Commission properly proceeded based on its authority under section 201(b). In the specific context of whether and to what extent site commission payments should be recoverable costs in interstate and international inmate calling services rates, the Commission sought comment on whether particular approaches would ''result in unjust and unreasonably high rates for incarcerated people and their loved ones to stay connected,'' consistent with the ''just and reasonable'' standard in section 201(b) of the Act.

124. Given the focus in the *2020 ICS FNPRM* on applying the Commission's section 201(b) authority, it makes sense to evaluate cost recovery—otherwise described as an evaluation of whether the costs are directly and reasonably related to the provision of inmate calling services—under the longstanding principles the Commission has relied upon when implementing section 201(b) in the past. To be clear, the Commission relies on both sections 201 and 276 for its authority to regulate site commissions. As the D.C. Circuit explained in *GTL* v. *FCC,* these two sections serve different purposes, with section 201 directing the Commission to ensure that interstate rates are just and reasonable and section 276 directing the Commission to ensure providers are fairly compensated. These statutory provisions, while not coterminous, permit the Commission to regulate site commission payments by examining whether such payments are prudently incurred under section 201 and whether such payments provide fair compensation. Under this framework, just and reasonable rates are focused on recovering prudently incurred investments and expenses that are ''used and useful'' in the provision of the regulated service for which rates are being set. In applying this framework, the Commission considers whether the investment or expense ''promotes customer benefits, or is primarily for the benefit of the carrier.'' The Commission not only has applied this in the context of carriers operating under rate-of-return regulation, but rates set on that basis also were used as the foundation for price caps.

125. *Contractually Prescribed Site Commission Payments.* Given the regulatory backdrop and the state of the record here, the Commission recognizes that contractually prescribed site commission payments that simply compensate a correctional institution for the costs (if any) an institution incurs to enable interstate and international inmate calling services to be made available to its incarcerated people, can, on an interim basis and in light of the current regulatory backdrop, be considered a prudent expense the provider incurs, at least as long as the Commission continues to permit providers of interstate and international inmate calling services to continue to make site commission payments. In *GTL* the court faulted the Commission's ''categorical exclusion of site commissions from the calculus used to set [inmate calling services] rate caps,'' and even the *2016 ICS Reconsideration Order* found that ''it is reasonable for [correctional] facilities to expect providers to compensate them for those costs[ ]'' the facilities incur to enable the provision of inmate calling services. Against that backdrop, the record here does not persuade the Commission to reach a contrary conclusion in its analysis under section 201(b). In light of the regulatory backdrop and current state of the record, the Commission likewise finds that contractually prescribed site commission payments that simply compensate a correctional institution for costs an institution incurs to enable access for incarcerated people to interstate and international inmate calling services can, at least at this time, be considered used and useful in the provision of interstate and international inmate calling services. In the *2016 ICS Reconsideration Order* the Commission found that ''some facilities likely incur costs that are directly related to the provision of [inmate calling services],'' and determined that ''it is reasonable for those facilities to expect [inmate calling services] providers to compensate them for those costs . . . [as] a legitimate cost of [inmate calling services] that should be accounted for in [the] rate cap calculations.'' The current record here again does not persuade the Commission to reach a contrary conclusion in its analysis under section 201(b). While a different record might persuade it to reach a different conclusion in the future, under this record the Commission will treat such payments as prudently incurred expenses used and useful in the provision of interstate and international inmate calling services.

126. By contrast, the Commission finds that contractually prescribed site commission payments do not warrant recovery insofar as they exceed the level needed to compensate a correctional institution for the costs (if any) an institution incurs to enable interstate and international inmate calling services to be made available to its incarcerated people. First, the Commission concludes that such expenses are not prudently incurred. Under Commission precedent, expenses are imprudent if they are excessive. The Commission finds that to be the case here. As demonstrated by its marketplace analysis above, the Commission is not persuaded that a correctional institution would decline to make inmate calling services available to its incarcerated people absent contractually prescribed site commission payments above and beyond any amount necessary to recover the institution's costs to enable inmate calling services to be provided to its incarcerated people. That alone persuades the Commission that such payments are excessive. Separately, the Commission also concludes that the imprudence of such expenses is confirmed by the ongoing regulatory scrutiny and questions about recovery through interstate inmate calling services rates that have surrounded site commission payments since the *2012 ICS FNPRM.* This further bolsters the Commission's conclusion that such site commission payments are imprudent.

127. As an independent, alternative basis for rejecting recovery through interstate and international inmate calling services rates, the Commission finds that contractually prescribed site commission payments, insofar as they exceed the level needed to compensate a correctional institution for the costs (if any) an institution incurs to enable interstate and international inmate calling services to be made available to its incarcerated people, are not used and useful in the provision of interstate and international inmate calling services. The used and useful concept is designed, in part, based on the principle that regulated entities ''must be compensated for the use of their property in providing service to the public.'' The Commission does not view site commission payments—whatever their origin—as involving the use of provider property and investment in a manner analogous to the circumstances addressed in the Commission's provider-based rate caps. As a result, even for those site commission payments that the Commission finds recoverable through interstate and international inmate calling services rate caps under its interim rules, the Commission is not persuaded that it should allow more than a pass-through

and instead should go further and provide for providers to make a profit on those site commission payments. Viewed one way, the site commission payments that the Commission finds permissible to recover are akin to exogenous costs—''costs that are triggered by administrative, legislative or judicial action beyond the control of the carriers''—which, in the event of cost increases, result in upward adjustment of price caps without guaranteeing carriers profit on those exogenous costs. The Commission's permitted recovery of certain site commission payments through interstate and international inmate calling services charges could be viewed as an analogous adjustment to the rate cap the Commission sets for the provider-specific costs. Independently of that precedent, the Commission separately justifies its decision as a matter of the flexibility provided by the ''just and reasonable'' framework of section 201(b) of the Act under the particular circumstances here. Specifically, the Commission finds it likely that setting providers' interstate and international rates in a manner that provides for a profit on the providers' site commission payments is likely to exacerbate the already-perverse incentives of providers and correctional institutions (as well as state or local governments mandating site commission payments at specified levels) to increase the magnitude of site commission payments to the ultimate detriment of customers of interstate and international inmate calling services. By contrast, the Commission is not persuaded that allowing more than a pass-through of the site commission expenses that the Commission finds prudently incurred and used and useful here is necessary to ensure the continued economic viability of the provision of interstate and international inmate calling services. Thus, the Commission concludes that its approach adequately accounts for the use of providers' property in the provision of interstate and international inmate calling services balanced with the equitable interest of customers of interstate and international inmate calling services. ''Equally central to the used and useful concept, however, is the equitable principle that the ratepayers may not fairly be forced to pay a return except on investment which can be shown directly to benefit them.'' And it is that element of the used and useful analysis that the Commission finds dispositive here. Under the Commission's marketplace analysis of contractually prescribed site commission payments, the Commission is unpersuaded that site commission payments above the level needed to compensate a correctional institution for costs the institution reasonably incurs to make interstate and international inmate calling services available are required to ensure that incarcerated people have access to those services. Instead, the Commission concludes that such payments are a means (sometimes the sole or at least primary means) by which a given provider seeks to overcome its competitors to become the exclusive provider of multiple services, including nonregulated services, at a correctional facility. And the record does not reveal that correctional institutions, in contracting with providers that offer comparatively higher contractually prescribed site commission payments, are somehow benefitting customers of interstate and international inmate calling services as compared to the selection of some other provider. Rather, the Commission concludes here that given the anomalous nature of the inmate calling services marketplace, the primary benefits flow to the chosen provider—which overcame its competitors and now has the exclusive ability to serve the correctional facility—and the correctional facility itself (or the state or local government more generally), which can avail itself of the revenue stream such site commission payments provide, all to the detriment of interstate and international inmate calling services customers.

128. Where site commissions of a particular level are not required under formally codified laws or rules external to the contracting process, providers of inmate calling services cannot reasonably contend that they are bound to offer, or agree to pay, site commissions above the level for which recovery is permitted going forward under the Commission's rules. In this way, to the extent providers' concerns stem from a collective action problem in the marketplace, the Commission's rules could help address that issue. The record before the Commission further suggests that if, in the wake of this Report and Order, providers of inmate calling services should offer to pay site commissions at levels higher than they can recover through interstate and international inmate calling services rates, that is because they expect to profit from obtaining the franchise at a given facility in other ways—*e.g.,* by recovering the cost of the site commission payments they offer through intrastate inmate calling services rates or through revenue generated by providing other, nonregulated services. While the Commission's analysis might have particular force in the case of newly entered or renewed contracts, even with respect to existing contracts the analysis above justifies the Commission's refusal to set rates in a way designed to recover contractually prescribed site commission payments above the level needed for a correctional institution to recover its costs of making inmate calling services available to its incarcerated people.

129. *Legally Mandated Site Commission Payments.* The Commission next conducts the cost recovery analysis for scenario one (referred to for convenience as ''legally mandated site commission payments''). The Commission's analysis begins the same as for contractually prescribed site commission payments. For the same reasons explained above in that context and given the regulatory backdrop, the Commission assumes on the record here and for purposes of this interim reform that legally mandated site commission payments simply compensate a correctional institution for the actual costs (if any) an institution incurs to enable interstate and international inmate calling services to be made available to its incarcerated people and are at least plausibly a prudent expense that is used and useful in the provision of interstate and international inmate calling services.

130. The Commission's analyses of contractually prescribed and legally mandated site commission payments part ways, on the record before the Commission, when it comes to site commission payments insofar as they exceed the level that simply compensates a correctional institution for any costs the institution incurs to enable interstate and international inmate calling services to be made available to its incarcerated people—at least up to the level of the site commission payment specified by law or rule. The Commission is not aware of situations where a statute or regulation external to the contracting process requires a specific site commission and the provider nonetheless pays a site commission even higher than such level. Should such a situation occur, the Commission would find such expenses both imprudent and not used and useful for the same reasons discussed in connection with contractually prescribed site commission payments, discussed above. The Commission assumes on this record that making legally mandated site commission payments at the level required by the relevant statute or regulation is a

prudent expense, as the Commission sees no evidence that either the provider or the correctional institution could agree to a lower amount (or no site commissions at all) based on the current record and current law. The Commission does not determine at this time to what extent this expense may impact its ability to ensure just and reasonable interstate rates under the section 201 analysis as a whole, as evaluated based on a different record in the future. And the Commission has not determined, even on this record, that this expense reflects the actual costs associated with the provision of inmate calling services, separate and apart from the legal compulsion for facilities to collect it.

131. For purposes of the interim reforms it makes today, the Commission finds legally mandated site commission payments at the level required by the relevant statute or rule to be used and useful in the provision of interstate and international inmate calling services at least as long as the Commission continues to permit providers of interstate and international inmate calling services to continue to make these site commission payments. The Commission emphasizes that this is a close question, however, and reiterate that the record the Commission develops in response to today's Fifth FNPRM may persuade it to reach a different conclusion when the Commission addresses site commissions on a permanent basis. In a state that has codified a requirement that providers of inmate calling services pay site commissions at a specified level, as allowed by current federal policy but an open question in the attached Fifth FNPRM, facilities have no immediate ability to entertain offers from providers that wish to supply a facility without paying the site commission demanded. And absent further legislative process to amend the governing statute, facilities would appear to have to forgo making interstate and international inmate calling services available if they cannot collect the legally mandated site commission payments. Additionally, by agreeing to pay site commissions that are required by statute, providers do not obtain any benefit or leverage over competing providers. For this reason, too, legally mandated site commissions do not, in the Commission's judgment, reflect the independent business judgment of service providers, based on the current treatment of site commissions. While formally distinct from the Commission's prudence and used and useful analysis, the Commission takes comfort that its conclusion today with respect to legally mandated site commission payments is unlikely to cause long-term harm. For one, the Commission only adopts interim rules here, and if subsequent events or additional arguments or evidence come forward justifying a different outcome, the Commission can revisit its decision at that time. In addition, on balance the Commission finds legally mandated site commission payments less pernicious than contractually prescribed site commission payments. The legislative process is transparent, and laws are enacted by elected officials who are accountable to their constituents. At least as an interim matter, while the Commission collect additional information on this subject in the Fifth FNPRM, published elsewhere in this issue of the **Federal Register**, the Commission takes comfort in the legislative process as a potential check on the ability of providers and governmental authorities to impose unjust and unreasonable rates for interstate and international inmate calling services. For these reasons, taking into account the court's vacatur in *GTL,* the Commission permits providers of inmate calling services to recover through interstate and international rates—as a line item distinct from the generally applicable interim interstate and international provider-related rate cap component—any site commissions that they pay pursuant to formally codified law or regulation so long as the total per-minute rate that users pay does not exceed the $0.21 cap, which remains, as it has since 2013, the highest permissible rate for interstate debit and prepaid calls, and by this Report and Order, the highest permissible rate for collect calls too. Operationally, providers remain free to impose a legally mandated site commission facility charge at the level specified by the relevant statute or regulation, consistent with the analysis above. If their resulting cumulative rate otherwise would exceed the current $0.21 per minute rate cap, they would need to charge a lower provider-related rate to stay within that rate cap under the Commission's rules. As explained above, providers have been operating under the $0.21 per minute rate cap since 2013, and despite the opportunity to justify a waiver of that cap, no provider has done so. Consequently, the Commission declines to presume, for purposes of establishing new rules, that aggregate interstate and international inmate calling services charges above that level will be justified, although, as before, a waiver process is available if a provider seeks to make that case.

132. *Determining the Appropriate Contractually Prescribed Facility Rate Component.* The Commission permits providers of prisons and larger jails to recover no more than $0.02 per minute over and above the otherwise applicable provider-related rate cap to account for site commissions actually paid but not required by formally codified law or regulation. The total rate charged for interstate inmate calling services is also bound by the overall upper limit of $0.21 per minute that has been effective since 2013.

133. The Commission reaches its decision to adopt a $0.02 per-minute facility-related rate component for prisons and larger jails on two separate and independent bases. First, this allowance is based on estimates of the portion of site commissions that are legitimately related to inmate calling services based on the methodology first described in Appendix H of the *2020 ICS FNPRM* but since updated with corrected cost data consistent with the record. The Commission continues to rely on this methodology because it most conservatively estimates the site commission allowance by rounding up and applying the same rate to jails and prisons to ''ensure [the Commission] do[es] not harm unusual prison contracts.'' The Public Interest Parties' expert replicated the Commission's initial analysis and concluded the proposed $0.02 facility-cost allowance estimate is ''reasonable'' given the difficulty of disaggregating the portion of site commission payments directly attributable to inmate calling services from the portion that is due to the transfer of market power. Because the Commission's initial analysis, like its updated analysis, continues to be based on imperfect cost data that are not sufficiently disaggregated so as to reflect potential differences in costs for smaller jail facilities as commenters claim, the Commission limits its actions here to only prisons and larger jails as well. As the Public Interest Parties' expert suggests, that methodology reflects the Commission's ''reasonable attempt'' in light of ''data limitations on site commissions'' to compare per-minute costs for facilities that are paid site commissions and those that are not as a way to ''isolate the gap in costs that could be covered by site commission payments.'' This methodology, derived from cost and site commission data that providers reported in response to the Second Mandatory Data Collection, incorporated no correctional facility-provided cost data. Thus, the Commission's proposed methodology

reflected its reasoned judgment as to the best estimation of legitimate facility costs related to inmate calling services in the absence of cost data from correctional facilities themselves. The Public Interest Parties agree that the proposed $0.02 allowance for all facilities ''strikes an appropriate balance between the statutory mandates that [inmate calling services] providers receive fair compensation and that [inmate calling services] rates are just, reasonable and promote access to [inmate calling services] by incarcerated people and their families and support networks.'' They explain that the site commission allowance is not designed to necessarily compensate providers for the entirety of all site commission payments, pointing out that would be inconsistent with the *GTL* decision, which recognized as ''legitimate'' only those site commissions that are ''directly related to the provision of [inmate calling services].''

134. The Commission's updated site commission analysis in Appendix D reflects even lower potential estimates for legitimate facility costs related to inmate calling services. As explained above, the record convinces the Commission that adjustments and corrections to the cost data underlying the *2020 ICS FNPRM* proposals were necessary for determining the provider-related rate component, and the Commission updated its site commission analysis using these revised cost data. This updated analysis supports a facility-related rate component of less than the $0.02 allowance the Commission originally calculated. Indeed, these updated data show that prison contracts without site commissions had per-minute allocated costs which were on average $0.008 higher than prison contracts that required the payment of site commissions, whereas the gap for jails was $0.004. However, the Commission is unwilling to reduce the $0.02 allowance at this time, especially on an interim basis, given record opposition to that allowance on the basis that it is too low, was not based on facility-provided cost data, and relied on cost data aggregated for the most part at the contract level rather than facility level where size variations would likely be reflected. And, as discussed below, the Commission has independent record data that supports the $0.02 allowance.

135. Several commenters oppose the $0.02 allowance as too low for two primary reasons. First, providers criticize the Commission's methodology for estimating reasonable facility costs in the *2020 ICS FNPRM* insofar as this methodology ''fails to consider whether any characteristics *other* than facility costs might affect whether a particular contract pays a site commission.'' Second, the National Sheriffs' Association and others argue that $0.02 per minute is inappropriate for smaller jails, and claim that adopting a uniform $0.02 per-minute allowance for all facilities conflicts with the approach the Commission took in the *2016 ICS Order,* which adopted additive amounts to the rate caps to account for site commissions based on facility size.

136. The Commission agrees that the *2020 ICS FNPRM* methodology resulted in a proposed facility-related rate component that does not distinguish between different types of site commission payments and that may not sufficiently reflect that smaller correctional facilities might face higher facility costs related to inmate calling services than the initially calculated $0.02. The Commission therefore departs from its initial proposal to apply a specific uniform facility cost allowance cap to *all* facilities for *all* types of site commissions in two ways to address these criticisms.

137. First, the Commission distinguishes between the two distinct types of site commission payments and permit providers, when serving prisons and larger jails, to recover each in a distinct manner. For payments required under codified law or regulation, as explained above, the Commission permits recovery of the full commission amount, without markup, provided that the total interstate rate charged for interstate inmate calling services at those facilities does not exceed the $0.21 per-minute rate that represents the highest interstate rate cap currently in effect for debit and prepaid calls for any size correctional facilities. Second, for contractually prescribed site commission payments, the Commission adopts a $0.02 cap on recovery through interstate rates but limit its applicability solely to prisons and larger jails.

138. The Commission limits the applicability of the $0.02 cap for recovery of contractually prescribed site commission payments to prisons and larger jails, in response to criticism that this value would not be sufficient to recover the alleged higher facility-related costs incurred by jails with average daily populations below 1,000. Likewise, the Commission does not adopt a separate legally mandated rate component for these facilities. Instead, inmate calling services for jails with average daily populations below 1,000 will remain subject only to the single, aggregate $0.21 per-minute total rate cap. The Commission agrees that the cost data methodology underlying the calculation of the contractually prescribed facility rate component may have masked facility size cost variations due to the aggregated nature of those data. Given that these data obscure cost differences at the level of provider contracts, it is likely to be even harder to identify the variation, among jail contracts of different sizes, in costs that are in some cases incurred by providers and in other cases incurred by incarceration authorities. Thus, the Commission's decision to limit adopting a facility-related rate component to only prisons and larger jails on this interim basis, as the Commission does for the provider-related rate component, and to refrain from changing the current interim rate cap of $0.21 for jails with average daily populations less than 1,000, should address the concern raised in the record about facility size variations in facility-related costs for jails with average daily populations less than 1,000.

139. In addition to comparing providers' cost data with and without site commissions to determine a conservative estimate of facilities cost from data that was provided solely by providers and not facilities, the second and separate basis for reaching a decision to adopt $0.02, as the contractually prescribed facility-related rate component for contractually prescribed site commissions applicable in prisons and larger jails, is record data and information reintroduced by Pay Tel and the National Sheriffs' Association that independently supports a $0.02 allowance for correctional facility costs at these size facilities. The Commission has previously relied on these data, and thus the Commission concludes they are largely credible insofar as they come from the National Sheriffs' Association, ''which, as an organization representing sheriffs, is well situated to understand and estimate the costs that facilities face to provide [inmate calling services].'' Indeed, in the *2015 ICS Order,* while declining to establish any additional rate component to reflect facility costs related to inmate calling services, the Commission, in referring to record evidence at that time that included this same National Sheriffs' Association data, stated ''[w]e note, however, that evidence submitted . . . indicates that if facilities incurred any legitimate costs in connection with [inmate calling services], those costs would likely amount to no more than *one or two cents* per billable minute.''

140. Some commenters contend that the numbers contained in these data support a $0.02 allowance for prisons and larger jail facilities, while also

lending support for the argument advanced by other commenters that facility-related inmate calling services costs are higher for jails with fewer incarcerated people and that such costs decrease with an increase in facility size. According to these data, facilities with average daily populations of 1,000 and more can have site commission costs as low as $0.003 per minute, which is up to 85% less than the $0.02 allowance the Commission adopts here. One reason commenters assert that jails with average daily populations of less than 1,000 may have higher site commission costs is that they have higher weekly inmate-turnover rates and shorter lengths of stay than larger jails. This higher turnover causes such jails to incur much greater costs, including costs related to ''setting up an account, funding an account, closing an account . . . administering account funds after an inmate's release'' or ''enrolling inmates for voice biometrics.'' ''On average, jails with an [average daily population] of 2,500 or more inmates held inmates about twice as long (34 days) as jails with an [average daily population] of less than 100 inmates (15 days).'' Further, the record suggests that this trend continues as jail size falls even further; *e.g.,* jails with average daily populations below 50 have an ''average time in jail of 11.2 days.'' Other commenters have found similar cost differentials between larger jails and jails with fewer incarcerated people, regardless of the data sets they rely upon. Some of this cost difference can likewise be attributed to ''differences in officer, supervisor and other employee hours spent on various duties; the compensation rates for officers, supervisors and other employees; and differences in minutes of use.'' In the Fifth FNPRM published elsewhere in this issue of the **Federal Register**, the Commission seeks comment on the effect of turnover on facility costs. While the Commission recognizes that the data in the National Sheriffs' Association survey are more than five years old, they are the best data available from correctional facility representatives regarding their estimated costs related to inmate calling services that correctional facilities incur. Although the Commission asked correctional facilities to provide detailed information about their specific costs, nothing more current was submitted. Nevertheless, the Commission finds the survey results for facilities with average daily populations greater than or equal to 1,000 largely sufficient to support its interim $0.02 allowance for prisons and larger jail facilities in the absence of more current data.

141. The Commission is concerned, however, that some of the facilities included in the National Sheriffs' Association survey report an exceedingly high number of hours of correctional facility officials' time compared to most other reporting facilities. For example, one facility with an average daily population of approximately 1,500 reports approximately 694 total hours per week on inmate calling services-related activities, roughly 400 hours more than the next highest facility with an equal or lower average daily population. Given a total of 168 hours in a week (seven days per week × 24 hours per day), this equates to more than 17 full-time 40-hours-a-week correctional facility personnel (or four full-time personnel working 24 hours a day every day) devoting all their time to inmate calling services. The Commission does not find these data credible when comparing them to data of similarly sized reporting facilities *that have no incentive* to under-report their hours or costs. For example, more than 80% of the larger jails having the same or less average daily populations as the facility reporting 694 hours report total hours spent on inmate calling services at fewer than 250 total hours a week and, of those facilities, roughly half spend fewer than 100 hours a week on inmate calling services-related activities. The remaining facilities of the same or smaller average daily populations report total hours less than 300, well less than half the amount of time claimed by the facility reporting 694 hours. Indeed the majority of facilities between 1,000 and 1,500 average daily population report average total costs per minute less than $0.02. Nevertheless, in the absence of any other facility-provided data for purposes of the Commission's interim rate caps, the Commission concludes that reliance on these data best balances its objectives to ensure just and reasonable rates under section 201 of the Act with the requirement to ensure fair compensation under section 276 of the Act. The Commission therefore concludes that a $0.02 allowance for the contractually prescribed facility rate component is reasonable for this interim step based on this record until more updated facility-related data are submitted into the record.

142. In adopting the $0.02 allowance, the Commission declines the Public Interest Parties' suggestion that the Commission round the $0.02 figure down to $0.01 based on the analysis done for the *2020 ICS FNPRM.* The Public Interest Parties' experts argue that the rounding adjustment is appropriate given typical rounding conventions. In the *2020 ICS FNPRM,* the Commission calculated the difference in mean costs per minute for contracts with and without site commissions, which came out to $0.013. The Commission explained that it rounded this figure upward ''to allow for individual contracts for which this matters more than the average contract.'' The Commission's revised calculations reflect even lower numbers as it has noted, yet the Commission sees no reason to adjust its proposed conservative approach here for this interim solution, particularly in light of the reintroduction of the National Sheriffs' Association facility-related data. To the extent that there are contracts covered by the new interim rate caps that the Commission adopts today where the facility-related costs to provide inmate calling services are higher than its even lower revised calculations or the previously calculated $0.013, particularly in light of the fact that National Sheriffs' Association prefers a higher rate for larger jails, the Commission maintains the more conservative $0.02 rate cap component as its interim contractually prescribed facility rate component at this time.

143. The Public Interest Parties also raise concerns about ''double counting costs'' in both the provider-related and facility-related rate cap components. As they explain, ''[t]he base rate (*i.e.,* the mean plus one standard deviation) is calculated based on the full data set which includes observations of contracts that pay commissions and those that do not.'' Facilities that do not require site commissions ''already incorporate the unobserved or unreported costs that this adjustment is intended to account for.'' Site commission payments have been removed from the calculation to determine the new lower provider-related interim rates the Commission adopts today. Unlike the Commission's proposal in the *2020 ICS FNPRM* where all providers would have been able to recover the $0.02 rate component for all facilities regardless of whether site commissions were actually paid, under the Commission's rules adopted today providers that do not pay site commission payments may not assess the separate facility-related rate components on inmate calling services customers. The Commission finds that this addresses the potential double-counting concern raised by the Public Interest Parties. The Commission also rejects the arguments of Prisoners' Legal Services of Massachusetts that ''[t]here

is no need or justification for a two cent markup on telephone rates.'' These commenters highlight that ''[i]n three of six recently negotiated Massachusetts county contracts, the sheriffs voluntarily eliminated their commissions.'' While eliminating site commission payments related to interstate and international inmate calling services altogether may be a laudable objective, on the record before the Commission and taking into account the DC Circuit's decision in *GTL,* the Commission declines to do so at this time.

144. The Commission also rejects the National Sheriffs' Association's request that the Commission establish a rate component of $0.05 for facilities having average daily populations between 350 and 2,499. The National Sheriffs' Association's proposal covers a much greater range of jail facilities than the Commission has determined the Commission can reasonably address based on the current record; accordingly, the Commission declines to adopt its proposal. The Commission is not confident that the data it currently has can reasonably estimate legitimate facility-related costs for smaller facilities. And the Commission's interim rate components will cover facilities with average daily populations of 1,000 or more—*i.e.,* facilities that the National Sheriffs' Association's survey data suggest can accommodate less than the $0.02 per minute the Commission adopts as an interim measure.

145. Some providers oppose the Commission's calculated $0.02 number because it is lower than their average site commission payments across all their contracts. The Commission finds their arguments unpersuasive and contrary to law. For example, GTL argues that its site commissions average is [REDACTED] per minute and that the site commissions for [REDACTED] of its jail contracts exceed the Commission's proposed rate cap. Securus explains that in 2018 and 2019, the company incurred approximately [REDACTED] million in site commission expenses, of which roughly [REDACTED] was associated with inmate calling services. Securus also highlights that site commissions paid over the same period increased with facility size, ranging from [REDACTED] per minute for the facilities with the fewest incarcerated people to [REDACTED] per minute for the largest facilities. Securus's figures run counter to the claims of other commenters and correctional facility evidence showing that facility costs per calling minute tend to decrease as facility size increases. The problem with both GTL's and Securus's claims is that their figures are based on *total* site commissions paid, and fail to isolate or otherwise account for only those portions of payments related to reasonable facility-related costs of providing inmate calling services. In other words, their calculations vastly overstate legitimate facility-related costs because they include the full site commission payments, under the mistaken view that they should be permitted to recover the entire amount of site commission payments from incarcerated people or the loved ones they call. The Commission agrees with the Public Interest Parties that such analysis ''includes site commission payments that compensate correctional facilities for the transfer of market power from the facility to the [inmate calling services] provider that should not reasonably be included in the cost base.'' Given the failure to isolate inmate calling services-related costs from the site commission figures provided by GTL and Securus, the Commission is not persuaded that they represent reasonable allowances for inmate calling services-related facility costs. Furthermore, these figures include site commission payments that would fall into the category of the legally mandated facility rate component that the Commission separately adopts today that permits providers to recover these site commission payments in a manner other than through the $0.02 contractually prescribed facility-related rate component. To rely on the Securus or GTL averages to arrive at a facility-related rate component for prisons and larger jails would necessarily result in double recovery with respect to many of these payments.

146. *Security and Surveillance Costs.* The Commission cannot determine, based on the current record, whether security and surveillance costs that correctional facilities claim to incur in providing inmate calling services are ''legitimate'' inmate calling services costs that should be recoverable through interstate and international calling rates. The *2020 ICS FNPRM* sought comment on this issue, and the record is mixed. Several commenters support the exclusion of security and surveillance costs from the base of recoverable inmate calling services costs under section 276, arguing that these tasks are ''not related to the provision of communication service and provide no benefit to consumers.'' As Worth Rises explains, security and surveillance services ''used in a prison or jail reflect policy decisions made by administrators that differ dramatically from one state or county to another and even one facility to another'' and are ''generally not responsive to any local, state, or federal law requirements, and are thus incredibly varied.'' And the United Church of Christ and Public Knowledge argue that costs associated with monitoring, call blocking, and enrolling incarcerated people in voice biometrics systems are security costs not related to ''communications functions.'' GTL and the National Sheriffs' Association argue that ''correctional facilities incur administrative and security costs to provide incarcerated people with access to [inmate calling services]'' and that these costs should be recovered through calling rates. The data provided by the National Sheriffs' Association suggest that correctional facilities do include security and surveillance costs that they assert could reasonably be related to providing calling services. These data and descriptions also suggest a troubling and apparent duplication of some of the same security functions claimed by providers in their costs. The National Sheriffs' Association also asserts that the data suggest that it is possible to arrive at a per-minute cost to perform these duties.

147. The Commission is skeptical of these data given the wide unexplained variations that appear across some of the facilities. At the same time, the Commission recognizes that the data upon which the National Sheriffs' Association relies are self-reported costs purportedly incurred in relation to inmate calling services. Those data do not suggest a methodology that would permit the Commission to verify or otherwise isolate legitimate telephone calling-related security and surveillance costs, such as costs associated with court-ordered wiretapping activity, from general security and surveillance costs in correctional facilities that would exist regardless of inmate calling services. As Worth Rises emphasizes, isolating and thus being able to quantify calling-related security and surveillance costs is an important step in determining how, if at all, such costs should be recovered through rates.

148. On the present record, however, commenters have not provided the Commission with any plausible method for doing so, much less a methodology for determining recoverable security and surveillance costs, if any, versus non-recoverable costs. In the absence of an ability to distinguish or quantify security cost duplication at this time, the Commission seeks comment on this issue in the Fifth FNPRM, published elsewhere in this issue of the **Federal Register**, so the Commission can continue to evaluate whether and, if so, how to exclude these costs from

interstate and international inmate calling services rates.

149. *Takings.* In *GTL* v. *FCC,* the DC Circuit directed that the Commission address on remand whether ''the exclusion of site commissions . . . violates the Takings Clause of the Constitution because it forces providers to provide services below cost.'' Consistent with that directive, the *2020 ICS FNPRM* sought comment on the takings issue with respect to site commission payment cost recovery. The Commission indicated it did not believe that there were any potential taking concerns arising from the rate cap proposals in the *2020 ICS FNPRM.* The Commission finds that the Takings Clause is not implicated by the actions it takes today in adopting separate and distinct facility-related rate components that providers may recover.

150. As an initial matter, the interim rate cap reforms the Commission adopts in this Report and Order with respect to site commission payments are based on a cautious, data-driven approach to lowering total interstate rate caps, carefully balancing the needs of providers to receive fair compensation while ensuring just and reasonable rates and practices. The D.C. Circuit's concern about takings due to the categorical exclusion of any portion of site commission payments in the *2015 ICS Order* is obviated by the Commission's two-part facility-related rate component mechanism.

151. As the Supreme Court has recognized, the ''guiding principle has been that the Constitution protects utilities from being limited to a charge for their properly serving the public which is so 'unjust' as to be confiscatory.'' As a general matter, ''[r]ates which enable [a] company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risk assumed certainly cannot be condemned as invalid, even though they might produce only a meager return on the so called 'fair value' rate base.'' In making this evaluation, ''it is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unreasonable, judicial inquiry . . . is at an end. The fact that the method employed to reach that result may contain infirmities is not then important.'' Whether a given rate is confiscatory ''will depend to some extent on what is a fair rate of return given the risks under a particular rate-setting system, and on the amount of capital upon which the investors are entitled to earn that return.'' In evaluating the ''total effect'' of a rate on a company, courts do not consider the profitability of a company's nonregulated lines of business. Carriers face a ''heavy burden'' to prevail on a takings claim and must demonstrate that a rate ''threatens [the carrier's] financial integrity or otherwise impedes [its] ability to attract capital.''

152. Considered in their totality, the Commission's interim per-minute provider-related rate caps and allowances for site commissions do not threaten providers' financial integrity such that they could be considered confiscatory. The rate caps and site commission allowances are based on data supplied by providers and, as applicable to site commissions, correctional facilities. Neither correctional facilities nor providers have incentives to understate their costs in the context of a rate proceeding, lest the Commission adopts rates that are below cost. Indeed, the manner in which these cost data were collected gave ''providers every incentive to represent their [inmate calling services] costs fully, and possibly, in some instances, even to overstate these costs.'' Thus, there is no reason to believe that the data understate the actual costs of providing interstate and international inmate calling services.

153. Further, as the Commission observed in 2015, ''[t]he offering of [inmate calling services] is voluntary on the part of the [inmate calling services] providers, who are in the best position to decide whether to bid to offer service subject to the contours of the request for proposal. There is no obligation on the part of the [inmate calling services] provider to submit bids or to do so at rates that would be insufficient to meet the costs of serving the facility or that result in unfair compensation.'' And unlike the rate caps adopted in 2015, the Commission's new interim rate framework includes an explicit allowance for site commission payments. Considering these circumstances, the Commission concludes that the ''total effect'' of its interim rate regime is not confiscatory and reject arguments that the reforms adopted here will result in unconstitutional takings.

154. The Commission's actions also do not constitute a *per se* taking as they do not involve the permanent condemnation of physical property. Nor do the Commission's actions represent a regulatory taking. The Supreme Court has stated that in evaluating regulatory takings, three factors are particularly significant: (1) The economic impact of the government action on the property owner; (2) the degree of interference with the property owner's investment-backed expectations; and (3) the ''character'' of the government action. None of these factors suggest a regulatory taking here.

155. First, the interim steps the Commission takes with respect to inmate calling services rates including site commission payments are unlikely to have adverse economic impacts on providers. Providers have a waiver mechanism available to them should they find that in limited instances, the rate cap components do not cover the legitimate costs of providing inmate calling services. And, as explained above, the Supreme Court has long recognized, when a regulated entity's rates ''enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed,'' the company has no valid claim to compensation under the Takings Clause, even if the current scheme of regulated rates yields ''only a meager return'' compared to alternative rate-setting approaches.

156. Second, these interim actions do not improperly impinge on providers' reasonable investment-backed expectations. The Commission has long been examining how to address inmate calling services rates and charges and has taken incremental steps to address areas of concern as they arise. Various proposals, especially those targeting rate reform, have been raised and extensively debated in the record. Given this background, the Commission is not persuaded that any reasonable investment-backed expectations can be viewed as having been upset or impinged by its actions here.

157. Third, the Commission's actions today substantially advance the legitimate governmental interest in protecting incarcerated people, and the familial and other support systems upon which they rely through telephone service, from unjust and unreasonable interstate and international inmate calling services rates and charges. This is an interest that Congress has required the Commission to protect. Thus, the Commission's actions do not compel a physical invasion of providers' property, but merely ''adjust[ ] the benefits and burdens of economic life to promote the common good'' by ensuring that providers are fairly compensated while also directly protecting the interests of ratepayers and, indirectly, the broader public.

158. *Recovering Facility-Related Rate Components on Consumers' Bills.* Having adopted the two aforementioned distinct facility-related rate components today to account for payments required under codified law and the Commission's reasonable estimate of

legitimate correctional facility costs, the Commission also finds it necessary to ensure increased transparency in the rates and charges imposed upon incarcerated people and their loved ones for interstate and international inmate calling services. Under its interim rules, the Commission adopts different caps on the facility-related rate component of interstate and international inmate calling services depending on the circumstances that led to the site commission payment. In contrast to someone's status as an inmate of a prison versus a jail, or of a jail of a particular size—for which the Commission also has differing rate caps—the Commission finds it less likely that customers of interstate and international inmate calling services will know the circumstances that led to a given provider's site commission payment. Absent information separately breaking out the facility-related rate component of the service charge, and some identifier tying the charge to the relevant category under the Commission's rules, customers will be substantially less able to evaluate their bills and monitor whether they are receiving the protections of Commission rate caps to which they are entitled. To this end, the Commission exercises its authority to require providers choosing to recover the facility-related rate components in their total interstate or international inmate calling services rates to include those rate components separately on inmate calling services bills. The Commission believes that the requirements the Commission adopts advance truthfulness and accuracy in billing, consistent with the Commission's existing Truth-In-Billing rules. To the extent that the requirements of these rules differ from the requirements of the Commission's Truth-In-Billing rules with respect to the detail and specifications required or otherwise, the Commission makes clear that these more specific billing requirements for the facility-related component of interstate and international inmate calling services charges are controlling over the more general Truth-In-Billing rules to the extent of any divergence—but only to that extent. Providers thus must treat the Commission's interstate and international inmate calling services disclosure requirements as controlling within their self-described scope and otherwise comply with the more general Truth-In-Billing rules. The facility-related rate components on such bills should contain the source of the obligation underlying that component, the amount of the component on a per unit basis, and the total interstate or international rate component resulting from the facility-related rate component charged for interstate or international calls and reflected on bills. The Commission provides more detailed guidance on the mechanics of implementing these requirements later in this section.

159. The Commission has previously found that it has the jurisdiction to ''regulate the manner in which a carrier bills and collects for its own interstate offerings, because such billing is an integral part of that carrier's communications service.'' In the *2013 ICS Order,* the Commission used this authority to address billing-related call blocking, explaining that ''the Commission and the courts have routinely indicated that billing and collection services provided by a common carrier for its own customers are subject to Title II'' of the Act. And, in adopting ancillary service charge rules in the *2015 ICS Order,* the Commission reaffirmed its jurisdiction to regulate the manner in which providers bill and collect charges associated with inmate calling services. Because these facility-related rate components concern the ''manner'' in which calling service providers bill for their interstate and international services, the Commission concludes that it has the necessary authority to require implementation as specified herein.

160. The strong public interest in facilitating greater transparency with respect to site commission payments likewise justifies the disclosure of facility-related rate component information. Given that incarcerated people and their loved ones ultimately bear the burden of these payments through the total per-minute rates charged by providers, there is a strong interest in transparency regarding the charges that incarcerated people and their families bear. Absent its requirements the Commission finds a substantial risk that billing information will lack the detail about correctional facility-related charges necessary for consumers to ensure they are receiving the protections of the Commission's rate caps in that regard.

161. Calling service providers in this proceeding have similarly encouraged the Commission to account for the effect of state law in assessing site commission payments. GTL explains that there are ''significant variances in site commission requirements,'' some of which are driven by state law. And Securus points to variations in state laws governing site commissions that ''might affect whether a particular contract pays a site commission.'' Securus expressly encourages the Commission to treat site commissions ''separate and distinct from the provider base rate.'' Securus highlights that ''[t]his would allow the Commission to set a lower rate ceiling based on non-commission costs, and would increase public transparency of [inmate calling services] provider costs.'' The Commission agrees. By accounting for legally mandated and contractually prescribed site commissions separately, the Commission is better able to account for certain variances in site commission costs and increase transparency to end users with respect to what portion of their total interstate and international rates relate to site commission payments. The Commission also declines NCIC's request that rather than permit site commission allowances as an additive to the provider-related rate components, the Commission instead requires providers to make these payments ''from their revenue generated at the new caps.'' The Commission is unable, on the record before it and for purposes of the interim reforms the Commission makes today, to take this step.

162. The Commission's treatment of correctional facility-related costs as a separate and distinct rate component from the lower provider-related interim rate caps the Commission adopts is consistent with *GTL* v. *FCC.* While the D.C. Circuit rejected the ''categorical exclusion'' of site commission costs from ''the calculation used to set [inmate calling services] rate caps,'' nothing in the court's decision dictates how the Commission implements recovery of such costs. The facility-related rate components the Commission adopts herein merely disaggregate correctional facility-related costs from provider-related costs and direct providers to recover these costs through separate interim rate components.

163. *Mechanics of the Legally Mandated Facility Rate Component.* For providers subject to site commission payments required under codified laws or regulations, the Commission permits providers to pass through to consumers this cost of providing inmate calling services, without any markup, capped at the maximum total interstate rate cap currently in effect for debit and prepaid calls from any size correctional facilities. Providers may never charge a total rate for interstate calls that exceed $0.21, the highest interstate rate cap permissible as a result of today's actions. As the Commission indicated, nothing the Commission does today increases any interstate calling rate above the $0.21 rate cap in effect prior

to today for prepaid and debit calls from all sizes and types of facilities. The Commission agrees, for present purposes, that site commissions prescribed under formally codified laws are meaningfully distinguishable from contractually negotiated site commission payments. At least on the current record, while the Commission collects additional information through today's Fifth FNPRM, the Commission considers it prudent to regard site commissions of this type as reasonably related to the provision of inmate calling services.

164. Consistent with the Commission's transparency objectives, providers shall: (1) Specify the state statute, law, or regulation adopted pursuant to state administrative procedure statutes where there is notice and an opportunity for public comment that operates independently of the contracting process between correctional institutions and providers giving rise to the mandatory nature of the obligation to pay; (2) disclose the amount of the payment on the applicable per-unit basis, *e.g.,* per-call or per-minute if based on a revenue percentage; and (3) identify the total amount of this facility rate component charged for the interstate and international calls on the bill. For example, a provider serving a local jail in Tennessee is required to collect $0.10 for each completed telephone call. In issuing an inmate calling services customer bill, that provider must clearly label the legally mandated facility-related rate component, specify section 41–7–104 of the Tennessee Code as the relevant statutory code section giving rise to the obligation, specify the amount as $0.10 per call, and include a line item indicating the total charge to the customer resulting from multiplying the $0.10 per call charge by the number of interstate and international calls. Similarly, for a statutory obligation to remit a percentage of gross revenue, like the 40% reflected in the Texas code, the Commission requires a provider to identify the Texas code section, specify that it requires an additional 40% charge on top of the applicable per-minute interstate or international provider-related rate component, and include a line item reflecting how much of the total interstate and international rate charges are attributable to the mandatory 40% charge. The Commission recognizes the possibility that not all mandatory site commission payments may be easily expressed as a percentage of revenue or easily converted to a per-call or per-minute rate. Under these circumstances, providers must use their best judgment to comply with the Commission's billing-related disclosure obligations to reflect the legally mandated rate component in the manner the Commission prescribes for interstate and international calls on their inmate calling services customer bills. Providers are not required to use the terms ''legally mandated facility rate component'' or ''contractually prescribed facility rate component,'' but may do so if they choose. Other terms may be appropriate as long as providers clearly label the facility-related rate components. The Commission directs the Bureau staff to assist with questions that may arise on a case-by-case basis should providers encounter difficulty implementing the Commission's billing transparency requirements.

165. *Mechanics of the Contractually Prescribed Facility Rate Component.* Providers subject to contractually prescribed site commissions pursuant to contract with correctional facilities or agencies may charge up to $0.02 per minute to recover those discretionary payments. Should a provider's total contractually prescribed site commission payment obligation result in a lower per-minute rate than $0.02 per minute of use, that provider's contractually prescribed facility rate component would be limited to the actual amount of its per-minute site commission payment up to a maximum of $0.02. An illustration may prove helpful. If the provider charges $0.12 per minute for a call from a larger jail and the correctional facility imposes a 10% site commission payment obligation on all gross revenue, the provider would be required to pay the correctional facility $0.012 (an amount lower than $0.02). In such a case the provider is *only* able to charge a contractually prescribed facility rate component of $0.012 rather than the full $0.02 amount. For this reason, providers must calculate any contractually prescribed facility rate component to three decimal points for all intermediate calculations occurring before the total amount of such charges related to interstate and international calling are determined. Similar to the requirements for the Commission's legally mandated rate component, should providers decide to recover this discretionary amount from their interstate or international calling customers, they must clearly label the rate component on their bill and indicate that this rate component is required by the correctional facility per contract. They must also show this rate component charge as an additional (up to $0.02, as applicable) per minute rate component on top of the applicable provider-related per-minute rate component, and then compute the total amount attributable to the $0.02 rate component charged to the end user for that call, determined by multiplying $0.02 by the number of interstate and international minutes reflected on that bill. To the extent providers believe they are unable to recover their costs through the interstate and international rate components the Commission adopts today, they may seek waivers through the waiver process the Commission also adopts today. ICSolutions requests that the Commission require providers to list in-kind commissions on consumer bills because ''differential treatment based on the form of commissions distinguishing monetary from all other forms will lead to gold-plating and limitations on competition.'' The Commission declines to do so. Instead, consistent with the Commission's broad definition of site commissions in section 64.6000(t), the Commission makes clear that the $0.02 allowance for the contractually prescribed facility rate component reflects *any* type of site commission or compensation, whether monetary or in-kind, that is required to be paid in this situation. The Commission's focus on consumer transparency here means that consumers need to know what they are paying to cover any type of consideration that the provider is paying, giving, donating, or otherwise providing to the facility.

166. Finally, NCIC Inmate Communications (NCIC) asks the Commission to clarify that the Commission's $0.02 allowance ''does not prohibit the payment of additional site commissions should the inmate calling services provider and correctional facility so negotiate.'' The Commission confirms that the $0.02 figure does not prevent or prohibit the payment of additional site commissions amounts to correctional facilities should the calling services provider and the facility enter into a contract resulting in the provider making per-minute payments to the facility higher than $0.02. All the Commission does here is limit the providers' ability to recover these commissions to $0.02. Consequently, the Commission rejects NCIC's assertion that the $0.02 allowance could raise Tenth Amendment concerns ''by infringing on a state's right to require or permit site commissions.'' With respect to state prescribed statutory or legal obligations, the Commission allows recovery for such mandatory site commission payments as described herein, leaving

states free to require them as they wish. As the Public Interest Parties correctly highlight, the Commission's actions do not ''affect a state's ability to require or permit site commissions.'' The Commission's recognition here that existing site commission payment obligations may contain legitimate facility-related costs is not an invitation for correctional facilities not currently incorporating these discretionary payments into their bidding and contracting process to do so in the future. Indeed, in the Fifth FNPRM, the Commission seeks comment on whether providers should be prohibited from entering into any correctional facility contract that requires the payment of site commission payments with respect to interstate and international inmate calling services pursuant to the Commission's authority under section 201(b) of the Act.

5. Waiver Process for Outliers

167. The Commission readopts and modifies the waiver process applicable to calling service providers and codify this process in its inmate calling services rules. The Commission reaffirmed its waiver process for inmate calling services providers in the *2015 ICS Order.* These portions of the *2015 ICS Order* were left unaltered by the *GTL* v. *FCC* court's 2017 vacatur. The *2020 ICS FNPRM* proposed to adopt a modified waiver process to better enable the Commission to understand why circumstances associated with a provider's particular facility or contract differ from those at other similar facilities it serves, and from other facilities within the same contract, if applicable. The record, while not robust on this issue, generally supports the Commission's proposed waiver process modifications. For instance, GTL agrees with the Commission's proposal to apply the waiver process on a facility-by-facility basis rather than at the holding company level as required under the present rules. Significantly, no commenter opposes the proposed waiver process modifications.

168. A waiver process provides an important safety valve for providers that may face unusually high costs in providing interstate or international inmate calling services at a particular facility or under a particular contract that are otherwise not recoverable through the per-minute charges for those services and through ancillary service fees associated with those services. Such a process helps the Commission ensure that providers' rates for interstate and international inmate calling services and ancillary services are not unreasonably low within the meaning of section 201(b) of the Act and also is essential to the Commission's ability to ensure that providers are fairly compensated for each and every completed call, as section 276(b)(1)(A) of the Act requires. Accordingly, the Commission establishes a modified waiver process requiring providers of inmate calling services that seek waivers of the Commission's interstate or international rate or ancillary fee caps to do so on a facility-by-facility or contract basis, consistent with the Commission's proposal in the *2020 ICS FNPRM.* The Commission similarly modifies its waiver process to specifically permit providers to seek waivers of the international rate caps the Commission adopts in this Report and Order. The Commission has previously delegated authority to the Bureau to review and rule on petitions for waiver of its caps for inmate calling services, and the Commission reaffirms that delegation of authority today.

169. Throughout the course of this proceeding, various parties have argued that reductions in inmate calling services rates would threaten their financial viability, imperiling their ability to provide service, and risking degraded or lower quality service. The Commission finds that these claims are best handled on a case-by-case basis through a waiver process that focuses on the costs the provider incurs in providing interstate and international inmate calling services, and any associated ancillary services, at an individual facility or under a specific contract. The Commission finds these levels of analysis to be the most appropriate because they permit the evaluation of detailed information about individualized circumstances that are best measured at those disaggregated levels of operations, unlike its prior waiver process which was based at the holding company level. This approach also recognizes that in some instances the circumstances at a particular facility may prevent the provider from recovering its costs of providing interstate and international inmate calling services and associated ancillary services under the Commission's rate and ancillary service fee caps, while in other instances circumstances applicable to all facilities covered by a contract may prevent such cost recovery. To the extent any provider desires to cease serving a facility or facilities because it determines that it is no longer an economically attractive business operation, correctional facilities and incarcerated people need not fear an abrupt disruption or cessation of service, as some providers suggest could occur. If an inmate calling services provider seeks to discontinue offering service at any facility, it would first need to obtain authority from this Commission pursuant to section 214 of the Act, a provision which serves to ensure that customers of any telecommunications services provider have alternative service options available to them prior to the carrier discontinuing its service at any facility. Moreover, based on the contractual arrangements between the relevant correctional facility and provider, the inmate calling services contract would likely be transferred to another provider to ensure continuity of service for the incarcerated people residing in the facility in question, a transfer which also would require prior approval from the Commission pursuant to section 214 of the Act.

170. As with all waiver requests, the petitioner bears the burden of proof to show that good cause exists to support the request. Any inmate calling services provider filing a petition for waiver must clearly demonstrate that good cause exists for waiving the Commission's rate or fee caps at a given facility or group of facilities, or under a particular contract, and that strict compliance with the Commission's rate or fee caps would be inconsistent with the public interest. The Commission does not expect the Bureau to grant waiver requests routinely. Rather, the Commission expects the Bureau to subject any waiver requests to a rigorous review. Relief would be granted only in those circumstances in which the petitioner can demonstrate that adhering to the Commission's rate or fee caps would prevent it from recovering its costs of providing interstate inmate calling services at a particular facility or group of facilities, or pursuant to a particular contract. Moreover, the Commission agrees with commenters that suggest that the interim rate reform adopted in this Report and Order should minimize the need for providers to avail themselves of the Commission's waiver process.

171. Petitions for waiver must include a specific explanation of why the waiver standard is met in the particular case. Conclusory assertions that reductions in interstate or international rates, or associated ancillary service fees, will harm the provider or make it difficult for the provider to expand its service offerings will not be sufficient. The Commission agrees with commenters that providers requesting a waiver of the Commission's inmate calling services rules should provide a detailed explanation of their claims, as well as a comparative analysis of the reasons the

provider cannot recover its costs when similar facilities or contracts served by the provider do. In addition, waiver petitions must include all required financial data and other information needed to verify the carrier's assertions. Failure to provide the information listed below will be grounds for dismissal without prejudice. Furthermore, the petitioner must provide any additional information requested by Commission staff needed to evaluate the waiver request during the course of its review. This requirement is consistent with prior Commission inmate calling services waiver requirements. This additional information may include information regarding the provider's facilities or contracts that have characteristics similar to those for which waiver is sought, the provider's interstate and international rates, and the provider's associated ancillary service charges, at or below the Commission's caps. Petitions for waiver must include, at a minimum, the following information:

- The provider's total company costs, including the nonrecurring costs of the assets it uses to provide inmate calling services and its recurring operating expenses for these services at the correctional facility or under the contract;
- The methods the provider used to identify its direct costs of providing interstate and international inmate calling services, to allocate its indirect costs between its inmate calling services and other operations, and to assign its direct costs to and allocate its indirect costs among its inmate calling services contracts and correctional facilities;
- The provider's demand for interstate and international inmate calling services at the correctional facility or at each correctional facility covered by the contract;
- The revenue or other compensation the provider receives from the provision of interstate and international inmate calling services, including the allowable portion of any permissible ancillary services fees attributable to interstate and international inmate calling services, at the correctional facility or at each correctional facility covered by the contract;
- A complete and unredacted copy of the contract for the correctional facility or correctional facilities, and any amendments to such contract;
- Copies of the initial request for proposals and any amendments thereto, the provider's bid in response to that request, and responses to any amendments (or a statement that the provider no longer has access to those documents because they were executed prior to the effective date of the waiver rules adopted in this Report and Order);
- A written explanation of how and why the circumstances associated with that correctional facility or contract differ from the circumstances at similar correctional facilities the provider serves, and from other correctional facilities covered by the same contract, if applicable; and
- An attestation from a company officer with knowledge of the underlying information that all of the information the provider submits in support of its waiver request is complete and correct.

172. The Commission declines to adopt Free Press's request that a provider's waiver request should terminate upon a showing either that facility costs have declined or that its revenue has increased, and that the Commission should ''require periodic updates on cost and revenue data to make these determinations.'' Requiring a provider to provide updated and detailed cost and revenue data and analyses on an ongoing basis, beyond its initial detailed cost and data submissions, would be unnecessarily burdensome. Any waiver request filed with the Commission will be rigorously scrutinized and, if granted, time limited as appropriate, based on the circumstances of each particular request. Additionally, the Commission views its waiver process as sufficiently narrow and rigorous to filter spurious waiver claims, and thus sufficiently addresses those commenters' requests that any potential grant of a waiver of the Commission's inmate calling services rules be as narrowly tailored as possible.

173. Consistent with its past waiver process for inmate calling services, the Commission delegates to the Bureau the authority to approve or deny all or part of any petition for waiver of the Commission's inmate calling services rules. Such petitions will be placed on public notice, and interested parties will be provided an opportunity for comments and reply comments. The Bureau will endeavor to complete its review of any such petitions within 90 days of the provider's submission of all information necessary to justify such a waiver, including any information requested by the Bureau subsequent to receiving the waiver request.

D. Interim International Rate Caps

174. Today the Commission adopts, for the first time, interim rate caps on international inmate calling services calls, as proposed in the *2020 ICS FNPRM.* In that *FNPRM,* the Commission proposed to ''adopt a rate cap formula that permits a provider to charge an international inmate calling services rate up to the sum of the provider's per-minute interstate rate cap for that correctional facility *plus* the amount that the provider must pay its underlying international service provider for that call on a per-minute basis.'' A diverse group of industry stakeholders strongly support the Commission's proposal to cap international calling rates.

175. The record before the Commission is replete with evidence that Commission action to address international inmate calling services rates is long overdue. Although international calling minutes from correctional facilities represent only a fraction of all calling minutes from such facilities, for those incarcerated people who rely on international calling to stay connected with their loved ones abroad, current international calling rates present a heavy financial burden. The *2020 ICS FNPRM* recognized that international rates are ''exceedingly high in some correctional facilities, some as high as $45 for a 15-minute call.'' Record evidence provides additional examples of extremely high international calling rates.

176. Providers and public interest advocates alike broadly support Commission adoption of international rate caps. Notably, the record explains that providers have entered into contracts that limit international rates in certain states. In 2016, New Jersey, for example, prohibited state correctional authorities from contracting for international rates higher than $0.25 per minute. And in 2018, Illinois negotiated a contract with Securus capping international calls at $0.23 per minute. The Commission applauds these state efforts to address excessive international calling rates through the states' contracting authority, which complements its action today setting long-overdue rate caps for international calling services.

177. *Calculating International Rate Caps.* In the *2020 ICS FNPRM,* the Commission proposed to adopt a rate cap formula for international inmate calling services calls that would allow a provider to ''charge a rate up to the sum of the inmate calling services provider's per-minute interstate rate cap for that correctional facility plus the amount that the provider must pay its underlying international service provider for that call on a per-minute basis (without a markup).'' Although some commenters support the proposed methodology for calculating the international rate caps, the Commission acknowledges Securus's argument

regarding the administrative difficulty of practically implementing the Commission's proposal for international rate caps.

178. According to Securus, the rate structures used by underlying international providers outside the United States can vary based on the destination. While the average cost that Securus pays for international calls is around $0.09 a minute, in some countries the international termination rates are significantly higher than $0.09. To handle the fluctuating costs of international calls, Securus, like many telecommunications service providers, has implemented a ''least cost routing system'' for completing its inmate calling services customers' international calls that relies on continually updated ''rate decks'' containing thousands of entries for international rates. When an international call is made, Securus will steer the call through the route having the lowest rate at that time. When rates change or the route is no longer available, Securus must find an alternative route with the next lowest rate to terminate the calls. Securus states that this constant flux of different underlying international carriers charging Securus different wholesale rates makes it impractical for Securus—and, likely, other providers—to charge customers ''based on the actual cost of terminating each individual call.''

179. Securus, therefore, proposes a methodology to account for this constant variation in international rates to the same overseas destination. Under Securus's proposal, the per-minute international rate cap applicable to each ''international destination'' would be based on the Commission's applicable total per-minute interstate rate cap for that facility, plus the average per-minute amount paid by the provider to its underlying wholesale international carriers to terminate international calls to the same ''international destination'' over the preceding calendar quarter. The Commission defines ''international destination'' as meaning the rate zone in which an international call terminates. For countries that have a single rate zone, ''international destination'' means the country in which an international call terminates. Under this proposal, providers would be required to determine this average per-minute amount paid for calls to each international destination for each calendar quarter, and then adjust their maximum international per-minute rate caps based on such determination within one month of the end of each calendar quarter. The record supports Securus's proposal as being more administratively efficient than the Commission's proposal.

180. Securus presents a convincing argument that compliance with international rate caps on a call-by-call basis, where the rates charged by underlying international carriers are constantly fluctuating, would be ''impractical.'' Moreover, this methodology takes into account not only the highest but also the lowest wholesale rate for international calls to the same destination over a reasonable period of time, benefiting incarcerated people by having a consistent, predictable international calling rate for every three-month period to the country or countries they need to call. No party has objected to this proposal, provided that the Commission makes clear that providers may not mark up any charge for international termination before passing it through to consumers. Accordingly, the Commission adopts Securus's approach for interim international rate caps, subject to a no mark-up requirement. Because the interstate rate caps adopted today are interim rate caps pending the Commission's collection of new, more uniform, cost data, and because the Commission's international rate caps include its applicable interim interstate rate cap component for each facility, these international rate caps are similarly interim in nature. This methodology will enable providers to recover the higher costs of international calling. In the unlikely scenario where an inmate calling services provider is unable to fully recover its international calling costs, such provider may avail itself of the waiver process the Commission adopts in this Report and Order. And incarcerated people will enjoy reasonable and more affordable international calling rates, allowing them to better communicate with family and friends abroad.

181. To ensure that any international call termination charges are transparent to consumers, the Commission requires that providers disclose, as a separate line item on their calling services bills, any such international charges that they pass through to consumers. The Commission has jurisdiction to regulate ''the manner in which a carrier bills and collects for its own interstate offerings.'' Providers shall also clearly, accurately, and conspicuously disclose those charges on their websites or in another reasonable manner readily available to consumers. Providers shall retain documentation supporting any charges for international termination that they pass through to consumers and provide such documentation, including any applicable contracts, to the Commission upon request. The Commission finds that these transparency requirements will not be particularly burdensome because providers need to calculate international termination charges to set their rates and need to retain records for financial auditing purposes. And, in any case, the strong public interest in facilitating greater transparency with respect to calling services' rates outweighs the limited burden on providers. Absent these requirements, the Commission finds a substantial risk that consumers will lack sufficient information about international calling rates, which may be subject to change every quarter given the prescribed method of determining the wholesale provider rate component.

182. *Alternative Proposals.* On the record before it, the Commission declines the Public Interest Parties' request that the Commission cap international inmate calling services rates at a level no higher than its applicable interstate rate caps. The Public Interest Parties note that some providers reported no international costs but did report international minutes and revenue from the calls, which ''suggests that international costs are already included in their total costs, and thus accounted for in the interstate rates.'' According to the Public Interest Parties, the Commission will double count those costs if it allows providers to recover the costs of international calls separately. While some small degree of double counting may have occurred through failure to separately report international costs in response to the Second Mandatory Data Collection, the record indicates that some providers did include separate costs for international calls in their responses. Regardless, the method the Commission is adopting recognizes that international calling does cost more than domestic calling and that providers are entitled to recover these extra costs through the method the Commission adopts. The Commission will continue to monitor international calling rates in providers' annual reports and collect more uniform data on international costs at the same time the Commission undertakes its data collection for interstate costs. Should those data reflect double counting, the Commission will adjust its permanent international rate caps accordingly. The Commission also declines the proposal of the Human Rights Defense Center, which asserts that ''$.05 per minute is more than adequate compensation for companies that provide all Inmate Calling Services (ICS) services, locally, interstate, intrastate and internationally.'' The

Human Rights Defense center provides insufficient support and basis for this proposal, in light of the Commission's obligations under section 276 of the Act.

E. Consistency With Section 276 of the Act

183. Section 276(b)(1)(A) of the Act requires the Commission to ''ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call.'' The Commission concludes, consistent with the Commission's proposal in the *2020 ICS FNPRM,* that the interim rate caps the Commission adopts in this Report and Order fully satisfy this mandate. In the vast majority of, if not all, cases, these rate caps will allow providers to generate sufficient revenue from each interstate and international call—including any ancillary service fees attributable to that call—(1) to recover the direct costs of that call; and (2) to make a reasonable contribution to the provider's indirect costs related to inmate calling services. To the extent there are legitimate but rare anomalous cases in which a provider cannot recoup such costs under the new rate caps, the provider may seek a waiver of those caps, to the extent necessary to ensure that it is fairly compensated, as required by the Act.

184. As the Commission observed in the *2020 ICS FNPRM,* this approach recognizes that calling services contracts often apply to multiple facilities and that providers do not expect each call to make the same contribution toward indirect costs. The record confirms that ''because the industry norm is to bid for one contract for multiple facilities and then offer a single interstate rate across facilities irrespective of cost differentials that may exist among facilities under the contract, it would be impossible to reach a methodology that would allow a direct, one-to-one recovery of costs.'' No parties challenged this conclusion or commented otherwise. Indeed, providers acknowledge that they do not presently keep the type of accounting records that would allow them to measure the costs of individual calls. And, although the Mandatory Data Collection that the Commission adopts in this Report and Order will result in far more granular cost data than currently are available, the resulting data will necessarily rely on allocations of indirect costs among contracts and facilities and thus will fall far short of allowing a provider to directly assign all its inmate calling services costs to individual calls.

185. The Commission finds that the interim rate caps it adopts today are consistent with both section 276 of the Act and the D.C. Circuit's decision in *GTL* v. *FCC.* In that decision, the court rejected the Commission's ''averaging calculus'' in the *2015 ICS Order,* which set tiered rate caps using industry-wide average costs derived from cost data submitted by providers. The court explained that the Commission erred in setting rate caps using industry-average costs because calls with above-average costs would be ''unprofitable,'' in contravention of the ''mandate of § 276 that 'each and every' inter- and intrastate call be fairly compensated.'' The court found the Commission's reliance on industry-average costs unreasonable because, even disregarding site commissions, the proposed caps were ''below average costs documented by numerous [inmate calling services] providers and would deny cost recovery for a substantial percentage of all inmate calls.''

186. GTL argues that the Commission's new interim rate caps fail to address the court's criticism of the Commission's prior rate caps, because they ''will not, in *all* cases, cover the costs of providing service.'' This argument ignores an important distinction between the rate cap methodology that was before the court in *GTL* v. *FCC* and the methodology the Commission uses in this Report and Order. Instead of setting rate caps at industry-wide average costs, the Commission's methodology begins by looking at industry-wide average costs but does not stop there. Instead, the Commission adjusts those mean costs upward by one standard deviation and use the results to establish zones of reasonableness from which the Commission selects separate provider cost components for prisons and larger jails. The Commission then adds an additional amount to account for the portion of site commission payments that the Commission conservatively estimates is related specifically to inmate calling services. As detailed in Part III.C.4, the Commission adopts a modified version of the site commission proposal in the *2020 ICS FNPRM* based on record evidence that $0.02 per minute for every facility may not permit recovery of all legitimate facility costs related to inmate calling services and may not account for site commission payments required under codified law. The Commission permits full recovery of site commission payments required under codified law and up to $0.02 per minute for contractually prescribed site commission payments. At the same time, the Commission also explains above that full recovery of site commissions is not required under *GTL* v. *FCC* or section 276 of the Act. The Commission therefore disagrees with commenters asserting that section 276 requires full recovery of site commission payments in order to comply with section 276. The Commission's interim approach permits recovery of the portion of site commission payments that the Commission estimates are directly related to the provision of inmate calling services. Nothing more is required. The Commission's approach therefore incorporates assumptions and actions that lean toward over-recovery of costs. The Commission estimates that revenues from the capped per minute charges for individual interstate and international calls—along with the revenues from related ancillary service fees—will enable all providers to recover their actual costs of providing interstate and international inmate calling services, but provide a process for unusual cases where the Commission might be mistaken. Thus, contrary to GTL's assertion, the Commission's interim rate caps, coupled with the Commission's new waiver process, ''account for the real differences in costs among [inmate calling services] providers and ensure[ ] providers with higher costs receive fair compensation'' in a manner consistent with section 276(b)(1)(A).

187. ''Fair compensation'' under section 276(b)(1)(A) does not mean that each and every completed call must make the same contribution to a provider's indirect costs. Nor does it mean a provider is entitled to recover the total ''cost'' it claims it incurs in connection with each and every separate inmate calling services call. Instead, compensation is fair if the price for each service or group of services ''recovers at least its incremental costs, and no one service [*e.g.,* interstate calling service] recovers more than its stand-alone cost.'' Economists generally agree that the price for each product (or group of products) is compensatory if it at least recovers its incremental costs but is an inefficiently high price if it recovers more than its standalone costs. The record indicates that, subject to one anomalous possible outlier contract, the rate cap methodology the Commission adopts today will allow every provider of calling services for incarcerated people to charge a price that recovers its direct costs (*i.e.,* costs that are directly attributable to producing all of the inmate calls under a given contract) and contributes to recovery of its indirect

costs. The one exception is an apparent anomalous contract for which that contract's indirect costs were reported by [REDACTED] *after* the release of the *2020 ICS FNPRM.* The per-minute cost the Commission calculates for this contract is the single highest per-minute cost of all jail contracts and more than double the per-minute cost for the second highest jail contract. To the extent this contract possesses such unusual characteristics that the provider's costs are indeed legitimately this high, this is precisely the type of contract the waiver process the Commission adopts today is meant to address. Indeed, the Commission demonstrates that virtually all contracts, except those that reflect the issues the Commission has discussed regarding GTL, impacted by the rate caps this Report and Order imposes are commercially viable under conservative assumptions. That is, the Commission expects they should be able to cover the contracts' direct charges and make a commercially sound contribution to costs shared across the contracts sufficient to ensure each provider's viability.

188. As the Commission recognized in the *2002 Pay Telephone Order,* the ''lion's share of payphone costs are those that are 'shared' or 'common' to all services,'' and there are ''no logical or economic rules that assign these common costs to 'each and every call.' '' As a result, ''a wide range of compensation amounts may be considered 'fair.' '' Here, contrary to the assertions of certain providers, the Commission adopts conservative interim rate caps that fall squarely within the zones of reasonableness, as well as an allowance for site commissions reflected by the Commission's new facility-related rate component that is supported by its analysis that reflects the variations in correctional facility costs, thus providing for fair compensation under the statute.

189. Providers fail to acknowledge that a wide range of compensation amounts may be considered fair, arguing generally that the Commission must adopt rate caps that enable them to recover their total costs ''for each and every completed . . . interstate call.'' In effect, providers argue that a rate-setting methodology that does ''not, in all cases, cover the costs of providing service'' fails to satisfy section 276. The Commission disagrees. First, GTL's reliance on *Illinois Public Telecommunications Assoc.* v. *FCC* for support is misplaced because totally different circumstances—resulting in ''no compensation for coinless calls made from inmate phones''—were before the court in that case. The *Illinois Public Telecommunications* court's rejection of a ''no compensation'' regime where providers received zero compensation for calls simply does not create a mandate that the Commission adopts any particular compensation methodology, much less the methodology the providers urge.

190. Second, the Commission's rate cap methodology here differs materially from the methodology vacated in *GTL* v. *FCC.* There, the court found that the record ''include[d] two economic analyses, both concluding that the [*2015 ICS*] *Order's* rate caps are below cost for a substantial number of [inmate calling services] calls even after excluding site commissions'' and that ''[t]he [*2015 ICS*] *Order* does not challenge these studies or their conclusions.'' As a result, the court held that ''the use of industry-average cost data *as proposed in the Order*'' could not be upheld because ''it lacks justification in the record and is not supported by reasoned decisionmaking.'' The Commission's methodology in this Report and Order, by contrast: (1) Is designed to ensure that the costs of the vast majority of, if not all, calls are recovered; (2) includes a site commission allowance; (3) is based on a rigorous analysis of data submitted into the record by providers responding to a Commission data collection; and (4) as a backstop, provides the opportunity for providers to obtain a waiver if they can show that one is needed to ensure that they receive fair compensation, consistent with the statute.

191. But for the extraordinary case, providers will recover their costs under the new interim rate caps the Commission adopts. Providers that continue to claim they will be unable to recover their costs of interstate or international inmate calling services under the interim rate caps the Commission adopts today will be able to seek a waiver of those caps in accordance with the procedures set forth in this Report and Order. Any such waiver requests will be analyzed and resolved based on more comprehensive, current, and disaggregated cost data regarding that provider's cost of providing inmate calling services at the particular facility or facilities at issue. The Commission rejects Securus's suggestion that, for purposes of assessing compliance with section 276 of the Act, the Commission should calculate the return component of a provider's costs using the price its current owners paid to purchase the provider. Instead, the Commission concludes that it should calculate that component for purposes of assessing compliance with section 276 using the same rate base that the Commission uses in assessing compliance with section 201(b)—the original cost of the property used to provide inmate calling services at the particular facility or facilities. The combination of the Commission's carefully considered interim rate caps and the Commission's revised waiver process afford all providers the opportunity to recover fair compensation for each and every completed interstate and international inmate calling services call consistent with section 276(b)(1)(A).

F. Cost-Benefit Analysis of Revised Interstate Rate Caps

192. Although the Commission's actions in this Report and Order are not dependent on its analysis of the relative costs and benefits of the revised interim interstate rate caps, the Commission finds that the benefits of its actions far exceed the costs. The benefits of lowering inmate calling services rates sweep broadly, affecting incarcerated people, their families and loved ones, and society at large. Although important and substantial, these benefits do not lend themselves to ready quantification. As one commenter aptly explains, increased communication and ties to the outside world are important for ''maintaining inmate mental health.'' The formerly incarcerated can face myriad obstacles on reentry, including ''limited occupational and educational experience and training to prepare them for employment, drug and alcohol addictions, mental and physical health problems, strained family relations, and limited opportunities due to the stigma of a criminal record.'' Lower telephone rates will likely lead to increased communication by incarcerated people which, in turn, can help mitigate some of these issues by, for example, allowing incarcerated people to maintain family relationships and make plans for post-release housing or employment.

193. Lower rates, and the resulting increase in calls, can also lead to improvements in the health and well-being of the families of incarcerated people. In particular, children of incarcerated parents are much more likely to suffer from behavioral problems, poor educational attainment, physical health problems, substance abuse, and adult incarceration. Studies show that contact with incarcerated parents can help mitigate these harmful effects. One study, for example, demonstrated that a child's chances of dropping out of school or being suspended decreased if the child had increased contact with an incarcerated

parent. As Verizon explains, ''[p]reserving family ties allows incarcerated people to parent their children and connect with their spouses, helping families stay intact. Supporting strong families, in turn, makes our communities safer.'' The Commission agrees.

194. The Commission's actions will benefit incarcerated people, their families, and society in ways that cannot easily be reduced to monetary values but that standing alone support its actions. That being said, an analysis of the quantifiable benefits of the Commission's actions today shows that they far exceed the costs. In the *2020 ICS FNPRM,* the Commission estimated that implementing the proposed changes would cost $6 million. These estimated implementation costs included one-time administrative, contract-revision, and billing-system costs. These costs included costs associated with changing the rate for debit/prepaid calls at jails with average daily populations less than 1,000. The Commission now finds that $6 million is a reasonable estimate for the costs of implementing the changes it adopts today. These costs are only a relatively small fraction of the $32 million in quantifiable benefits that the Commission now estimates its actions will bring and pale in comparison to the qualitative benefits today's changes will confer on incarcerated people, their communities, and society as a whole. In the *2020 ICS FNPRM,* the Commission estimated benefits of $30 million, including a benefit of $7 million due to expanded call volumes plus at least $23 million for reduced recidivism, which would reduce prison operating costs, foster care costs, and crime. The Commission's estimate of $32 million in benefits is the sum of: (1) A gain of $9 million from inmate calling services users making more calls at lower rates (which is an increase of $2 million as compared with the Commission's previous estimate of $7 million); and (2) $23 million in benefits to society due to reduced recidivism, crime, and foster-child care costs that improved access to communications will bring. GTL suggests that it ''*may not* be the case'' that revised interstate rate caps will result in increased call volume. GTL posits that this is because interstate calls are ''only a small part of all'' inmate calling services calling and that ''incarcerated individuals are not entitled to unfettered access to telephonic communications.'' The Commission finds GTL's arguments to be speculative and unsupported. The Commission therefore rejects these arguments in favor of the more data-driven approach it takes here. As the Commission has explained, rate reform will promote increased communication between incarcerated persons and their loved ones. This additional communication will help preserve essential family ties, allowing children to stay in touch with an incarcerated parent, which, in turn, will make communities safer. Being able to maintain communication also will help incarcerated persons plan for successful integration back into their communities upon release by providing a vital avenue to explore housing and employment opportunities.

195. *Expected Quantitative Benefits of Expanded Call Volumes.* In the *2020 ICS FNPRM,* the Commission calculated benefits based on a forecast of the increase in the number of calls that would occur if the Commission adopted the proposed rate caps. The Commission used estimates of current call minutes at prices above the proposed rate caps, the price decline on those call minutes implied by the proposed rate caps, and the responsiveness of demand to the changes in price. Using 2018 call volume data, the Commission estimated that approximately 592 million interstate prepaid and debit minutes and 3.3 million interstate collect minutes originated from prisons at rates above the proposed caps. Those data also showed that approximately 453 million interstate prepaid and debit minutes and 2 million interstate collect minutes were made from jails at rates above the proposed caps. To determine these numbers, the Commission used rate information from the 2019 Annual Reports and call volume data (interstate minutes) from the Second Mandatory Data Collection responses. The Commission considers each of the following call types: Interstate debit and prepaid calls for prisons and larger jails only; and interstate collect calls for prisons, larger jails, and jails with average daily populations less than 1,000. For each of these call types, the Commission adjusted the reports for minutes downward by dropping the minutes recorded in nine states—Alaska, Delaware, Hawaii, Maryland, New Mexico, Texas, Vermont, Washington, and West Virginia. The Commission did this because each of these states has important contracts with rates below the caps the Commission is adopting, and the rates under those contracts will only be affected by the Commission's actions if they are required to reduce their site commissions. This adjustment means the Commission's benefit estimates are likely substantially understated. In computing benefits, the Commission relied on a lower-end interstate calling estimate of demand price elasticity of 0.2, and estimated annual benefits of approximately $1 million, or a present value over ten years of approximately $7 million. Following common convention, the Commission expresses own-price elasticities as positive numbers. An elasticity of 0.2 means that for each percentage point drop in rates, interstate inmate calling services demand would increase by 0.2%. The Commission's analysis is based on pre-COVID–19 data and makes no adjustments for the COVID–19 pandemic. However, if post-COVID–19, there is an increased reliance on telecommunications, and acceptance by correctional authorities of such use, the Commission's estimates would be understated. The present value of a 10-year annuity of $1 million at a 7% discount rate is approximately $7 million. Erring on the side of understatement, the Commission uses the 7% rate.

196. The Commission's estimation methodology remains essentially the same as in the *2020 ICS FNPRM,* with two exceptions. First, leaving intact the $0.21 per minute rate for interstate debit and prepaid calls from jails with average daily populations less than 1,000 excludes some call volume from the lower cap, lowering impacted call volumes. Prior to the Commission's actions today, the interim interstate rate caps for all interstate calls were $0.21 per minute for debit and prepaid calls and $0.25 per minute for collect calls. The new interim provider-related rate caps the Commission adopts today plus an allowance of $0.02 for contractually prescribed facility rate components adopted in this Report and Order result in the following five price declines from these rates (assuming all calls include the $0.02 allowance and no legally mandated site commission payment results in an allowance higher than $0.02 per minute, both of which will not be the case given that some facilities charge no site commissions and thus no facility cost allowance is permitted and some legally mandated site commission payments may exceed $0.02 per minute): For prison debit and prepaid calls, 33% (= ($0.21 − $0.14)/$0.21); for prison collect calls, 44% (= ($0.25 − $0.14)/$0.25); for jail debit and prepaid calls, for jails with average daily populations of 1,000 or more, 24% (= ($0.21 − $0.16)/$0.21), with no change for jails with average daily populations less than 1,000; and for jail collect calls, for jails with average daily populations of 1,000 or more, 36% (=

($0.25 − $0.16)/$0.25), and for jails with average daily populations less than 1,000, 16% (= ($0.25 − $0.21)/$0.25). The Commission cuts these price changes in half to allow for contracts with rates below the current caps. (This is equivalent to assuming prices are evenly distributed around the midpoint between current caps and the Commission's new caps.) Second, the Commission's estimate of inmate calling services price elasticity has been revised upward to 0.3. With these changes, the Commission estimates an annual welfare gain of $1.3 million, or a present value of $9 million from reduced inmate calling services rates. The Commission calculates the increase in surplus due to lower call prices separately for: Debit and prepaid calls from prisons; collect calls from prisons; debit and prepaid calls from jails with average daily populations of 1,000 or more; collect calls from jails with average daily populations of 1,000 or more; and collect calls from jails having average daily populations less than 1,000. The calculated surpluses equal one half of the product of three items: Minutes for each of the five call types; the demand elasticity estimate (0.3); and, respectively for each of the five call types, half the price decline from the earlier cap to the new interim cap. This is the area of the surplus triangle generated by an assumed price fall of one half the difference between the Commission's current caps and the new interim caps if demand and supply are linear and the final price represents costs. If the final price is still above costs, as is likely given the Commission's conservative assumptions, the surplus gain would be greater. Nonlinearities of both demand and supply have ambiguous impacts, so linearity is a good approximation in the absence of further information. The Commission obtains an increase in surplus of $1.7 million, and then calculate the present value of a 10-year annuity of $1.7 million at a 7% discount rate to be approximately $12 million.

197. *Inmate Calling Service Demand Elasticity.* When prices fall, quantity demanded increases. Demand elasticity is a measure of the sensitivity of quantity changes to changes in prices. For small changes, demand elasticity is the ratio of the percentage change in quantity to the percentage change in price, holding other things constant. However, for larger changes, again holding other things constant, demand elasticity is better estimated by the ratio of (1) the percentage change between the original quantity and the quantity midway between the original quantity and final quantity to (2) the percentage change between the original price and the price midway between the original price and the final price. This is because, due to the simple mathematics of percentage changes, for a large change in quantity or price, the elasticity of demand as measured by the simpler ratio can be materially different than the measure that would obtain if the change was reversed: A Change from 1 to 0.80 is a 20% decline, but a rise from a 0.80 price to 1.00 is a 25% rise. In the *2020 ICS FNPRM,* the Commission relied on demand elasticity estimated for voice telecommunications generally and chose a conservative estimate from these of 0.2. However, the record provides five pieces of direct evidence of the demand elasticity for inmate calling services, three of which are quite recent. These estimates, three of which are approximately 0.4 and two of which are approximately 0.3, lead the Commission to conservatively conclude inmate calling services have a demand elasticity of at least 0.3. For the first three of the Commission's estimates the Commission does not have sufficient data to ensure it is holding all other things constant, and for the fourth, from Securus's consultant FTI, the Commission cannot verify FTI's approach. Thus, all these estimates should be viewed as approximate. To avoid overstating benefits, the Commission uses the lower bound of these estimates rounded to the first decimal place.

198. First, a 57.5% drop in calling rates in New York state in 2007 resulted in an increase in call volumes of 36%, suggesting a demand elasticity of 0.38. The 0.38 elasticity calculation is as follows. The Commission normalizes or changes the units in which quantity and price are denominated, so the initial quantity is 100 and the initial price is $100. Using the quantity increase of 36% and price decline of 57.5%, the Commission can determine the new quantity and price in these new normalized units. Normalization works because the arc elasticity calculation depends on the change between quantities and prices and therefore yields the same measure regardless of the units used to measure quantity and price. A quantity increase of 36% implies a new quantity of 136 (= 100 * (1 + 36%)). A price decrease of 57.5% implies a new price of 42.5 (= 100 * (1 − 57.5%)). The quantity change using the midpoint formula is 30.5% (= (136 − 100)/((100 + 136)/2)). The price change using the midpoint formula is 80.7% (= (100 − 42.5)/((100 + 42.5)/2)). Thus, the elasticity is 0.38 (= 30.5%/80.7%). Second, 2018 data from the New York City contract suggests a demand elasticity of 0.37. The Commission estimates the elasticity based on the price of a 15-minute phone call, the price of which dropped from $1.20 = ($0.50 + (14 * $0.05)) to $0.45 = (15 * $0.03). Normalizing the initial quantity to 100 implies a new quantity of approximately 140 (= 100 * (1 + 40%)). The quantity change in the midpoint formula is 33.3% (= (140 − 100)/((100 + 140)/2)); the price change in the midpoint formula is 90.9% (= ($1.20 − $0.45)/(($1.20 + $0.45)/2)); therefore, the elasticity is 0.37 (= 33.3%/90.9%). Third, in 2019, in San Francisco, when calls became free, call volumes rose 81%, suggesting an elasticity of 0.29. The elasticity of 0.29 is derived as follows: Normalizing the initial San Francisco quantity to 100 and price to $100 implies the new quantity is 181, and the new price is zero. Thus, the quantity change in the midpoint formula is 57.7% (= (181 − 100)/((100 + 181)/2)); the price change in the midpoint formula is 200% (= (100 − 0)/((100 + 0)/2)); and the elasticity is 0.29 (= 57.7%/200%). Fourth, two estimates are calculated using evidence submitted by Securus. Securus's consultant FTI estimates price and quantity movements from the rate reduction seen in 2014 due to the Commission's earlier action. FTI's estimates suggest a demand elasticity of 0.31 and evidence from a recent pilot program conducted by Securus suggests an elasticity of 0.36. FTI initially used regression analysis to estimate an elasticity of 1.25 for interstate calling for large facilities. However, FTI was concerned the regression model did not account for a range of factors, the two most important of which were substitution from intrastate/local inmate calling services to interstate inmate calling services, said to increase call volumes by 28.3%, and unexplained Securus initiatives, said to increase call volumes by 14.9%. After making adjustments to control for the impact of these factors, FTI estimates that a 38.2% fall in interstate prices increased demand by 15.5%. From these measures the elasticity calculation is as follows. Normalizing the initial quantity and price to 100 implies the price fell to 61.8 (= 100 * (1 − 38.2%)) and the quantity rose to 115.5 (= (100 * (1 + 15.5%))). The midpoint formulas are 47.2% (= (100 − 61.8)/((100 + 61.8)/2)) for price; and 14.4% (= (115.5 − 100)/((100 + 115.5)/2)) for quantity. Thus, the elasticity is 0.31 (= 14.4%/47.2%). Securus reported a 27% increase in call length and a 50% reduction in per-

minute costs under six pilot programs that gave incarcerated persons and their families ''the option of paying a flat rate for a set number of calls per month.'' From this information, the Commission estimates an elasticity of 0.36. Normalizing the initial quantity and price to 100 implies a new quantity of 127 (= 100 * (1 + 27%)) and a new price of 50 (= 100 * (1 − 50.0%)). The quantity change in the midpoint formula is 23.8% (= (127 − 100)/((100 + 127)/2)); the price change in the midpoint formula is 66.7% (= (100 − 50)/((100 + 50)/2)); therefore, the elasticity is 0.36 (= 23.8%/66.7%). Securus only mentions call length. If there was an additional increase in frequency of calls, not accounted for in the provided measure, then this elasticity measure is underestimated. In both the New York City and San Francisco cases, the Commission's elasticity estimate is derived from a price decrease in which the initial price was closer to its current caps than will be the case for most of the contracts the Commission discusses. Economic theory suggests that the demand elasticity for contracts with prices above the Commission's caps will be greater than the New York City or San Francisco estimates. In general, demand elasticity changes at different points along the good's demand curve, generally rising with price. (This is most easily seen for a linear demand curve. For small changes, demand elasticity is defined as the product of the demand curve's slope and the ratio of price to quantity. When demand is linear, its slope is constant, thus any change in elasticity is determined by how the ratio of price to quantity changes, and this ratio always rises with price, since a rising price implies a falling quantity. For realistic nonlinear curves, for which quantity demanded is finite at a zero price and for which a price exists at which quantity demanded is zero, this relationship will hold at low and high prices; as price approaches zero, elasticity also approaches zero, while as price approaches the point at which quantity demanded is zero, elasticity becomes large.) Both the New York City and San Francisco cases considered price changes that happened along a portion of the demand curve where price was less than the Commission's rate caps. Therefore, these estimates were taken over a portion of the demand curve where elasticity was likely smaller than it is for the contracts with current rates above the Commission's caps. In addition, economic theory predicts that a good has higher elasticity if it accounts for more of a consumer's overall budget. Every estimate for inmate calling elasticity that the Commission has seen has been below 1. This implies that incarcerated people residing in facilities with higher calling rates end up spending more on calling services overall—even after accounting for differences in minutes purchased—than incarcerated people in facilities with lower calling rates. It follows that because incarcerated people in facilities with prices above the Commission's caps spend more on inmate calling than incarcerated people in New York City and San Francisco did, these incarcerated people will have a higher demand elasticity than incarcerated people in New York City and San Francisco.

199. The Commission also expects lower rates for calling services to yield additional benefits by reducing recidivism and crime and the need for child foster care. Several commenters point to the link between affordable inmate calling, improved mental health, and lower recidivism. According to the Episcopal Church and the United States Conference of Catholic Bishops, ''studies have shown that phone communication between families and their loved ones in prison and its associated mental health benefits make incarcerated people less likely to recidivate.'' Citing the California Department of Corrections, GTL also emphasizes the recidivism-reducing effect that affordable inmate calling services can have by helping incarcerated people prepare for life after confinement. In the *2020 ICS FNPRM,* the Commission estimated that the benefits from reduced recidivism would exceed $23 million over ten years. That estimate and the underlying reasoning continue to apply here. Although the Commission cannot pinpoint how much increased telephone contact would reduce recidivism among incarcerated people, the Commission estimates that even if its reforms resulted in only 100 fewer people being incarcerated due to recidivism, that would yield savings of approximately $3.3 million per year, or more than $23 million over 10 years in present value terms. Other savings would also be realized through reduced crime, and fewer children being placed in foster homes. The potential scale of fiscal saving—in addition to the immense social benefits—is suggested by the fact that, on average, state and local governments incur administrative and maintenance costs of $25,782 per foster placement.

200. *Costs of Reducing Rates for Interstate Inmate Calling Services Calls.* The Commission finds most credible the cost estimate used in the *2020 ICS FNPRM,* where the Commission estimated that the costs of reducing rates for interstate inmate calling services calls would amount to approximately $6 million. The Commission continues to assume smaller jails incur costs for all calls. Approximately 3,000 calling services contracts will need to be revised based on the rules the Commission adopts today, and a smaller number of administrative documents may need to be filed to incorporate lower interstate and international rates. The Commission uses an hourly wage of $46 for this work. The Commission examined several potential wage costs. For example, in 2020, the median hourly wage for computer programmers was $45.98, and for accountants and auditors, it was $39.26. The Commission chose the higher of these because of the specialized technical nature of the work. This rate does not include non-wage compensation. To capture this, the Commission marks up wage compensation by 46%. In March 2020, hourly wages for the civilian workforce averaged $25.91, and hourly benefits averaged $11.82, yielding a 46% markup on wages. Using this 46% markup on the $46 hourly wage, the Commission obtains an hourly rate of $67.16 (= $46 × 1.46), which the Commission rounds up to $70. The Commission estimates that these changes would require approximately 25 hours of work per contract. The Commission uses a $70 per hour labor cost to implement billing system changes, adjust contracts, and to make any necessary website changes. The estimated cost of these actions is $5,139,750 (= 2,937 (number of contracts) * 25 (hours of work per contract) * $70 per hour), which the Commission rounds up to $6 million to be conservative.

201. GTL argues that the Commission's estimate that it would take 25 hours of work per contract to revise calling services contracts is unrealistically low. According to GTL, its recent experience renegotiating contracts and implementing new rates in 2013 and 2015 indicates that the costs of such renegotiations are much higher than what the Commission estimated. GTL, however, did not provide any specific data about the costs it incurred and did not explain the methodology it used to arrive at its cost estimates. Accordingly, the Commission cannot reasonably assess the merits of GTL's objection, much less rely on its filings to provide a different estimate. As a result, the Commission finds that its earlier estimate that its reforms would cost providers approximately $6

million continues to provide the best information for the Commission to use in conducting its cost-benefit analysis.

202. *Anticipated Effect on Inmate Calling Services Investment.* The Commission's new rate caps will give inmate calling services providers the opportunity for full cost recovery and a normal profit. This full cost recovery includes operating costs, common costs, a return on capital investment, and capital replacement. By adopting the new interim rate caps, the Commission seeks to lower the price of interstate and international inmate calling services closer to the costs companies incur in providing the services. GTL argues that the Commission risks discouraging investment by ignoring components of providers' total costs, particularly capital costs, and setting inmate calling services rates too low. Securus claims that ''the proposed caps would not allow Securus to recover its costs at many jail facilities,'' and that the Commission has not accounted for ''the potential negative outcomes of degraded or lower quality service at some facilities if providers are not able to fully recover all of their costs.'' The Commission disagrees with both providers. The rate caps adopted in this Report and Order will allow every provider of calling services for incarcerated people to charge a price that recovers its direct costs—namely the costs directly attributable to producing all of the calls under a given contract—and that contributes to the recovery of the provider's indirect costs. With rates set to exceed estimated per-minute costs, including an allowance for the cost of capital, a provider should generate sufficient revenue to more than cover its total operating costs, thereby avoiding any disincentive to invest. As a fail-safe, however, the Commission's Report and Order also allows providers unable to recover their costs under the interim rate caps adopted herein to seek waivers of those caps.

203. Under the Commission's new policy, lower rates will enable more frequent inmate calling at lower prices. Incarcerated people and their families will enjoy added consumer surplus, measured by the difference between the lower price and their willingness to pay for the increased call volume. Some of the producer surplus, measured by the difference between the lower price and service providers' marginal costs, will be transferred from providers to incarcerated people and their loved ones, thereby reducing provider profits. As discussed above, surplus gains may come from other sources besides provider profits. Any addition to consumer surplus that did not exist previously as provider profit is a net economic gain. Neither gain will come at the expense of provider investment. And, as noted above, lower calling rates will facilitate increased communication between incarcerated people and their loved ones, which will benefit all incarcerated persons and their families by fostering essential family ties and also allowing incarcerated people to plan for successful reentry upon release.

G. Disability Access

204. The Commission is committed to using all of its authority to ensure that incarcerated people with hearing and speech disabilities have access to functionally equivalent telecommunication services to communicate with their families, loved ones, and other critical support systems. The Commission specifically ''acknowledge[s] the injustice facing the scores of incarcerated people with disabilities who lack access to functionally equivalent communications.'' In the *2020 ICS FNPRM,* the Commission asked for comment on the needs of incarcerated people with communication disabilities. As the Commission did in the *2015 ICS Order,* the Commission uses ''disabilities'' to include individuals who are deaf or hard of hearing, as well as those who are deafblind or have speech disabilities who also have policy concerns that are similar to those incarcerated people who are deaf or hard of hearing. The response was voluminous. The Commission received 17 substantive responses in the comment cycle, and 68 express comments. Commenters' concerns generally fall into two categories. First, commenters allege that some providers are not following the Commission's rules for the provision of TRS and complain about egregiously high rates and the lack of necessary equipment at correctional facilities. The Commission reminds providers that they are obligated to comply with the Commission's existing inmate calling services and related rules, including rules requiring that incarcerated people be provided access to certain forms of TRS, rate caps for calls using a text telephone (TTY) device, rules prohibiting charges for TRS-to-voice or voice-to-TTY calls, and rules requiring annual reporting of the number of TTY-based calls and any complaints. In addition, like other communications service providers, inmate calling services providers must ensure that the services and equipment provided for use by incarcerated people are accessible and usable by incarcerated people with disabilities (subject to achievability), including when legacy telephone services are discontinued and replaced with advanced services such as Voice over internet Protocol (VoIP).

205. Second, several commenters argue that TTY is an outdated mode of communication for individuals with disabilities. The Commission agrees that given the changes in telecommunications technologies in the past decades, TTYs have become little used because of the widespread transition to internet Protocol-based services. The Commission also understands that TTYs may not be suitable for individuals who, for example, use American Sign Language as their primary mode of communication. To fill the void and to better serve incarcerated people with disabilities, commenters advocate that the Commission require providers to offer other types of functionally equivalent telecommunication services. The Commission intends to address these concerns in the near future in a manner that best meets the needs of incarcerated persons who are deaf, hard of hearing, deafblind, or have a speech disability, consistent with the Commission's jurisdiction and legal authority. Accordingly, the Commission seeks detailed comment to further explore this issue in the Fifth FNPRM, published elsewhere in this issue of the **Federal Register**.

206. Public interest groups also urge the Commission to coordinate with the Department of Justice (DOJ). Through the Federal Bureau of Prisons, DOJ administers federal correctional facilities. In addition, DOJ has authority to adopt disability access regulations applicable to federal, state, and local government entities, including correctional authorities, under section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act (ADA). The Commission agrees that such coordination would be beneficial in assisting it with addressing issues such as those raised in the record and in the Fifth FNPRM, published elsewhere in this issue of the **Federal Register**. The Commission therefore directs CGB to make all efforts to coordinate with DOJ to ensure that incarcerated people with communications disabilities have access to communications ''in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services.''

H. Other Issues

1. Ancillary Fee Cap for Single-Call Services and Third-Party Transaction Fees

207. The Commission revises its rules for single-call services and third-party financial transaction fees to establish a uniform cap for both types of ancillary service fees for or in connection with interstate or international use of inmate calling services. Providers may no longer simply pass through third-party financial transaction fees, including those related to single-call services, to calling services consumers. The Commission sought comment in the *2020 ICS FNPRM* on whether its ancillary services fee caps, generally, should be lowered or otherwise modified. It also sought comment on what limits, if any, should be placed on third-party transaction fees that providers may pass on to consumers, including those related to single-call services. Single-call services are collect calls by incarcerated people that ''are billed through third-party billing entities on a call-by-call basis to parties whose carriers do not bill collect calls.'' Specifically, the Commission defined single-call services as ''billing arrangements whereby an Inmate's collect calls are billed through a third party on a per-call basis, where the called party does not have an account with the Provider of Inmate Calling Services or does not want to establish an account.'' Record evidence provided by the Prison Policy Initiative explains that Western Union, one of the most prominent third-party money transfer services used in this context, charges $6.95 to send money to GTL, the largest inmate calling services provider. The Commission therefore modifies its rules to limit the charges a provider may pass on to incarcerated people or their friends and family for third-party financial transaction fees associated with single-call services or for third-party money transfer service fees to $6.95 per transaction on an interim basis. These modifications are warranted to close loopholes in the Commission's rules. The Commission also clarifies that no third-party transaction fee may be charged when a third party is not involved directly in a particular transaction, *e.g.,* in the case of an automated payment where the consumer uses a credit card to fund or create an account.

208. In adopting the $6.95 interim cap for third-party transactions fees, including those appropriately charged for single-call services, the Commission declines to adopt at this time NCIC's proposal to cap these fees at the $3.00 cap for automated payment fees or the $5.95 cap for live agent fees, as applicable, pending further input on this proposal, which the Commission seeks in the Fifth FNPRM, published elsewhere in this issue of the **Federal Register**. For the same reasons, the Commission declines the proposal of ICSolutions, at this time, to limit third-party fees to the $5.95 live agent fee or the $3.00 automated payment fee. The Commission does not have sufficient evidence to adopt this proposal at this time, especially considering the data provided by the Prison Policy Initiative, which supports a higher rate ($6.95) than the highest rate NCIC's proposal would allow ($5.95). The Commission encourages all interested parties to comment further on the NCIC proposal. At this time, however, the Commission concludes that the number provided by the Prison Policy Initiative is a reasonable interim step that reduces excessively high third-party fees embedded in the total fees for single-call services and other third-party transactions.

209. *Single-Call Services.* In the *2015 ICS Order,* the Commission first adopted rules for single-call and related services, one of five permissible ancillary service charges that providers were allowed to assess on their customers in connection with inmate calling services. The Commission found that providers were using single-call services ''in a manner to inflate charges,'' and limited fees for single-call and related services to the exact transaction fee charged by the third party that bills for the call, ''with no markup, plus the adopted, per-minute rate.'' The ''third-party transaction'' referred to in section 64.6020(b)(2) of the Commission's rules for single-call services is the same type of ''third-party financial transaction'' referred to in section 64.6020(b)(5) of the Commission's rules. Because the D.C. Circuit stayed the rule on March 7, 2016, it never became effective; and the Commission reinstated it in the *2020 ICS Order on Remand* without revision.

210. In reinstating the single-call services rule, the Commission noted evidence in the record suggesting that certain providers may have entered into revenue-sharing arrangements with third parties in connection with single-call services that indirectly result in mark-up of fees charged by third-party processing companies and thus serve to circumvent the Commission's cap on pass-through fees for single-call services. This evidence included, for example, a then recent report prepared by the Prison Policy Initiative detailing the way some providers use these revenue-sharing arrangements with third parties, like Western Union and MoneyGram, to circumvent the caps on the fees they may charge for single-call services. The third-party financial provider charges the inmate calling services provider as much as $12 to send it a payment in connection with a single-call service or to fund an account. The inmate calling services provider then passes this fee on to the family of the incarcerated person who placed the call, and the two companies split the $12 fee, each getting $6. Some providers freely admit that they engage in these revenue-sharing schemes. Other providers have asked the Commission to address this practice and preclude it.

211. These ''egregiously-high third-party transaction fees'' are unconnected to legitimate costs of inmate calling services. The Commission, therefore, revises the single-call service rule and limit the third-party transaction fees providers may pass on with respect to single-call services to $6.95 per transaction. The Commission declines the suggestion of ICSolutions to delete the reference to single-call services from section 64.6020 of its rules and move it to a definition in section 64.6000. Section 64.6000 already contains a definition for this ancillary service charge. More broadly, however, ICSolutions appears to envision removing fees for single-call services from the list of permitted ancillary service charges. The Commission declines to do so at this time, but the Commission seeks comment on this proposal in the Fifth FNPRM, published elsewhere in this issue of the **Federal Register**. There is support in this record for this proposal. The Commission declines NCIC's request to clarify that the fee cap for single call services ''will continue to be $3.00'' or to prohibit transaction fees on all single calls. Nothing in the Commission's rules today provides for a $3.00 fee cap for single call services. And the Commission declines at this time to prohibit transaction fees for single calls pending further record development on this issue through today's Fifth FNPRM. The Commission has previously found single-call services to be among ''the most expensive ways to make a phone call.'' And record evidence suggests some providers still may steer families of incarcerated people to these more expensive calls. The Commission previously noted ''concerns that providers may be using consumer disclosures as an opportunity to funnel end users into more expensive service options, such as those that may require consumers to pay fees to third parties.'' Revising the rule applicable to single-

call services in this way will ensure that consumers of inmate calling services, who may be unaware of or confused by other available calling options, are protected from unjust and unreasonable charges and practices when seeking to remain in contact with incarcerated friends or family, particularly when they are initially incarcerated and this immediate single-call method of communication is even more critical.

212. *Third-Party Financial Transaction Fees.* For the same reasons the Commission limits the third-party transaction fee associated with single-call services, the Commission revises the rule pertaining to third-party financial transaction fees in connection with funding accounts directly with the inmate calling services provider that may be set up on behalf of incarcerated people by their friends and family or by the incarcerated people themselves. The same revenue-sharing practices that lead the Commission to revise the single-call services rule are implicated in connection with the third-party financial transaction fees rule. Although the *2020 ICS FNPRM* referred to ''third-party transaction fees,'' the third-party financial transaction fee described in section 64.6020(b)(5) is the same as the third-party transaction fee referred to in the rule pertaining to single-call services. Of course, as the Commission states, where no third party is involved in a call, no third-party fees may be charged.

213. The Commission sought comment in the *2015 ICS FNPRM* on a variety of issues relating to revenue-sharing, including how the Commission can ''ensure that these revenue sharing arrangements are not used to circumvent the Commission's rules prohibiting markups on third-party fees.'' In the *2020 ICS FNPRM,* the Commission sought further comment on the use of revenue-sharing arrangements and whether the Commission should clarify the third-party financial transaction fee rule. CenturyLink previously contended that the rule governing third-party financial transaction fees already implicitly prohibits providers from recovering higher fees from consumers as a result of revenue-sharing agreements. In the *2020 ICS FNPRM,* the Commission stated that ''[m]arking up third-party fees, whether directly or indirectly, is prohibited.''

214. Yet the record in this proceeding continues to suggest that the same types of revenue-sharing agreements that lead to indirect markups of third-party transaction fees for single-call services similarly lead to mark-ups of third-party financial transaction fees. Such practices serve to circumvent, either directly or indirectly, the limits placed by the Commission on ancillary service charges and lead to unjust and unreasonable charges. The Commission thus revises its rules relating to third-party financial transaction fees and limit the fees that a provider can pass through to a calling services consumer to $6.95. The Commission clarifies that it does not prohibit providers from entering into revenue-sharing agreements with third parties, despite at least one commenter proposal to do just that. But providers may not pass on fees exceeding $6.95 per transaction—whether or not they are associated with such agreements—to incarcerated people and their families.

2. Effect on State Regulation

215. As the Commission explained in the *2020 ICS Order on Remand,* where the Commission has jurisdiction under section 201(b) of the Act to regulate rates, charges, and practices of interstate communications services, ''the impossibility exception extends that authority to the intrastate portion of jurisdictionally mixed services 'where it is impossible or impractical to separate the service's intrastate from interstate components' and state regulation of the intrastate component would interfere with valid federal rules applicable to the interstate component.'' Consistent with that explanation and prior cases, the Commission exercises its authority under the Supremacy Clause of the U.S. Constitution to preempt state regulation of jurisdictionally mixed services but only to the extent that such regulation conflicts with federal law. To be clear, state regulation of jurisdictionally mixed services would not conflict with federal law if state regulation required rates at or below the federal rate caps. In such cases, the provider would need to comply with the lowest rate cap to comply with both federal and state requirements for jurisdictionally indeterminant services. Thus, state laws imposed on inmate calling services providers that do not conflict with those laws or rules adopted by the Commission are permissible. The interim reforms the Commission adopts in this Report and Order apply to interstate and international inmate calling services rates and certain ancillary services charges imposed for or in connection with interstate or international inmate calling services. To the extent that a call has interstate as well as intrastate components, the federal requirements will operate as ceilings limiting potential state action. To the extent a state allows or requires providers to impose or charge per-minute rates or fees for the affected ancillary services higher than the caps imposed by the Commission's rules, that state law or requirement is preempted except where a call or ancillary service fee is purely intrastate in nature, as the Commission did in the *2020 ICS FNPRM.* In connection with ancillary service charges, the Commission reminds providers that ''[t]o the extent a state allows or requires an inmate calling services provider to impose fees for ancillary services other than those permitted by its rules, or to charge fees higher than the caps imposed by its rules, that state law or requirement is preempted except where such ancillary services are provided only in connection with intrastate inmate calling services.'' To the extent that state law allows or requires providers to impose rates or fees lower than those in the Commission's rules, that state law or requirement is specifically not preempted by the Commission's actions here. For example, the Commission is aware that certain states have begun efforts to examine inmate calling services rates and charges subject to their jurisdiction. The Commission applauds these state initiatives, which appear consistent with its own efforts in this proceeding. The fact that the Commission is also examining inmate calling services rates and charges involving jurisdictionally mixed services in no way precludes the states from also adopting rules governing such services so long as the states' rules are not inconsistent with or conflict with federal law or policy.

3. Additional Data Collection

216. The Commission adopts a new data collection obligation to collect, in a more consistent and directed manner, the data and information necessary to respond to the various criticisms in the record about the imperfections and inconsistencies in the data from the Second Mandatory Data Collection. The *2020 ICS FNPRM* sought comment on whether and how the Commission should proceed with respect to any new data collection. The Commission agrees with commenters that a new collection must state more precisely what data the Commission seeks and how a provider should approximate or derive the type of data the Commission requests if it does not keep its records in such a manner. This is an essential prerequisite to adopting permanent interstate rate caps for both provider-related and facility-related costs. Accordingly, the Commission delegates authority to WCB and the Office of Economics and Analytics (OEA) to implement a Mandatory Data Collection, including

determining and describing the types of information required related to providers' operations, costs, demand, and revenues, consistent with the directives in this section. In addition, the Commission delegates authority to CGB to undertake, if necessary, a separate data collection related to inmate calling services providers' costs and other key aspects of their provision of TRS and other assistive technologies, in conjunction with the disability access issues the Commission explores in the accompanying Fifth FNPRM, published elsewhere in this issue of the **Federal Register**.

217. *Background.* The Commission has conducted two mandatory data collections related to inmate calling services in the past eight years—the 2013 First Mandatory Data Collection and the 2015 Second Mandatory Data Collection. The 2013 collection required providers to report actual and forecasted costs, separately for jails and prisons and at a holding company level; specific categories of costs, including telecom costs, equipment costs, security costs, and other specified costs; and information on site commissions, minutes of use, number of calls, number of facilities, and information on charges for ancillary services. The data collected from the 2015 Second Mandatory Data Collection form the basis for the interim rates caps the Commission adopts herein. To allow for consistent data reporting, the Commission directed WCB in both collections to develop a template for providers to use when submitting their data and to furnish providers with further instructions to implement the collection. The Commission also directed WCB to review the providers' submissions and delegated to WCB the authority to require providers to submit additional data as necessary to perform its review. For example, staff analysis of responses to the Second Mandatory Data Collection revealed numerous deficiencies and areas requiring clarification. WCB and OEA conducted multiple follow-up discussions with providers to supplement and clarify their responses resulting in direction to several providers to amend their submissions and respond to questions from staff.

218. In response to the *2020 ICS FNPRM* seeking comment on whether the Commission should collect additional data and, if so, what data it should collect, several parties support additional data collection. The Commission also sought comment on, among other things, whether providers should be required to update their responses to an additional data collection on a periodic basis. GTL, however, suggests that the Commission should avoid the burden of an additional data collection, asserting that there is no reason to believe that providers will report their costs differently than they have in the past. GTL argues that the Commission should allow the market to adjust to any rules adopted as a result of the *2020 ICS FNPRM* before imposing additional reporting requirements. GTL also suggests that relying on the Annual Reports that inmate calling services providers file pursuant to section 64.6000 of the Commission's rules would provide a less burdensome way of obtaining data and a better measure of rates in the marketplace.

219. *Mandatory Data Collection.* The Commission concludes that a Mandatory Data Collection is essential to enable it to adopt permanent interstate and international rate caps that more accurately reflect providers' costs than the interim rate caps the Commission adopts in this Report and Order. Such a data collection is also needed to enable the Commission to evaluate and, if warranted, revise the current ancillary service charge caps. Because of the adverse impact that unreasonably high rates and ancillary services charges have on incarcerated people and those family and loved ones they call, the Commission believes that the benefits of conducting a third collection far outweigh any burden on providers. Moreover, providers have long been on notice of the types of cost information the Commission intends to collect and will have ample time to consider how best to prepare to respond. The Commission delegates to WCB and OEA authority to implement this new data collection. The Commission directs them to develop a template and instructions for the collection to collect the information the Commission needs to protect consumers against unjust and unreasonable rates and ancillary services charges for interstate and international inmate calling services and to aid its continuing review of this unique inmate calling services marketplace that one provider quite aptly describes as ''nuanced and multilayered.''

220. Contrary to GTL's assertion, an additional data collection is warranted, particularly considering the deficiencies of its own and other providers' responses to the Second Mandatory Data Collection. The Commission is not persuaded by GTL's concern about the timing of an additional collection, as the potential benefits from expediting further reform far outweigh any burdens the collection may place on providers. The Commission's cost-benefit analysis shows substantial benefits are gained from lowering interstate and international inmate calling services rates towards costs. If, as appears likely, the interim price caps put in place today are still significantly above costs, then bringing rates down to costs will bring substantial further benefits. Finally, while the Annual Reports contain useful and relevant marketplace information on providers' rates and charges, the Commission disagrees with the contention that the Annual Reports provide sufficient data to establish just and reasonable interstate inmate calling services rates. As the Public Interest Parties explain, the Annual Reports only include information on rates and charges and not the type of cost data required to set cost-based rates.

221. *Details of Data Collection.* In the *2020 ICS FNPRM,* the Commission sought comment on whether it should consider other types of data that would more fully capture industry costs beyond the detailed and comprehensive data it had already collected. Securus asserts that the Commission should require providers to follow a standard cost-causation modeling methodology to attribute costs to specific products, and, where that is not feasible, properly allocate costs across the products in a cost-causative manner, to the extent possible. Securus contends that cost drivers should be incorporated into the cost attribution analysis, such as time-tracking by software developers, IT support tickets, and physical inventory of computing hardware. The Public Interest Parties contend that, among other things, the Commission should collect granular data with detailed components of direct and indirect costs, operations, and revenues, in addition to collecting costs at the facility level. In addition, they assert that the Commission should standardize a methodology for allocating indirect costs. The Public Interest Parties maintain that future data collections should require the submission of the costs of ancillary services and should be audited by an independent third party prior to submission to the Commission. They also assert that the Commission should collect data on marketplace trends, such as bulk purchasing at fixed monthly rates. The Public Interest Parties further argue that the Commission should require certification of the submitted cost data by the chief executive officer, chief financial officer, or other senior executive of the provider, as required for the Annual Reports. In addition, they assert that the Commission should take enforcement

action against any parties violating the Commission's rules well in advance of any future data collection.

222. Securus asks that the Commission provide more specific instructions on how to measure direct and indirect costs and contends that each company should be required to provide detailed work papers showing how it complied with the Commission's instructions. Pay Tel supports modifications to forms, instructions, and guidance governing future data collections as necessary ''to avoid the same or similar dataset issues currently presented.'' Pay Tel asserts that detailed instructions would guide providers when completing the data collection form, including by clearly and expressly defining terms that are crucial to the collection process. Pay Tel claims that many of the issues with the current dataset appear to have arisen due to differing provider interpretations of instructions and terms, and that the Commission should minimize the potential for such differing interpretations as much as possible.

223. The Commission directs WCB and OEA to consider all of the foregoing suggestions in designing the Mandatory Data Collection including considering whether to collect data for multiple years. They should also incorporate lessons learned from the two prior data collections to ensure that the Commission collects, to the extent possible, uniform cost, demand, and revenue data from each provider.

224. To ensure that the Commission has sufficient information to meaningfully evaluate each provider's operations, cost data, and methodology, the Commission directs WCB and OEA to collect, at a minimum, information designed to enable the Commission to:

- Quantify the relative financial importance of the different products and services in each provider's business portfolio, including revenues from products supplied by any corporate affiliates, and ensure that the provider's inmate calling services are not being used to subsidize the provider's, or any corporate affiliate's, other products or services;
- Quantify the relative financial importance of services, including revenues from each transmission service and ancillary service, included within the provider's inmate calling services operations;
- Measure the demand for the provider's inmate calling services (*e.g.,* in terms of paid and unpaid total minutes of use or completed calls);
- Calculate the provider's gross investment (gross book value of an asset, *i.e.,* prior to subtracting accumulated depreciation or amortization), accumulated depreciation or amortization, deferred state and federal income taxes, and net investment (net book value of an asset, *i.e.,* after subtracting accumulated depreciation or amortization) in tangible assets, identifiable intangible assets, and goodwill, including, but not limited to, the extent to which such intangible assets and goodwill were created internally as opposed to being generated through company acquisitions or asset purchases;
- Calculate the provider's recurring capital costs for depreciation and amortization, state and federal income tax, and interest, each disaggregated among appropriate categories, and its weighted average cost of capital, including capital structure, cost of debt, cost of preferred stock, and cost of equity;
- Calculate the provider's recurring operating expenses, at a minimum for maintenance and repair; billing, collection, and customer care; general and administrative; other overhead; taxes other than income tax; and bad debt, each disaggregated among appropriate categories;
- Ensure that the provider has directly assigned to its inmate calling services operations, and to its other operations, the investments and expenses that are directly attributable to those operations, as may be prescribed by WCB and OEA;
- Ensure that the provider has allocated to its inmate calling services operations, and to its other operations, common investments and expenses (*i.e.,* investment and expenses that are not directly assignable to inmate calling services or to any single non-inmate calling services line of business);
- Ensure that the provider has directly assigned to specific contracts or facilities investments and expenses directly attributable to inmate calling services to the extent feasible;
- Ensure that the provider has allocated any remaining unassigned inmate calling services and common investment and expenses to specific contracts or facilities using reasonable, cost-causative methods;
- Ensure that the provider has directly assigned any site commission payments to, or allocated any such payments between, its inmate calling services and its other operations using reasonable, cost-causative methods; and
- Ensure that the provider has followed any required instructions regarding the foregoing.

225. The Commission also delegates to WCB and OEA the authority to require providers to submit any additional information that they deem necessary to help the Commission formulate permanent rate caps or to revise its rules governing ancillary service charges. WCB and OEA shall have the authority to require each provider to fully explain and justify each step of its costing process and, where they deem it appropriate, to specify the methodology the provider shall use in any or all of those steps. WCB and OEA also shall have the authority to require any provider to clarify and supplement its response to this data collection where appropriate to enable the Commission to make a full and meaningful evaluation of the company's cost, demand, and revenue data and costing methodology. Each provider shall keep all records necessary to implement this collection, and all providers shall make such records available to the Commission upon request.

226. *Timeframes for Data Collection.* The Commission directs the template and instructions for the data collection to be completed for submission to the Office of Management and Budget (OMB) not later than 90 days after this Report and Order becomes effective. The Commission also directs WCB to require providers to respond within 120 days after WCB announces in a Public Notice that OMB has approved the new data collection, such announcement to occur no later than seven business days after receipt of OMB's approval. WCB may, however, grant an extension of the 120-day response deadline for good cause.

227. *Potential CGB Data Collection.* The Commission separately delegates authority to CGB to undertake a separate data collection related to inmate calling services providers' costs and other key aspects of their provision of TRS and other assistive technologies should CGB determine such a data collection is necessary to assist the Commission's consideration of the record obtained with respect to assistive technologies for incarcerated people pursuant to the Commission's accompanying Fifth FNPRM, published elsewhere in this issue of the **Federal Register**. To the extent CGB undertakes such data collection, the Commission delegates to it the authority to require providers to submit any additional information that it deems necessary to assist the Commission's consideration of reforms in this area. CGB shall also have the authority to require any provider to clarify and supplement its response to such data collection where appropriate.

4. Effective Dates

228. The Commission's actions in this Report and Order, including its new interim interstate and international rate caps, will take effect 90 days after notice of them is published in the **Federal Register**, except that the delegations of authority in Part III.H.3 shall take effect upon such publication, and the rules and requirements that require approval from OMB under the Paperwork Reduction Act shall be effective on the date specified in a notice published in the **Federal Register** announcing OMB approval. This 90-day timeframe is the same transition timeframe the Commission proposed in the *2020 ICS FNPRM,* and this period matches the timeframe the Commission adopted when providers first became subject to the current interim caps. The Commission received varying proposals for effective dates in response its proposed 90-day timeframe. Certain commenters argue for an effective date of 30 days after publication in the **Federal Register**, on the basis that providers have been on notice of the pending changes for some time and that any further delay will only add to the costs that incarcerated people and their families will bear. Other commenters propose an effective date beyond 90 days or advocate for a staggered approach that would allow more transition time for jails, arguing that this additional time is necessary to make billing system changes or to renegotiate contracts among private parties.

229. The Commission concludes that a 90-day timeframe for implementing the new interim provider-related and facility-related rate caps and other changes that do not require OMB approval strikes a reasonable balance between the competing interests. On the one hand, a rapid timeframe would help alleviate the burden of unreasonably high interstate and international rates on incarcerated people and those they call, a burden that the ongoing COVID–19 global pandemic has exacerbated. On the other hand, the record shows that providers and correctional officials will need more than 30 days to execute any contractual amendments necessary to implement the new interstate and international rate caps and otherwise adapt to those caps. Parties seeking a longer transition period rely primarily on the difficulties jails with average daily populations less than 1,000 may encounter in implementing relatively sweeping changes to the rate cap structure. The only rate cap change applicable to those jails, however, will be to reduce the per-minute charges for interstate collect calls from $0.25 per minute to $0.21 per minute. Further, as the Commission recognized in the *2020 ICS FNPRM,* 90 days after publication in the **Federal Register** appears to have been sufficient for implementation of the rate cap changes adopted in the *2013 ICS Order.* In view of the foregoing considerations, the Commission finds that a 90-day transition period after publication in the **Federal Register** appropriately balances the need for expedited reform with the difficulties of adapting to its new rules. The Commission rejects GTL's request that the Commission defer the effective date of the changes to the provider-related and facility-related rate cap components (which do not require OMB approval) until after OMB approves the new disclosure requirements affecting how providers bill consumers for calling services. GTL makes no showing as to why it cannot implement the changes to the rate caps components within 90 days after publication of notice of them in the **Federal Register** or why implementing them at a later date would be fair to calling services consumers. The Commission notes, however, any provider that wishes to avoid separate implementation dates is free to voluntarily implement the new disclosure requirements prior to their being approved by OMB.

230. The Commission finds good cause for having its delegations of authority to WCB, OEA, and CGB take effect immediately upon publication of notice of them in the **Federal Register**. Making the delegations effective at that time will enable WCB and OEA to move as expeditiously as practicable toward finalizing the Mandatory Data collection and thereby reduce the time it will take the Commission to set permanent rate caps for interstate and international inmate calling services and, if appropriate, revise the current ancillary service fee caps. Similarly, making the delegation to CGB effective upon publication in the **Federal Register** will enable CGB to move forward with any data collection as soon as practicable once it receives comments on the Fifth FNPRM, published elsewhere in this issue of the **Federal Register**. Given the importance of these areas to incarcerated people, including those with communication disabilities, any unnecessary delay in these initiatives would be inconsistent with the public interest.

5. Rule Revisions

231. The Commission makes two non-substantive changes to its inmate calling services rules. First, the Commission amends section 64.6000(g) of its rules to fix a typographical error. Currently, this section erroneously uses the word ''though'' instead of ''through'' in defining ''Debit Calling'' whereas a parallel definition for ''Prepaid Calling'' correctly uses ''through.'' The Commission therefore changes ''though'' to ''through'' in section 64.6000(g). Second, the Commission removes the last sentence of section 64.6000(c) of its rules. That sentence references section 64.6010, which previously was removed and reserved for future use.

232. The Commission finds good cause to make these revisions without notice and comment. The Administrative Procedure Act permits agencies to issue rule changes without notice and comment ''when the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' The Commission finds good cause here because the rule changes are editorial and non-substantive. The rule changes correct a typographical error and conform the Commission's rules to previous rule amendments. The Commission need not seek comment on rule changes to ''ensure consistency in terminology and cross references across various rules or to correct inadvertent failures to make conforming changes when prior rule amendments occurred.''

IV. Severability

233. All of the rules and policies that are adopted in this Third Report and Order and Order on Reconsideration are designed to ensure that rates for inmate calling services are just and reasonable while also fulfilling the Commission's obligations under sections 201(b) and 276 of the Act. Each of the separate reforms the Commission undertakes here serves a particular function toward these goals. Therefore, it is the Commission's intent that each of the rules and policies adopted herein shall be severable. If any of the rules or policies is declared invalid or unenforceable for any reason, the remaining rules shall remain in full force and effect.

V. Procedural Matters

234. *People with Disabilities.* The Commission asks that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

235. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of

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

236. *Supplemental Final Regulatory Flexibility Act Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis (FRFA) relating to the Third Report and Order and Order on Reconsideration. The FRFA is set forth below.

237. *Final Paperwork Reduction Act Analysis.* The Third Report and Order contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198; *see* 44 U.S.C. 3506(4), the Commission previously sought comment on how it will further reduce the information collection burden for small business concerns with fewer than 25 employees.

VI. Supplemental Final Regulatory Flexibility Analysis

A. Need for, and Objectives of, the 2021 Third Report and Order

247. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Second Further Notice of Proposed Rulemaking in the Commission's Inmate Calling Services proceeding. The Commission sought written public comment on the proposals in that document, including comment on the IRFA. The Commission did not receive comments directed toward the IRFA. Thereafter, the Commission issued a Final Regulatory Flexibility Analysis (FRFA) conforming to the RFA. This Supplemental FRFA supplements that FRFA to reflect the actions taken in the Third Report and Order and conforms to the RFA.

248. The Third Report and Order adopts lower per-minute interim interstate provider-related rate caps of $0.12 per minute for prisons and $0.14 per minute for larger jails, respectively, until the Commission completes its evaluation of a new mandatory data collection and adopts permanent rate caps. Next, it reforms the current treatment of site commission payments by adopting facility-related rate components to permit recovery only of the portions of such payments estimated, on the present record, to be directly related to inmate calling services and requires them to be separately listed on bills, if charged. Where site commission payments are mandated pursuant to state statute, or law or regulation and adopted pursuant to state administrative procedure statutes where there is notice and an opportunity for public comment that operate independently of the contracting process between correctional institutions and providers (the Legally Mandated facility rate component), providers may pass these payments through to consumers, without any markup, as an additional component of the new interim interstate per-minute rate cap. Where site commission payments result from contractual obligations reflecting negotiations between providers and correctional facilities arising from the bidding and subsequent contracting process (the Contractually Prescribed facility rate component), providers may recover up to $0.02 per minute to account for these costs at prisons and larger jails. To promote increased transparency, the Third Report and Order requires providers to clearly label a Legally Mandated or Contractually Prescribed facility rate component, as applicable, in the rates and charges portion of a consumer's bill, including disclosing the source of such provider's obligation to pay that facility-related rate component. Next, the Third Report and Order eliminates the current interim interstate collect calling rate cap, resulting in a single uniform interim interstate maximum rate cap of $0.21 per minute for calls from jails with average daily populations below 1,000. The Third Report and Order emphasizes that the sum of the provider-related and facility-related rate components for prisons and larger jails may not result in a higher permissible total rate cap for any interstate call from any size facility than the $0.21 per minute cap that existed for interstate debit and prepaid calls before today and that continues to apply to all providers for all types of calls from jails with average daily populations below 1,000. The Third Report and Order also caps international inmate calling services rates for the first time, adopts a new mandatory data collection to obtain more uniform cost data based on consistent allocation methodologies to determine fair permanent cost-based rates for facilities of all sizes, and reforms the ancillary service charge rules, capping third-party transaction fees related to calls that are billed on a per-call basis and related to transferring or processing financial transactions. Finally, the Third Report and Order reaffirms providers' current obligations regarding functionally equivalent access for incarcerated people with hearing and speech disabilities.

249. Regarding access to inmate calling services by people who are deaf, hard of hearing or deafblind, or have speech disabilities, the Third Report and Order reminds providers that they are obligated to comply with the existing inmate calling services and related rules, including rules requiring that incarcerated people be provided access to certain forms of telecommunications relay service (TRS), rate caps for calls using a text telephone (TTY) device, rules prohibiting charges for TRS-to-voice or voice-to-TTY calls, and rules requiring annual reporting of the number of TTY-based calls and any complaints. In addition, inmate calling services providers must ensure that the services and equipment provided for use by incarcerated people are accessible and usable by incarcerated people with communication disabilities (subject to achievability), including when legacy telephone services are discontinued and replaced with advanced services such as Voice over internet Protocol (VoIP).

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

250. The Commission did not receive comments specifically addressing the rules and policies proposed in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

251. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

252. 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 rules adopted herein. 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 Small Business Administration (SBA).

253. *Small Businesses.* Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.

254. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

255. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated for the entire year. Of that total, 3,083 operated with fewer than 1,000 employees. Thus under this category and the associated size standard, the Commission estimates that the majority of local exchange carriers are small entities.

256. *Incumbent Local Exchange Carriers (incumbent LECs*). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by its actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees. Thus, using the SBA's size standard the majority of incumbent LECs can be considered small entities.

257. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

258. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers and under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on these data, the Commission concludes that the majority of Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

259. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

260. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under

that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by the Commission's action.

261. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by the Commission's action.

262. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the Commission's action.

263. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers, a group that includes inmate calling services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 535 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 531 have 1,500 or fewer employees and four have more than 1,5000 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by the Commission's action.

264. *TRS Providers.* TRS can be included within the broad economic category of All Other Telecommunications. Ten providers currently receive compensation from the TRS Fund for providing at least one form of TRS: ASL Services Holdings, LLC (GlobalVRS); Clarity Products, LLC (Clarity); ClearCaptions, LLC (ClearCaptions); Convo Communications, LLC (Convo); Hamilton Relay, Inc. (Hamilton); MachineGenius, Inc. (MachineGenius); MEZMO Corp. (InnoCaption); Sorenson Communications, Inc. (Sorenson); Sprint Corporation (Sprint); and ZP Better Together, LLC (ZP Better Together).

265. *All Other Telecommunications.* The ''All Other Telecommunications'' category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with annual receipts of $35 million or less. For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than $25 million and 15 firms had annual receipts of $25 million to $49,999,999. Thus, the Commission estimates that the majority of ''All Other Telecommunications'' firms potentially affected by its actions can be considered small. Under this category and the associated small business size standard, a majority of the ten TRS providers can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

266. The Third Report and Order requires providers to examine site commission payments in order to recover only the portions of such payments estimated to be directly related to inmate calling services and to separately list these charges on consumers' bills. Providers must determine whether a site commission payment is either (1) mandated pursuant to state statute, law or regulation adopted pursuant to state administrative procedure statutes where there is notice and an opportunity for public comment and that operates independently of the contracting process between correctional institutions and providers (the Legally Mandated facility rate component), or (2) results from contractual obligations reflecting negotiations between providers and correctional facilities arising from the bidding and subsequent contracting process (the Contractually Prescribed facility rate component). For Legally Mandated site commission payments, providers may pass these payments through to consumers without any markup, as an additional component of the new interim interstate per-minute rate cap. For Contractually Prescribed site commission payments, providers may recover an amount up to $0.02 per minute to account for these costs. To promote increased transparency, the Third Report and Order requires providers to clearly label a Legally Mandated or Contractually Prescribed facility rate component, as applicable, in the rates and charges portion of a consumer's bill, including disclosing the source of such provider's obligation to pay that facility-related rate component.

267. The Third Report and Order adopts a waiver process for providers if they can show that the applicable total rate per minute and ancillary service charge caps do not permit them to recover their costs of providing interstate and international calling services as well as minimum requirements for such a showing. It also adopts a new mandatory data collection to obtain more uniform cost data based on consistent prescribed allocation methodologies to determine fair permanent cost-based rates for facilities of all sizes.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

268. 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 and reporting requirements under the rules 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.''

269. The Commission's rate caps differentiate between prisons, larger jails, and jails with average daily populations below 1,000 to account for differences in costs incurred by providers servicing these different facility types. The Commission adopts new interim interstate provider-related rate caps for prisons and larger jails and for collect calls from jails with average daily populations below 1,000. The Commission believes these actions properly recognize that, in comparison to prisons and larger jails, jails with average daily populations below 1,000 may be relatively high-cost facilities for providers to serve. The Commission also adopts rate caps for international calls originating from facilities of any size.

270. The Commission adopts new interim interstate facility-related rate components for prisons and larger jails to allow providers to recover portions of site commission payments estimated to be directly related to the provision of inmate calling services and to separately list these charges on consumers' bills. Providers must determine whether a site commission payment is either (1) mandated pursuant to state statute, or law or regulation and adopted pursuant to state administrative procedure statutes where there is notice and an opportunity for public comment that operates independently of the contracting process between correctional institutions and providers (Legally Mandated facility rate component), or (2) results from contractual obligations reflecting negotiations between providers and correctional facilities arising from the bidding and subsequent contracting process (the Contractually Prescribed facility rate component). For Legally Mandated site commission payments, providers may pass these payments through to consumers without any markup, as an additional component of the new interim interstate per-minute rate cap. For Contractually Prescribed site commission payments, providers may recover an amount up to $0.02 per minute to account for these costs. To promote increased transparency, the Third Report and Order requires providers to clearly label a Legally Mandated or Contractually Prescribed facility rate component, as applicable, in the rates and charges portion of a consumer's bill, including disclosing the source of such provider's obligation to pay that facility-related rate component.

271. The Commission recognizes that it cannot foreclose the possibility that in certain limited instances, the interim rate caps may not be sufficient for certain providers to recover their costs of providing interstate and international inmate calling services. To minimize the burden on providers, the Commission adopts a waiver process that allows providers to seek relief from its rules at the facility or contract level if they can demonstrate that they are unable to recover their legitimate inmate calling services-related costs at that facility or for that contract. The Commission will review submitted waivers and potentially raise each applicable rate cap to a level that enables the provider to recover the costs of providing inmate calling services at that facility. This waiver opportunity should benefit any inmate calling services providers that may be small businesses and that are unable to recover their interstate and international costs under the new interim rate caps.

G. Report to Congress

272. The Commission will send a copy of the Third Report and Order, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the Third Report and Order, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Third Report and Order and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

VII. Ordering Clauses

273. Accordingly, *It is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i)–(j), 201(b), 218, 220, 225, 255, 276, 403, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201(b), 218, 220, 225, 255, 276, 403, and 617, this Third Report and Order *is adopted*.

274. *It is further ordered* that, pursuant to the authority contained in sections 1, 2, 4(i)–(j), 201(b), 218, 220, 225, 255, 276, 403, and 716, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201(b), 218, 220, 225, 255, 276, 403, and 617, this Third Report and Order, including the amendments to sections 64.6000, 64.6020, and 64.6030, of the Commission's rules, *shall be effective* ninety (90) days after publication in the **Federal Register**, except that the delegations of authority to the Wireline Competition Bureau, the Office of Economics and Analytics, and the Consumer and Governmental Affairs Bureau shall be effective upon publication in the **Federal Register**. Sections 64.6110 and 64.6120 contain new or modified information collection requirements that require review by OMB under the PRA. The Commission directs the Wireline Competition Bureau to announce the effective date for those information collections in a document published in the **Federal Register** after the Commission receives OMB approval, and directs the Wireline Competition Bureau to cause sections 64.6110 and 64.6120 to be revised accordingly.

275. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Third Report and Order including the Initial Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene Dortch,

Secretary.

List of Subjects in 47 CFR Part 64

Communications, Communications common carriers, Communications equipment, Computer technology, Individuals with disabilities, Prisons, Reporting and recordkeeping requirements, Security measures, Telecommunications, Telephone, Waivers.

Final Rules

For the reasons set forth above, the Federal Communications Commission amends part 64, subpart FF, of Title 47 of the Code of Federal Regulations as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 is amended 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), 255, 262, 276, 403(b)(2)(B), (c), 616, 620, 716, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

■ 2. Amend § 64.6000 by revising paragraphs (c) and (g) and adding paragraphs (v), (w), and (x) to read as follows:

§ 64.6000 Definitions.

* * * * *

(c) *Average Daily Population (ADP)* means the sum of all Inmates in a facility for each day of the preceding calendar year, divided by the number of days in the year.

* * * * *

(g) *Debit Calling* means a presubscription or comparable service which allows an Inmate, or someone acting on an Inmate's behalf, to fund an account set up through a Provider that can be used to pay for Inmate Calling Services calls originated by the Inmate;

* * * * *

(v) *Provider-Related Rate Component* means the interim per-minute rate specified in either § 64.6030(b) or (c) that Providers at Jails with Average Daily Populations of 1,000 or more Inmates and all Prisons may charge for interstate Collect Calling, Debit Calling, Prepaid Calling, or Prepaid Collect Calling.

(w) *Facility-Related Rate Component* means either the Legally Mandated Facility Rate Component or the Contractually Prescribed Facility Rate Component identified in § 64.6030(d).

(x) *International Destination* means the rate zone in which an international call terminates. For countries that have a single rate zone, *International Destination* means the country in which an international call terminates.

■ 3. Amend § 64.6020 by revising paragraphs (b)(2) and (5) to read as follows:

§ 64.6020 Ancillary Service Charge.

* * * * *

(b) * * *

(2) For Single-Call and Related Services—$6.95 per transaction, plus the adopted, per-minute rate;

* * * * *

(5) For Third-Party Financial Transaction Fees—$6.95 per transaction.

■ 4. Revise § 64.6030 to read as follows:

§ 64.6030 Inmate Calling Services interim rate caps.

(a) For all Jails with Average Daily Populations of less than 1,000 Inmates, no Provider shall charge a rate for interstate Collect Calling, Debit Calling, Prepaid Calling, or Prepaid Collect Calling in excess of $0.21 per minute.

(b) For all Jails with Average Daily Populations of Inmates of 1,000 or greater, no Provider shall charge a Provider-Related Rate Component for interstate Collect Calling, Debit Calling, Prepaid Calling, or Prepaid Collect Calling in excess of $0.14 per minute.

(c) For all Prisons, no Provider shall charge a Provider-Related Rate Component for interstate Collect Calling, Debit Calling, Prepaid Calling, or Prepaid Collect Calling in excess of $0.12 per minute.

(d) For all Jails with Average Daily Populations of Inmates of 1,000 or greater, and for all Prisons, Providers may recover the applicable Facility-Related Rate Component as follows:

(1) Providers subject to an obligation to pay Site Commissions by state statutes or laws and regulations that are adopted pursuant to state administrative procedure statutes where there is notice and an opportunity for public comment such as by a state public utility commission or similar regulatory body with jurisdiction to establish inmate calling services rates, terms, and conditions and that operate independently of the contracting process between Correctional Institutions and Providers, may recover the full amount of such payments through the Legally Mandated Facility Rate Component subject to the limitation that the total rate (Provider-Related Rate Component plus Facility-Related Rate Component) does not exceed $0.21 per minute.

(2) Providers that pay Site Commissions pursuant to a contract with the Jail or Prison may recover up to $0.02 per minute through the Contractually Prescribed Facility Rate Component except where the Provider's total Contractually Prescribed Facility Rate Component results in a lower per-minute rate than $0.02 per minute of use. In that case, the Provider's Contractually Prescribed Facility Rate Component is limited to the actual amount of its per-minute Site Commission payment up to a maximum of $0.02 per minute. Providers shall calculate their Contractually Prescribed Facility Rate Component to three decimal places.

(e) No Provider shall charge, in any Prison or Jail it serves, a per-minute rate for an International Call in excess of the applicable interstate rate cap set forth in paragraphs (a), (b), (c), and (d) of this section plus the average amount that the provider paid its underlying international service providers for calls to the International Destination of that call, on a per-minute basis. A Provider shall determine the average amount paid for calls to each International Destination for each calendar quarter and shall adjust its maximum rates based on such determination within one month of the end of each calendar quarter.

■ 5. Delayed indefinitely, revise § 64.6110 to read as follows:

§ 64.6110 Consumer disclosure of Inmate Calling Services rates.

(a) Providers must clearly, accurately, and conspicuously disclose their interstate, intrastate, and international rates and Ancillary Service Charges to consumers on their websites or in another reasonable manner readily available to consumers. In connection with international rates, providers shall also separately disclose the rate component for terminating calls to each country where that provider terminates International Calls.

(b) Providers must clearly label the Facility-Related Rate Component (either the Legally Mandated Facility Rate Component or the Contractually Prescribed Facility Rate Component) identified in § 64.6030(d) as a separate line item on Consumer bills for the recovery of permissible facility-related costs contained in Site Commission payments. To be clearly labeled, the Facility-Related Rate Component shall:

(1) Identify the Provider's obligation to pay a Site Commission as either imposed by state statutes or laws or regulations that are adopted pursuant to state administrative procedure statutes where there is notice and an opportunity for public comment that operates independently of the contracting process between Correctional Institutions and Providers or subject to a contract with the Correctional Facility;

(2) Where the Site Commission is imposed by state statute, or law or regulation adopted pursuant to state administrative procedure statutes where there is notice and an opportunity for public comment and that operates independently of the contracting process between Correctional Institutions and Providers, specify the relevant statute, law, or regulation.

(3) Identify the amount of the Site Commission payment, expressed as a per-minute or per-call charge, a percentage of revenue, or a flat fee; and

(4) Identify the amount charged to the Consumer for the call or calls on the bill.

(c) Providers must clearly label all charges for International Calls in § 64.6030(e) as a separate line item on Consumer bills. To be clearly labeled, providers must identify the amount charged to the Consumer for the International Call, including the costs paid by the provider to its underlying international providers to terminate the International Call to the international destination of the call.

(d) Paragraphs (a), (b), and (c) of this section contain new or modified information collection requirements adopted in FCC 21–60. Compliance with these information collection requirements will not be required until after approval by the Office of Management and Budget. Providers will be required to comply with these information collection requirements immediately upon publication by the Commission of a document in the **Federal Register** announcing Office of Management and Budget approval and revising this paragraph accordingly.

■ 6. Delayed indefinitely, add § 64.6120 to subpart FF to read as follows:

§ 64.6120 Waiver process.

(a) A Provider may seek a waiver of the interim rate caps established in § 64.6030 and the Ancillary Service Charge fee caps on a Correctional Facility or contract basis if the interstate or international rate caps or Ancillary Service Charge fee caps prevent the Provider from recovering the costs of providing interstate or international Inmate Calling Services at a Correctional Facility or at the Correctional Facilities covered by a contract.

(b) At a minimum, a Provider seeking such a waiver is required to submit:

(1) The Provider's total company costs, including the nonrecurring costs of the assets it uses to provide Inmate Calling Services, and its recurring operating expenses for these services at the Correctional Facility or under the contract;

(2) The methods the provider used to identify its direct costs of providing interstate and international Inmate Calling Services, to allocate its indirect costs between its Inmate Calling Services and other operations, and to assign its direct costs to and allocate its indirect costs among its Inmate Calling Services contracts and Correctional Facilities;

(3) The Provider's demand for interstate and international Inmate Calling Services at the Correctional Facility or at each Correctional Facility covered by the contract;

(4) The revenue or other compensation the Provider receives from the provision interstate and international Inmate Calling Services, including the allowable portion of any permissible Ancillary Service Charges attributable to interstate or international inmate calling services, at the Correctional Facility or at each Correctional Facility covered by the contract;

(5) A complete and unredacted copy of the contract for the Correctional Facility or Correctional Facilities, and any amendments to such contract;

(6) Copies of the initial request for proposals and any amendments thereto, the Provider's bid in response to that request, and responses to any amendments (or a statement that the Provider no longer has access to those documents because they were executed prior to the date this section is codified.

(7) A written explanation of how and why the circumstances associated with that Correctional Facility or contract differ from the circumstances at similar Correctional Facilities the Provider serves, and from other Correctional Facilities covered by the same contract, if applicable; and

(8) An attestation from a company officer with knowledge of the underlying information that all of the information the provider submits in support of its waiver request is complete and correct.

(c) A Provider seeking a waiver pursuant to paragraph (a) of this section must provide any additional information requested by the Commission during the course of its review.

(d) Paragraphs (a), (b), and (c) of this section contain new or modified information collection requirements adopted in FCC 21–60. Compliance with these information collection requirements will not be required until after approval by the Office of Management and Budget. Providers will be required to comply with these information collection requirements immediately upon publication by the Commission of a document in the **Federal Register** announcing Office of Management and Budget approval and revising this paragraph accordingly.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A

Analysis of Responses to the Second Mandatory Data Collection

A. Introduction

1. The Commission determines the interim interstate provider-related rate caps by developing separate zones of reasonableness based on data submitted by inmate calling services providers in response to the Second Mandatory Data Collection. In this Appendix, the Commission frequently refers to inmate calling services providers by short names or acronyms. These providers are: ATN, Inc. (ATN); CenturyLink Public Communications, Inc. (CenturyLink); Correct Solutions, LLC (Correct); Combined Public Communications (CPC); Crown Correctional Telephone, Inc. (Crown); Global Tel*Link Corporation (GTL); ICSolutions, LLC (ICSolutions); Legacy Long Distance International, Inc. (Legacy); NCIC Inmate Communications (NCIC); Pay Tel Communications, Inc. (Pay Tel); Prodigy Solutions, Inc. (Prodigy); and Securus Technologies, LLC (Securus). The goal of the Commission's approach is to estimate the mean contract cost per paid minute while taking into account providers' costs of providing inmate calling services as reported in response to the Second Mandatory Data Collection as well as the limitations of those data and concerns raised by stakeholders. The Commission establishes the bounds of the zones using a variety of standard data and economic methods. The Commission's overall approach is described in this Introduction, with additional details and the results discussed in the remainder of this Appendix and the Appendices that follow.

2. The Commission begins by collecting certain cost and revenue data related to inmate calling services from providers through the Commission's Second Mandatory Data Collection. Next, following a standard approach to data cleaning, the Commission then reviews the responses to the Second Mandatory Data Collection to identify submissions with duplicative, missing, or anomalous data. The Commission then fixes or removes these observations as appropriate, and create new variables that will be used in its analysis. Created variables include, for example, facility size categories and rurality (based on geocoding). These new variables are based on information submitted in the Second Mandatory Data Collection and described in greater detail below. At the core of its initial analysis and creation of new variables is the selection of a suitable mechanism to allocate reported indirect costs. Allocating indirect costs is critical to ensuring that the estimates capture the providers' actual costs associated with providing inmate calling services to the greatest possible extent. These steps result in a dataset that serves as the basis for the remainder of its analyses. Data cleaning and cost allocation play a critical role in ensuring appropriate evaluation of the data and lead to results that better reflect the realities of the inmate calling services market.

3. Using this dataset, the Commission first estimates the upper bounds of the zones of reasonableness by calculating, for both prisons and larger jails, the mean per-minute contract costs plus one standard deviation. Incorporating a standard deviation into each upper bound recognizes that providers' costs vary but places a limit on how much costs may differ among providers. Under a normal distribution, 68% of providers would fall within one standard deviation of the mean. The Commission recognizes, however, that per-minute costs may be affected by the

particular characteristics of a facility or contract, such as size or location. With statistical modeling, the Commission can identify how well various reported characteristics predict the per-minute costs of a contract. The results of this analysis can inform which characteristics, if any, may influence its approach to setting interim rates.

4. To estimate the lower bound of each zone of reasonableness, the Commission compares results from standard statistical tests to identify outliers within the dataset. An outlier is a value within the data that ''lies an abnormal distance from other values.'' After removing the outliers, the Commission finds there are still contracts that have reported per-minute costs that are significantly higher than other providers. To bring these contracts into alignment with comparable contracts, the Commission employs a statistical method that replaces the cost information for the abnormally high-cost contracts with cost information from contracts that have similar characteristics. The Commission uses these adjusted data to calculate the mean per-minute cost plus one standard deviation. From between the upper and lower bounds, the Commission then selects interim interstate provider-related rate caps for prisons and larger jails in accord with its analysis. The Commission concludes its analysis by testing whether these interim rate caps will allow providers to recover the costs of providing calling services to incarcerated people. In the remainder of this Appendix, the Commission describes the Second Mandatory Data Collection in greater detail, specific steps taken to clean the data, and initial data analysis to allocate indirect costs and explore the data. In addition, the Commission selects an appropriate cost allocator and assess the commercial viability of contracts under the new interim interstate provider-related rate caps.

5. *Collecting Inmate Calling Services Data.* The Commission's efforts to reform inmate calling services rates begin with collecting the cost, revenue, and other data reported by providers. The Commission initiated the Second Mandatory Data Collection in order to obtain more comprehensive and detailed data about inmate calling services providers, with the goal of setting more accurate cost-based rates. This effort included seeking cost data at the level of the contract and seeking information on cost components such as credit card processing fees, payments to affiliates, and the direct costs for collect calls. Further, the Second Mandatory Data Collection was unprecedented in how it disaggregates minutes, calls, site commissions, and revenues. Unlike past collections, providers reported both paid and unpaid minutes, and reported breakdowns of minutes and calls by payment type (debit/prepaid and collect calls) and by regulatory jurisdiction. Providers also reported site commissions in fixed and variable components, and disaggregated revenues between inmate calling services revenues and ancillary service revenues. These data, coupled with key attributes, such as average daily population (ADP), facility type (prison or jail), and facility locations, provide a detailed view of the inmate calling services industry.

6. Appropriate use of these data, however, requires awareness of the data's flaws. Two difficulties stand out. First, different providers record and interpret costs differently. This makes it impossible to ensure an apples-to-apples comparison among providers. Second, providers have strong incentives to overstate costs because higher costs will increase any rate caps the Commission bases upon those costs, resulting in higher prices. In fact, these two difficulties may be the reason why the data do not support two widely believed stylized facts: that providers' prison costs per minute are generally lower than their jail costs per minute; and that providers' unit costs tend to rise as the size of a correctional institution falls. Consequently, averaging reported costs, as allocated between prison and jail contracts, shows prisons to be more expensive to serve on a per-minute basis than jails.

7. However, careful analysis can identify such biases, and correct for them (*see* Appendix C). A similar distortion can occur if different providers have different approaches to reporting their costs. One provider's costs could, through the averaging process, overstate the costs of contracts of a certain type and understate the costs of others. However, averaging over all providers would reduce such distortions to the extent they were not systematic. Separately, the Commission finds other aspects of the reported data are less likely to be distorted. Providers' reports of call minutes (*i.e.,* minutes of use) and revenues are likely to be accurate down to the level of the contract. Call minutes are almost universally billed, as are calls when the first minute is priced differently to the second, requiring auditable accounting. For roughly 72% of contracts (2,100 of 2,900), providers report paid minutes which account for 90% or more of their total reported minutes, according to staff analysis of the Second Mandatory Data Collection responses. Revenue tracking, and thus reported revenues, are also likely to be reliable. Calling service providers have strong incentives to accurately track revenues. First, they must do so in order to make revenue-based site commission payments, which occur in a large majority of contracts. For roughly 86% of contracts (2,488 of 2,900), providers report variable site commissions (both legally compelled and negotiated), according to staff analysis of the Second Mandatory Data Collection responses. Second, tracking revenues at the contract level is necessary to determine whether a contract is profitable. Revenue reports are particularly valuable for the Commission's analysis because they provide an upper bound for contract costs that can be used to verify the accuracy of chosen cost allocation approaches. Accordingly, the Commission finds reported minutes of use and revenues to be reliable, and the Commission uses them in setting the interim interstate provider-related rate caps.

B. Fundamentals of the Second Mandatory Data Collection

8. *Description of Data Collection.* The Second Mandatory Data Collection was adopted with the goal of enabling the Commission to identify trends in the market and provide information necessary to adopt further reforms. Providers offering inmate calling services were required to submit five years of information, covering calendar years 2014 to 2018. Providers filed their responses to the data collection in March 2019. Commission staff then ''undertook a comprehensive analysis of the . . . responses and conducted multiple follow-up discussions with . . . providers to supplement and clarify their responses.'' In addition, staff relied on providers' April 1, 2020, annual reports to further inform the analysis and results set forth in the *2020 ICS FNPRM.*

9. Information requested by the Commission in the Second Mandatory Data Collection included company and affiliate information, total costs and revenues, and facility-level information. Filers were required to indicate the portion of total costs directly attributable to the provision of inmate calling services and allocate indirect costs, such as general overheads, between inmate calling services and other operations. In total, 13 providers of inmate calling services submitted data to the Commission (*see* Table 1). The 13th provider, Talton, is excluded from Table 1 for the reasons discussed below. The collected data included information on numerous characteristics of the providers' contracts, such as:

- Whether the contract was for a prison or a jail;
- The average daily incarcerated population (average daily population) of all the facilities covered by the contract;
- The total number of calls made annually under the contract, broken out by paid and unpaid, with paid calls further broken out by debit, prepaid, and collect;
- Total call minutes; call minutes broken out by paid and unpaid; interstate, intrastate, and international; and prepaid, debit, and collect calls;
- Inmate calling services revenues, broken out by prepaid, debit, and collect;
- Automated payment revenues and paper bill or statement revenues, earned under the contract (live operator revenues were not collected);
- Site commissions paid to facility operators under the contract; and
- Each provider's inmate calling services costs in total, exclusive of site commissions.

10. *Description of Initial Data Cleaning.* In its review of the responses to the Second Mandatory Data Collection, the Commission identifies submissions with incomplete or invalid data, duplicative information, and contracts that are not comparable to others because of unique characteristics. The Commission excludes these contracts where they cannot be used (*e.g.,* where missing data would not allow the Commission to make relevant calculations) or where the contracts do not have paid minutes, and so are unaffected by changes to the interstate rate caps. As the Wright Petitioners, Prison Policy Initiative, and Public Knowledge (Public Interest Parties) recognize, ''data cleaning to ensure comparability of costs'' is important. In response to commenters' emphasis on data consistency, the Commission further reviews the responses to the Second Mandatory Data

Collection and identify additional contracts that should be excluded from its analysis. Commenters express concern with instances where provider responses to the Second Mandatory Data Collection report zero values. Specifically, the Commission removes an additional 35 contracts beyond the contracts removed from the results presented in the *2020 ICS FNPRM.* Commenters express concern with instances where provider responses to the Second Mandatory Data Collection report zero values. The Commission does not remove these contracts because the Commission finds it appropriate to classify them as smaller jail contracts based on the reported paid minutes of use. The contracts removed from the *2020 ICS FNPRM* analysis included three contracts ''not comparable to the average correctional facility'' and contracts reporting zero minutes. In addition to removing these contracts, the Commission removes contracts with negative or zero total revenue. Other than the adjustments noted below, the Commission accepted the filers' data and related information ''as provided'' (*i.e.,* without any modifications).

11. *Removing Contracts with Invalid or Incomplete Data.* For the calculations presented in this Appendix, the Commission excludes a total of 467 contracts from the Second Mandatory Data Collection data. First, the Commission removes 424 contracts where a provider reported either zero paid minutes or zero total minutes, 416 of which reported neither paid nor total minutes. Of the remaining eight contracts reporting either zero paid minutes or zero total minutes, two appear to be contracts for juvenile services and the provider may not charge for calls ([REDACTED] in Texas and [REDACTED] in Florida), and six report zero paid minutes, but report a range of total minutes from four to 97. As a practical matter, contracts that provide free inmate calling services will not be affected by the interim rate caps adopted in the Report and Order, and zero-minute contracts frustrate attempts to calculate per-minute rates or revenues. The Commission finds these reasons sufficient to exclude such contracts from its analysis. Second, the Commission removes 10 contracts where a provider reported direct costs less than $0. By contrast, the Commission did not delete contracts for which no direct costs were reported. Finally, the Commission excludes 31 contracts where the total revenue net of site commissions is less than or equal to $0. The Commission finds that contracts that report negative direct costs and or negative revenues are implausible, and likewise indicative of some error in reporting.

12. *Excluding an Anomalous Contract.* The Commission excludes a long-standing, so presumably viable, contract between GTL and the [REDACTED], because it has an unusual preponderance of free calls, and at face value suggests GTL's per-minute costs on this contract for both paid and unpaid minutes are as low as [REDACTED]. In 2018, GTL provided [REDACTED] free minutes, earning revenues on only [REDACTED] minutes, or [REDACTED] of all minutes on this contract. Thus, free minutes constitute [REDACTED] of all minutes on this contract. In contrast, the share of paid minutes for all contracts excluding this one is 3.3%. Consistent with this [REDACTED] share of free minutes, it appears that the state requires the provision of at least two free 10-minute calls to each incarcerated juvenile per week. This equals the quotient of GTL's total revenues under the contract and total minutes supplied. GTL also paid [REDACTED] on the contract, which also is somewhat unusual. In 2018, only 31% of all prison contracts were commission-free. Inclusion of this contract distorts the cost allocation procedure, raising the mean per-minute cost for prisons by approximately [REDACTED] (from [REDACTED] to [REDACTED]), and increasing the standard deviation from $0.041 to $0.658. This occurs because the Commission estimates the per-minute costs by dividing a contract's allocated cost by paid minutes. Because this contract bears so few paid minutes, the Commission calculates a per-minute cost of [REDACTED]. If per-minute costs were calculated using total minutes instead of paid minutes, the per-minute costs would be [REDACTED]. This is implausible on its face, and becomes more implausible in light of the reported revenues associated with the contract. By way of comparison, this is [REDACTED] times higher than the next nearest allocated cost, [REDACTED] times higher than the average allocated cost for prisons, and [REDACTED] times higher than the [REDACTED] per-minute costs the Commission calculates for GTL's contract with the [REDACTED]. GTL only reports earning [REDACTED] per paid minute on this contract, an amount that is less than [REDACTED] the per-minute allocated cost. This is also substantially lower than the rate GTL earned per all minutes on its contract with the [REDACTED], or [REDACTED] per minute.

13. *Eliminating Double Reporting and Excluding Federally Managed Facilities.* In discussions with calling service providers, the Commission learned that several had included site commissions as part of their total inmate calling services costs and a subset of those had also reported site commissions as part of their direct inmate calling services costs. Because the Commission is interested in the cost of providing the underlying telecommunications service, the Commission does not include site commission payments in the measures of providers' costs. The Commission also discovered a double reporting of site commission payments for [REDACTED] contracts that both [REDACTED] and [REDACTED] reported serving. In their responses to the Second Mandatory Data Collection, it appears that [REDACTED] reported its share of the site commission while [REDACTED] reported the site commission for the entire contract. In these cases, the Commission has removed the site commission payments reported by [REDACTED] and consider [REDACTED]'s reported payment to represent the site commissions for the entire contract.

14. The Commission also excluded two contracts that are not comparable to the average correctional facility because they are managed by Immigration and Customs Enforcement (ICE) and the Federal Bureau of Prisons (BOP). This is because significant elements of inmate calling services in these federal institutions are managed by the incarceration authority and not the reporting provider. The ICE contract was the only contract held by Talton, so dropping this contract eliminated Talton from the dataset thus resulting in reliance on data from 12 providers. Before dropping the BOP contract, the Commission allocated a share of GTL's costs reported at the level of the firm (as opposed to the contract) to the BOP contract as described below. Excluding these contracts produces a dataset of 2,900 contracts, accounting for 2.2 million incarcerated people and 7.8 billion paid minutes.

15. The Commission's dataset of 2,900 contracts gives an unprecedented view into providers' costs, revenues, and call minutes. Today, CenturyLink's former inmate calling services operations are part of ICSolutions, but the Commission kept those operations separate in the analysis. By excluding incomplete and anomalous contracts, the Commission substantially improves the comparability of the information submitted by providers. However, providers may have overstated their costs or reported costs differently than other providers. The Commission addresses these issues in Appendix C by excluding outliers and replacing the cost information for abnormally high costs with that of comparable contracts.

C. Initial Data Analysis

16. After cleaning the reported data, the Commission makes a number of basic analytical observations to aid its analysis. First, it is important to understand the different levels of granularity in reported costs. This leads the Commission to conduct the analysis at the contract level. Next, the Commission divides the reported data into several tiers, and examine prisons, larger jails, and jails with average daily populations less than 1,000 separately. The Commission also conducts a geographic analysis to analyze the effects of rurality on reported costs. Finally, the Commission observes that disparate treatment of ancillary services costs and revenues requires some attention in order to ensure the Commission is comparing commensurate quantities. Taken together, these steps form a predicate around which may then offer further, deeper analysis of the resultant costs. The Commission reviews these steps below.

17. *Granularity of Reported Costs.* In the Second Mandatory Data Collection, costs are effectively reported at two levels, that of the inmate calling services provider—total costs—and that of the contract. Contract costs are costs that the provider attributes to a specific contract, including any proportion of overheads the provider elects to allocate. In this Appendix, unless otherwise specified, the Commission uses ''overheads'' to refer to costs incurred to provide a service, but which are also incurred to provide other services, and so cannot be directly attributed to any of those services. The canonical example is a chief executive officer's salary. Another example is the cost of a provider's platform and associated software used to provide inmate calling services across all of the

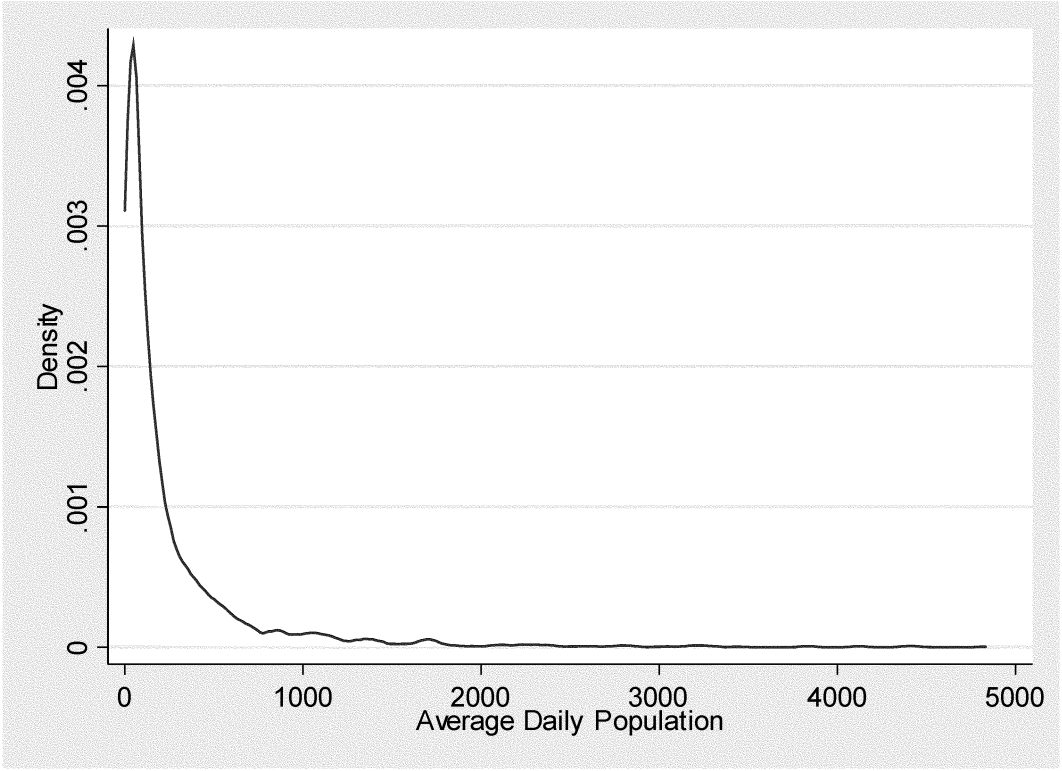
provider's contracts. That cost cannot be directly attributed to any particular contract. Instead, it is incurred whether or not one, several, or perhaps even most of the contracts are served. The difference between a provider's total costs and the sum of all costs reported at the contract level is unallocated costs, and these represent costs that have not been attributed to a particular contract. While providers generally reported at least some inmate calling services costs at the level of the contract, and more rarely at the level of the facility, each did this differently. Providers took different approaches in how they reported these costs. For example, bad debt is the only cost GTL reports at the level of the contract. Thus, for GTL, a range of other contract-specific costs are recorded at the level of the firm only. By contrast, another provider allocates some of its costs, most likely including overheads, to the contract according to the contract's share of phones installed. Still other providers allocate all of their overheads using a revenue allocator.

18. *Unit of Analysis.* The Commission's analysis is conducted primarily at the contract level. This approach is consistent with its view that the contract is the basic unit of supply for inmate calling services. That is, providers bid on contracts, rather than facilities (though in many instances the contract is for a single facility). This approach is also consistent with how the data were submitted, reflecting the underlying reality that providers are focused on contracts as a whole and not elements of the contracts. The Commission requested information to be submitted for each correctional facility where a provider offers inmate calling services, and some key variables—for example, the quantity of calls and minutes of use—were reported by facility. However, even though over 90% of contracts were reported as representing a single facility, most filers do not maintain all of the data the Commission requested by facility in the ordinary course of their business. As a result, in some instances, contracts were reported that covered multiple facilities without any breakout for those facilities. For example, contracts with the [REDACTED] and [REDACTED] were reported as single facilities, with average daily populations of [REDACTED] and [REDACTED], respectively. In other cases, some facility-level data were not reported. Examples of the latter include average daily populations and credit card processing costs. In any event, because the Second Mandatory Data Collection instructions had required providers to cross-reference their contracts with the facilities they covered, the Commission was able to group facilities by contract, which facilitated its ability to conduct its analysis at the contract level.

19. *Separation into Tiers.* The Commission separates contracts into three distinct categories for analysis: Contracts for prisons, contracts for jails with average daily populations of less than 1,000, and contracts for jails with average daily populations of 1,000 or more (larger jails). Average daily population was not reported for three of the 129 prison contracts and 81 of the 2,771 jail contracts. The average paid minutes across these 81 jail contracts is 54,895 paid minutes. Since the average paid minutes for these contracts are lower than the average paid minutes reported for jails with average daily populations less than 1,000, the Commission categorizes these 81 jail contracts as contracts for jails with fewer incarcerated people for the purposes of its analysis. Average paid minutes for a smaller jail is 634,774, and average paid minutes for a larger jail is 9,274,594.

20. Average daily population of 1,000 serves as a natural breakpoint in the data in two key respects. A natural break in a dataset is an approach to classifying data into ranges based on the similarity of the observations within a class, in this case, facility size (*i.e.,* average daily population). First, in terms of cost differentials, jails with average daily populations less than 1,000 are more likely than larger jails to exhibit higher per-minute costs. For instance, contracts for jails with fewer people exceed a cost threshold of $0.16 per minute at more than twice the rate of contracts for larger jails. Of the 2,589 smaller jail contracts, 132 contracts have an average per-minute cost above $0.16, and of the 182 larger jail contracts, four have an average per-minute cost above $0.16. Staff analysis of Second Mandatory Data Collection. Second, as shown in Figure 1 below, visualizing the distribution of the average daily population data for jails shows a shift in the shape of the data around an average daily population of 1,000, with a much more substantial density of observations below 1,000 as compared to above. Distribution of average daily population was visualized by plotting the results of a kernel density estimate. This density is driven by large numbers of contracts with low average daily populations. Specifically, approximately 48% of all jail contracts report average daily populations of less than 100, and approximately 93% of all jail contracts report average daily populations of less than 1,000. The Commission then looks at the 95th percentile value because it is often used to identify the tail of a distribution (*i.e.,* the values in the distribution that are farthest from the mean). Across all 2,771 jail contracts, the 95th percentile of average daily population is 1,165. Put differently, 95% of the jail contracts have average daily populations of less than 1,165, and 5% of jail contracts report an average daily population of 1,165 or greater. Since average daily population is an annualized estimate based on one year of data, the Commission finds it reasonable to round to the nearest order of magnitude and remain consistent with other analyses that use 1,000 or more as a category. The Commission includes jails with average daily populations less than 1,000 in the total dataset of 2,900 contracts for purposes of analyzing the various possible allocation methodologies and to ensure the analysis is sufficiently comprehensive. But, because the Commission does not adopt a new interstate interim rate cap for debit and prepaid calls from jails with average daily populations less than 1,000, the Commission does not provide summary statistics or otherwise analyze such facilities in this Appendix.

Figure 1 – Density of Average Daily Population for Jails



For the purposes of this Figure, the Commission visualizes only jail contracts with average daily populations less than 5,000.

21. *Geographic Analysis.* Rurality is an additional characteristic of correctional facilities that may affect the costs of provisioning inmate calling services. For example, jails and prisons in more rural areas of the country may be required to pay a higher rate for access to the public switched telephone network and these costs should be recoverable. Similarly, it is possible other costs, such as those for maintenance visits or installations, may be higher in rural areas. Detailed geographic information was not requested as part of the Second Mandatory Data Collection; however, the Commission did request that providers submit the street address for each facility reported. The Commission geocoded these addresses to determine the Census Block in which each facility is located. Geocoding is a process of associating longitude and latitude coordinates to a facility's address to conduct geographic analyses. This allows the Commission to test, for example, whether the costs of providing inmate calling services tend to be higher for facilities in blocks defined as rural by the U.S. Census Bureau. '''Rural' encompasses all population, housing, and territory not included within an urban area.'' ''Urban areas'' are ''Urbanized Areas (UAs) of 50,000 or more people''; and ''Urban Clusters (UCs) of at least 2,500 and less than 50,000 people.'' ''Census blocks provide the 'building blocks' for measuring population density and delineating each urban area.''

22. The Commission applied three processes to ultimately geocode 3,784 or 88% of the 4,319 filed facilities. The Commission first used ArcMap software version 10.8 to geocode 3,321 or 77% of the 4,319 filed facilities. The Commission then took a random sample of 170, or 17%, of the 998 addresses the Commission was unable to geocode, and where possible, corrected them manually. The Commission were able to geocode 164 of these 170 addresses. Finally, the Commission developed a Python script to clean up the remaining addresses—which the Commission then manually checked—and were able to geocode 299 additional facilities this way. In instances of contracts with multiple facilities, the Commission was unable to geocode the relevant facilities where a filer only provided a single address. In some instances, a mailing address was reported. If this was different from the facility's physical address and the address correction process did not detect this error, then the mailing address was used.

23. *Matching Ancillary Costs and Revenues.* The Second Mandatory Data Collection also collected data on the revenues generated from ancillary service charges, which are separate from inmate calling services revenues. Such charges have their own matching costs, which may be separately accounted for by providers. Providers should not have reported costs for lines of business such as video visitation services as part of inmate calling services costs, and thus the Commission does not have to account for these services. For example, ancillary services revenues from passthrough fees can be matched to separately reported costs. Thus, because revenues and costs for passthrough fees are separately reported, they can be readily compared.

24. In other cases, the costs of ancillary services may not be separately reported, but instead may be included by providers as the costs of supplying inmate calling services. In such cases, the Commission cannot be sure appropriate matching occurs. Because it is important to compare commensurate costs and revenues when assessing service profitability, the Commission must take steps to control for these circumstances. For example, for some analyses, the Commission

adds the revenues for two ancillary services—automated payments, and paper billing and statements—to inmate calling services revenues in order to compare commensurate revenues to costs. In some instances, the analyses of the ability of providers to recover their costs at the new interim interstate rate caps do not account for these ancillary services fee revenues. In those cases, the results therefore overstate the percentage of contracts under which the provider would be unable to recover its reported costs under those rate caps. The revenues earned on these ancillary services do not have separate matching cost reports, although the costs of these services are ordinarily included in the providers' inmate calling costs. Indeed, total billing costs, including automated payments and paper billing costs, are typically considered as costs of the billed service. Matching like to like therefore requires including revenues from these ancillary services in with inmate calling services revenues. Providers may also have reported some or all of their live agent services costs as inmate calling services costs, given no other category in which to include them. However, since this is less clear, the Commission made no adjustment to account for live agent services revenues.

25. Lastly, accounting for the costs and revenues of shared services also poses difficulties that may lead the Commission to understate inmate calling services' profitability. This possibility arises because providers may have allocated the costs of shared services to inmate calling services but are unable to allocate the related revenues accordingly. As an example, consider a payment account that incarcerated persons must set up to purchase inmate calling services as well as commissary services, tablet access, and other services. Providers may have allocated some or all the costs of the payment system to inmate calling services. At the same time, if there are usage fees associated with the payment account, such as fees charged to set up the account or to deposit money, then the provider should not have reported these in their inmate calling services nor ancillary services fee revenues, notwithstanding that the revenues are in part generated due to demand for inmate calling services.

26. Recognition of these nuances regarding the reported data and their limitations allows the Commission to offer some basic observations about inmate calling providers and the overall industry.

D. Summary Statistics

27. After taking the aforementioned steps, the Commission finds it useful to summarize aspects of the data here. The final dataset used in the analyses contains information on 2,900 contracts that are reported by 12 providers. Table 1 shows, for each provider and the industry, the number of contracts by facility type and in total, the number of facilities covered under those contracts, and the aggregated average daily population of those facilities.

TABLE 1—INMATE CALLING SERVICES PROVIDERS RANKED BY NUMBER OF CONTRACTS

Provider	Prison contracts	Jail contracts	Total contracts	Facilities	ADP
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Industry	129	2,771	2,900	3,628	2,238,732

28. Table 1 suggests that the provision of inmate calling services is very concentrated, with two providers reporting servicing more than [REDACTED] of all incarcerated people. Prison contract supply is more concentrated than that of jails, with only six of the 12 providers reporting prison contracts. Of the 129 prison contracts, [REDACTED], and 86% were held by the top three providers combined. Other measures also show high concentration for prisons. The largest provider covers 45% of reported average daily populations, and the top three cover 96%. The same numbers for total minutes are 51% and 96%, and for provider revenues including automated payment fees and paper bill fees are 55% and 95%. For jails, the largest provider, [REDACTED] of the contracts, and the top three providers combined held 59% of all jail contracts. Other measures also show high concentration for jails. The largest provider covers 34% of reported average daily populations, and the top three cover 74%. The same numbers for total minutes are 37% and 79%, and for provider revenues including automated payment fees and paper bill fees are 37% and 80%.

29. Table 2 presents each provider and the number of contracts it serves, lists the average daily population and total quantity of paid minutes delivered under those contracts, and provides the overall per-minute costs and per-minute revenues reported by each provider.

TABLE 2—SELECTED STATISTICS OF RESPONDING PROVIDERS

Provider	Number of contracts	ADP	ADP (% of total)	Paid minutes (millions)	Paid minutes (% of total)	Per-paid minute cost ($)	Per-paid minute revenue ($)
ATN	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
CenturyLink	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Correct	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
CPC	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Crown	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
GTL	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
ICSolutions	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Legacy	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
NCIC	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Pay Tel	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

TABLE 2—SELECTED STATISTICS OF RESPONDING PROVIDERS—Continued

Provider	Number of contracts	ADP	ADP (% of total)	Paid minutes (millions)	Paid minutes (% of total)	Per-paid minute cost ($)	Per-paid minute revenue ($)
Prodigy	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Securus	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Industry	2,900	2,238,732	100.0	7,790	100.0	0.092	0.096
Industry (Excluding GTL)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Notes: Average daily population was reported for only 2,816 out of 2,900 contracts. Per-paid-minute costs equal reported total costs, excluding site commissions, divided by paid minutes. Per-paid minute revenues equal all reported calling revenues, including for automated payment and paper billing services, divided by paid minutes.

30. Two noteworthy observations are offered by the foregoing table. First, because of the highly concentrated nature of supply, the data submitted by a few providers have a disproportionate effect on the total revenues and costs reported by the industry. For example, exclusion of GTL—see the last row—lowers the average cost per paid minute by nearly [REDACTED]. Second, GTL uniquely reports making losses on inmate calling services (with a per-paid minute cost of [REDACTED] compared to a per-paid minute revenue of [REDACTED]), and that loss is [REDACTED], being [REDACTED] of its reported costs. However, GTL's revenues likely represent an upper bound for its economic costs, given GTL's long-standing operation in the industry. In that case, its per-minute costs would be no more than [REDACTED].

E. Determining the Appropriate Cost Allocator

31. *Introduction.* Traditionally, under cost-based regulation, regulators set rates for a regulated firm based on a cost-of-service study. A cost-of-service study measures a firm's total cost of providing regulated services using the firm's accounting data. The cost of doing business includes operating expenses (*e.g.,* operating, maintenance and repair, and administrative expenses), depreciation expense (the loss of value of the firm's assets over time due to wear and tear and obsolescence), cost of capital (the cost incurred to finance the firm's assets with debt and equity capital), and income and other tax expenses. As part of this study, all of the firm's costs are directly assigned to or allocated among different jurisdictions and services. The results are referred to as fully distributed, or fully allocated, costs. Regulators typically establish a uniform system of accounts (USOA) and rules that specify how costs, are to be assigned or allocated, and these costs, direct assignments, and allocations are reflected in the cost-of-service study in accordance with these accounts and rules. For example, the Commission's USOA for rate-of-return incumbent local exchange carriers—a distinct set of carriers not at issue here—is set forth in Part 32 of the Commission's rules. Part 32 requires rate-of-return incumbent local exchange carriers to disaggregate company-wide cost data into 80 different accounts, including 49 balance sheet accounts, eight revenue accounts, 15 expense accounts, and eight other income accounts. The Commission's rules for separating regulated costs from nonregulated costs are set forth in Part 64 of the Commission's rules. Under these rules, the company-wide costs booked to Part 32 accounts are directly assigned to either regulated or nonregulated activities as feasible. The remaining costs are grouped into homogenous cost categories and then allocated based on the hierarchy of (1) direct analysis; (2) indirect, cost-causative links to another cost category for which direct assignment or attribution based on direct analysis is possible; or (3) a general allocator that reflects the ratio of all expenses directly assigned or attributed to regulated and nonregulated activities. The Commission's Part 36 rules set forth procedures for separating between intrastate and interstate jurisdictions the costs assigned or allocated to regulated activities under Part 64. The Commission's Part 69 rules set forth procedures for assigning to or allocating among different categories of interstate access services the costs assigned or allocated to regulated interstate services under Part 36.

32. In contrast to the traditional approach to cost-based ratemaking for industries that have a long history of rate regulation, its overall approach here is a relatively simple one that reduces the reporting burden on the industry but limits the degree to which a precise accounting of costs can be reflected in new interim provider-related rate caps. The Commission did not create a uniform system of accounts or a detailed set of cost accounting requirements for inmate calling services. Nor did it specify any complex set of rules for assigning or allocating inmate calling services costs to rate-regulated inmate calling services, nonregulated inmate calling services, and non-inmate calling services. The Commission also did not require providers to do a detailed cost-of-service study, although the FTI study of Securus's costs demonstrates the possibility of doing such a study in a credible way even without a detailed USOA or specific set of cost allocation rules. Securus gave FTI access to a highly disaggregated and comprehensive set of accounting data. As a result, FTI was able to distinguish among many different types of costs, develop more than 90 different cost allocators, and use these allocators to assign and allocate those different types of costs to inmate calling services subject to the rate caps or to services not subject to the rate caps, including services provided to prisons and jails (*e.g.,* advanced and investigative services), and other non-inmate calling services to estimate Securus's fully distributed cost of providing inmate calling services.

33. Providers, in response to the Second Mandatory Data Collection, aggregated various types of costs of supplying inmate calling services and reported a single number for each contract that reflects the aggregation of these costs. Any remaining costs not reported at the contract level were reported at the level of the firm. Costs directly attributable to the contract were not always allocated to the contract. For example, the only direct costs GTL reported at the contract level were those for bad debts, when many other costs would be contract specific. The reverse was also true. Costs that are not directly attributable to the contract level were sometimes reported as such. For example, CenturyLink allocated all of its costs down to the contract level. Costs that are not directly attributable to a contract and costs reported at the level of the provider, rather than contract, create a challenge: The Commission needs to allocate the various types of overhead costs among all of a provider's contacts as part of developing a cost-based rate cap, but the aggregation of these costs limits the Commission to a single allocation using a single one-size-fits-all allocator. The fact that some providers have categorized inmate calling services costs that almost certainly are attributable to a contract as overhead costs, rather than direct costs, and vice versa, further complicates the cost allocation problem. Different allocators for overhead costs produce materially different allocations and the Commission must choose the one that allocates these costs the best.

34. To cap per-minute rates, the Commission seeks to identify commercially viable rates—rates which would cover the true direct costs of any contract and provide enough contribution to recover total costs across all contracts. If a provider is unable to recover its costs for a specific contract, it may seek a waiver. Given providers' accounting systems are designed to run their businesses, and that providers bid for contracts, for the purposes of analyzing various possible allocators the Commission accepts their reports of costs, overstatement and miscategorization issues aside, as being

largely accurate. That leaves the Commission with the need to identify rates which recover costs reported at the level of the contract (''reported direct costs'') and make appropriate contributions to the difference between reported total costs and the sum of the providers' reported direct costs (''reported overheads''). One approach to this is to allocate reported overheads to contracts using a cost allocator, and to then determine a per-minute rate that would cover most contracts' fully allocated costs.

35. The Commission's analysis leads it to choose total minutes as the cost allocator. The Commission begins by explaining the cost allocation problem, then show that the best cost allocator of seven considered is call minutes. Lastly, the Commission explains the record provides it with little support to cap prices on a basis other than a per-minute price cap, such as a per-call or per-person per-period price cap.

36. *Compensatory Rates and Cost Allocation.* Putting aside the difficulties of interfirm comparisons, there is no clear rule for identifying a price for inmate calling services that covers costs directly attributable to a contract and makes a contribution to the recovery of any remaining costs not directly attributable to inmate calling services supplied under the contract, such that total costs are recovered. Under broadly accepted economic principles, where a firm provides a service under multiple contracts, prices for the service provided under each contract are compensatory if three conditions are met: (1) The price at least covers the contract's direct costs for inmate calling services, meaning recovery of the costs attributable to supplying these services under the contract; (2) the price does not recover more than the cost of providing inmate calling services on a standalone basis under the contract (*i.e.,* the costs that would be incurred if these services alone were supplied under the contract, and no other contract were supplied); and (3) prices overall recover the firm's total costs, meaning recovery of the direct costs for inmate calling services under each contract and the reported costs that are not attributable to any one contract but were allocated to inmate calling services. Thus, for example, any costs shared among all the contracts would be attributable to the one contract. However, since many prices are consistent with these conditions, they fail to provide full guidance for price setting.

37. Cost allocation is a standard, if imperfect, procedure used by regulators to develop cost-based prices for different services or customer groups where not all of a regulated firm's costs are attributable to a single service or customer group. Following a similar approach here, the Commission identifies a method to allocate providers' reported overheads to contracts, as these are the costs that providers did not attribute to contracts, and apply that method. The resulting cost allocation is then used to determine a cost-based price that would allow the provider to recover its contracts' reported direct costs while making a sufficient contribution to reported overheads such that total costs for all the contracts would be covered. The Commission considers seven approaches to allocating overheads, the six cost allocators analyzed in the *2020 ICS FNPRM*—call minutes (*i.e.,* minutes of use), number of calls, average daily population, revenues, contracts, and facilities—and, at the suggestion of commenters, direct costs. To do this, the Commission must identify the unit of sale for the service to be regulated and choose a cost allocator.

38. In developing these allocators, the Commission allocates reported overheads to contracts, calculate the mean per-minute cost of a contract, the standard deviation relative to that mean, and then add the mean to the standard deviation following the approach in the *2020 ICS FNPRM.* The Commission calculates a per-minute cost of a contract for each possible allocator by allocating reported overheads among each provider's contracts in proportion to the contracts' shares of the provider's total minutes, calls, average daily population, etc., and then divide the total cost of each contract by its quantity of paid minutes. Paid minutes are used as the divisor because those are the minutes that providers rely on to recover their costs. The Commission uses total minutes to allocate reported overhead costs rather than paid minutes, because costs are incurred to build sufficient capacity to provide all minutes, regardless of whether the minutes generate revenue. These results are reported in Table 3.

TABLE 3—MEANS, STANDARD DEVIATIONS, AND IMPLIED RATE CAPS USING VARIOUS COST ALLOCATORS

Cost allocator	Total contracts	Mean	Standard deviation	Implied rate cap (mean + std. dev.)
Minutes	2,900	$0.093	$0.056	$0.149
Number of Calls	2,900	0.116	0.092	0.208
ADP	2,804	0.789	10.325	11.114
Revenue	2,900	0.164	0.170	0.333
Contracts	2,900	18.499	300.136	318.636
Facilities	2,900	16.485	287.199	303.685
Direct Costs	2,125	0.228	2.189	2.417

39. *Choosing Minutes of Use as a Cost Allocator.* In determining the appropriate allocator, the Commission recognizes concerns that if the Commission were to prefer the per-minute cost allocator due to the low variance in the resulting per-minute costs, there would be an element of circular reasoning in its decision. The Commission selects the cost per-minute allocator over the six other alternatives based on a range of reasons. The primary aim of a cost allocator is to find a reasonable way of attributing costs, in this case to contracts, that either cannot be directly attributed, such as true overheads, or that, while conceptually could be attributed to a specific contract, cannot be attributed based on how the providers' accounts are kept. Such an allocator must be likely to reflect cost causation and result in rates that demand can bear. Three primary reasons are not subject to the circularity critique: Data trustworthiness, availability of data, and consistency with reported revenues. Table 4 compares the seven cost allocators:

TABLE 4—COST ALLOCATOR RATE CAP, IMPLIED ANOMALOUS CONTRACTS, AND TOTAL CONTRACTS

Cost allocator	Implied rate cap (mean per-minute allocated cost + 1 standard deviation)	Contracts with per-minute allocated costs greater than implied rate cap		Contracts with per-minute provider revenues greater than their per-minute allocated costs		Total contracts
		Number	Percent	Number	Percent	Number
Minutes	$0.149	196	6.8	2,532	87.3	2,900
Number of Calls	0.208	245	8.4	2,358	81.3	2,900

TABLE 4—COST ALLOCATOR RATE CAP, IMPLIED ANOMALOUS CONTRACTS, AND TOTAL CONTRACTS—Continued

Cost allocator	Implied rate cap (mean per-minute allocated cost + 1 standard deviation)	Contracts with per-minute allocated costs greater than implied rate cap		Contracts with per-minute provider revenues greater than their per-minute allocated costs		Total contracts
		Number	Percent	Number	Percent	Number
ADP	11.114	28	1.0	2,150	76.7	2,804
Revenue	0.333	254	8.8	2,290	79	2,900
Contracts	318.636	23	0.8	907	31.3	2,900
Facilities	303.685	20	0.7	1,000	34.5	2,900
Direct Costs	2.417	12	0.6	1,735	81.6	2,125

Notes: The implied rate cap for each allocator is the sum of the mean of contract costs and 1 standard deviation of the contract cost distribution, as set forth in Table 3. The number of contracts with per-minute allocated cost greater than implied rate cap is calculated for each cost allocator by counting the contracts with a cost allocation that exceeds the implied rate cap. The corresponding percent column represents this number as a share over the number of contracts for which a cost allocation could be calculated (contract totals are reported in the last column). Per-minute provider revenues equal contract revenues from calling rates, plus automated payment fees and paper billing fees, less commissions divided by paid minutes. The number of contracts with per-minute provider revenues greater than their per-minute allocated cost is calculated by counting the contracts with per-minute revenues that exceed the contract's allocated costs. The corresponding percent column represents this number as a share over the number of contracts for which a cost allocation could be calculated.

40. In Table 4, the second column reports the rate cap implied by each respective allocator. Only two of the potential allocators—minutes of use and number of calls—produce results below the current cap of $0.021 per minute for prepaid and debit calls. In contrast, the implied rate caps for revenue, direct costs, average daily population, facilities, and contracts all suggest that interstate inmate calling services rates are presently unreasonably low. This disparity is one of the reasons the Commission finds that minutes of use and number of calls are the only plausible allocators among the available alternatives.

41. In Table 4, the third and fourth columns (under the title ''Contracts with per-minute allocated costs greater than implied rate cap'') report the number and percentage of contracts that would not recover the costs allocated to them if prices were set to the implied rate cap. Lower numbers in these columns indicate that the cost allocator minimizes the number of contracts with allocated costs above the cap.

42. In Table 4, the fifth and sixth columns (under the title ''Contracts with per-minute provider revenues greater than their per-minute allocated costs'') provide a measure of the extent the cost allocator is consistent with prices currently set by providers. These two columns, respectively, report the number and percentage of contracts that earn revenues that are greater than the allocated per-minute costs. If the cost allocation is consistent with commercial cost recovery in an industry found to be in need of rate regulation and otherwise thought to be in solid shape financially, then revenues from the contracts recorded in these columns would recover direct costs and contribute to the recovery of overhead costs, as these contracts are commercially viable. Thus, a cost allocator that is compensatory, if not overly so, would have numbers close to the total contract number, or 100%, in these columns. The smaller the entries in these columns are, the less plausible the cost allocator is.

43. While no allocator is likely to pass these tests perfectly, the call minute cost allocator is the standout performer. The call minute cost allocator has the highest percentage, 87.3%, of contracts with revenues greater than their per-minute allocated cost (*i.e.,* the greatest percentage of contracts that appear to recover direct costs and contribute to overhead cost recovery) consistent with actual commercial revenue recovery in a financially solid industry. Thus, it produces results most consistent with what is required to make a contract commercially viable.

44. The call minute cost allocator also has the lower implied rate cap error rate, 6.8%, of the two plausible cost allocators, the other two being the number of calls. Simultaneously, it produces the lowest implied rate cap, $0.149, among all allocators. Thus, it is least likely to overcompensate providers, and, among plausible allocators, most likely to allow cost recovery.

45. The only other allocator to come close to producing results consistent with what the Commission learns from observed contract revenues, and not appearing to over-compensate providers, is the number of calls allocator. There, the percentage of contracts with observed per-minute revenues greater than per-minute allocated costs is 81.3%—a percentage that is lower than that for the call minute allocator. The number of calls allocator has the second-lowest implied rate cap (behind the call minute cost allocator) at $0.208, with 8.4% of contracts with per-minute allocated costs that would exceed this rate cap. These values indicate that the call minute cost allocator is a superior choice to the number of calls allocator.

46. Use of an average daily population allocator requires dropping 96 contracts, and providers in many instances had difficulties accurately reporting this number. While these facts alone are perhaps insufficient to eliminate average daily population as a cost allocator, they cast some doubt on its relative usefulness. Further, the average daily population allocator implies that only about three-fourths of all contracts recover their allocated cost at actual commercial rates, 10% points lower than the same number for the call minute allocator. The average daily population allocator also has an implied rate cap of $11.114. No credible contract in the data earns this much. There is an [REDACTED] contract [REDACTED] with per-minute revenues of $12.20. That contract has an average daily population of zero and only one reported paid minute in 2018. If the data recorded for that contract are not in error, then the contract is too unusual to be a good comparator. The next highest is an [REDACTED] contract for the [REDACTED]. It has an average daily population of 64, paid minutes of 3,335 or 52 minutes per incarcerated person per year, and per-minute revenues of $8.99, followed by an [REDACTED] contract [REDACTED], which has an average daily population of 754, paid minutes of 1,272, or 1.7 minutes per incarcerated person per year, and per-minute revenues of $1.50. [REDACTED] contract has the highest per-minute revenues of larger jails, at $1.35. Its average daily population is 1,128, with 130,781 paid minutes, for 116 minutes per incarcerated person per year. In contrast, the minutes per average daily incarcerated person for smaller jails is 3,671 and for all jails, 3,705. Thus, the [REDACTED] contracts appear peculiar with minutes per incarcerated person per year that are several orders of magnitude less than the smaller jail ratio. Further, if the allocator correctly assigns costs, then 28 or 1% of contacts earning $11.114 in revenues per minute implausibly would fail to recover costs. Based primarily on the commercial cost recovery mistake rate and implausibly high implied rate cap, the Commission concludes that average daily population is an unreasonable allocator.

47. Although a revenue cost allocation key may be used for certain accounting purposes, a revenue key is inappropriate for regulatory purposes because revenue is not a cost driver. While costs can be expected to increase with quantity sold, revenues do not always increase with quantity sold, and this can lead to perverse effects. For example, in general quantity sold increases as price falls. Starting from a price where no sales are made, revenues also increase as prices fall. However, at some point as prices fall, revenues also begin to fall: The revenue gain from new sales made at the lower price is

smaller than the revenue loss incurred due to the lower price as applied to all purchases that would have been made at the higher price. In that circumstance, holding other things constant, a revenue cost allocator would allocate less cost to a contract with a greater sales volume, contrary to cost causation. This also means a revenue allocator might reinforce monopoly prices. The exercise of market power can result in higher revenues than would be earned in a competitive market. In that circumstance, holding other things constant, a revenue allocator would allocate more costs to monopolized services than competitive ones. The Commission does not need to determine whether ''[a]llocating costs based on revenue is a commonly-used accounting tool in business.'' What is relevant here is that it is inappropriate for the purpose of setting rates for the reasons the Commission gives. In addition, the revenue allocator scores worse than the call minute cost allocator on all of the performance measures. Most significantly, it produces a rate cap that is more than twice the call minute rate cap, while simultaneously indicating a higher percentage of contracts would not cover their costs at that rate cap. Given these concerns, the Commission eliminates revenue as a cost allocator.

48. The contracts cost allocator has the lowest percentage of contracts with per-minute provider revenues greater than their per-minute allocated cost, 31.3%, a percentage that is about one-third of the call minute cost allocator percentage, and that is inconsistent with actual commercial rates. In addition, the contracts cost allocator implied rate cap of $318.63 is disconnected from reality, being an order of magnitude higher than the highest per-minute revenues earned on any contract. For both these reasons, the Commission concludes that contracts are an unreasonable cost allocator.

49. The facility data are poor with many providers failing to report the number of facilities under their contracts. In addition, a facility allocator has nearly the same problems as the contract allocator. Given these concerns, the Commission eliminates facilities as a cost allocator.

50. The Commission eliminates direct costs as an allocator due to the lack of availability of data and concerns about the trustworthiness of the data. Because direct costs were not reported for certain contracts, the Commission has to drop 775, or more than a quarter, of its observations. This artificially increases the amount of indirect costs allocated to the remaining contracts. In addition, many providers took markedly different approaches to recording direct costs, meaning the direct cost allocator treats different providers very differently. For example, GTL only reports bad debt as direct costs, essentially rendering any allocation based on direct costs meaningless for an additional [REDACTED] of all contracts, which cover nearly [REDACTED] of incarcerated people. Further, the direct cost allocator allocates overhead costs such that 81.6% of the contracts have provider per-minute revenues from actual commercial rates that are greater than their per-minute allocated cost, a share lower than that of the per-minute allocator. The relative shares rather than absolute number of contracts must be compared because to develop the direct cost allocator requires dropping 876 observations for which no direct costs were reported. It also produces an implied rate cap of $2.417, an implausibly high cap given only two contracts currently earn per-minute revenues greater than this. Such a rate cap would unnecessarily allow substantial margins for most contracts. The Commission eliminates this allocator based on these concerns.

51. The Commission concludes that a call-minute cost allocator remains the most reasonable choice for setting per-minute inmate calling services rate caps. A call minute cost allocator has the highest percentage of the contracts with provider per-minute revenues from actual commercial rates that are greater than their per-minute allocated cost, thus representing the allocator that most closely hews to commercial cost recovery as seen in supply. Consistent with this, its implied rate cap appears unlikely to significantly overcompensate providers on an interim basis, while ensuring commercial viability for most contracts.

52. *Subcontracts.* Some providers subcontract some or all of their contracts to a second provider. In 2018, of CenturyLink's [REDACTED] calling services contracts, the Commission has data on [REDACTED] which were subcontracted. CenturyLink has [REDACTED] subcontracts with [REDACTED], but [REDACTED] did not report data for these contracts), and a [REDACTED] contract has no reported subcontractor. If the Commission were to remove all subcontractor overhead costs allocated to CenturyLink's contracts, the average per-minute cost of CenturyLink's contracts would decrease from [REDACTED]. If the Commission removed only half of the overhead, this would result in an average per-minute cost of [REDACTED]. While Crown employed NCIC as a subcontractor for all of its [REDACTED] contracts, the providers' data descriptions and justifications suggest there was no double counting. This raises the question of how to deal with overhead costs in the case of subcontractors. The Commission takes an approach that may double count some overhead costs, as the Commission cannot identify what fraction of the subcontractors' overhead costs are captured in what they charge the prime contractor.

53. The reporting of costs for shared contracts varies by provider. Where the prime contractor only reported the cost of supplying the broadband connection on its contracts, while the subcontractor reported the costs of servicing the facilities (installation, maintenance, etc.), the Commission aggregated their costs. Because the reported costs represent the provision of different services, the Commission does not believe these contracts have costs that were double counted. Other providers operating as prime contractors reported all costs (including subcontractors' costs). Where the prime contractor's associated subcontractor did not file reports on the subcontracts, the Commission used the costs as reported by the prime contractor. However, where the associated subcontractors reported their costs, the Commission removed their direct costs to avoid counting them twice.

54. The subcontracting filers were also the main inmate calling services suppliers on other contracts, raising the question of how to avoid double counting the allocation the Commission made for overhead costs for their subcontracts. Leaning toward overstating costs, a shared contract is allocated the overhead of both providers that report the contract. The two observations were then aggregated into one and placed under the name of the firm that is the primary contract holder.

55. Inclusion of the overhead costs reported by the subcontractors overstates the cost recovering rate if, as is likely, they charge a markup over their direct costs. The markup would be part of the prime contractor's reported expenses, and to avoid double counting, the Commission would need to remove the markup from the calculations. The Commission cannot determine the amount of this markup, however. One approach would be to assume the markup matched the overhead cost allocation. In that case, the overhead costs of a subcontractor that are allocated to a subcontract would not be counted as they would be captured in the prime contractor's costs. However, if the markup exceeded this amount, the Commission would still be double counting costs, while if the markup was less than this amount, then the Commission would be understating costs. Table 5 shows the impact of this adjustment.

TABLE 5—COST ALLOCATOR RATE CAP, IMPLIED ANOMALOUS CONTRACTS, AND TOTAL CONTRACTS ADJUSTED TO AVOID DOUBLE COUNTING OF SUBCONTRACTOR OVERHEADS

Cost allocator	Implied rate cap (mean per-minute allocated cost + 1 standard deviation)	Contracts with per-minute allocated cost greater than implied rate cap		Contracts with per minute provider revenues greater than their per-minute allocated cost		Total contracts
		Number	Percent	Number	Percent	Number
Minutes	$0.149	194	6.7	2,540	87.6	2,900

TABLE 5—COST ALLOCATOR RATE CAP, IMPLIED ANOMALOUS CONTRACTS, AND TOTAL CONTRACTS ADJUSTED TO AVOID DOUBLE COUNTING OF SUBCONTRACTOR OVERHEADS—Continued

Cost allocator	Implied rate cap (mean per-minute allocated cost + 1 standard deviation)	Contracts with per-minute allocated cost greater than implied rate cap		Contracts with per minute provider revenues greater than their per-minute allocated cost		Total contracts
		Number	Percent	Number	Percent	Number
Calls	0.208	244	8.4	2,360	81.4	2,900
ADP	11.114	28	1.0	2,157	76.9	2,804
Revenue	0.334	250	8.6	2,304	79.4	2,900
Contracts	318.635	23	0.8	915	31.6	2,900
Facilities	303.684	20	0.7	1,009	34.8	2,900
Direct Costs	2.417	12	0.6	1,735	81.6	2,125

56. Table 5, when compared with Table 4, shows the impact of assuming that the markup matches the overhead cost calculation on the implied rate caps of the seven possible cost allocators to be small. Specifically, for the per-minute cost allocator, the implied rate remains the same, the number of contracts with a per-minute allocated cost greater than the implied rate cap decreases from 196 to 194, and the percentage of contracts where the per-minute revenues are greater than per-minute allocated costs increases from 87.3% to 87.6%. This analysis of the adjusted data reinforces the finding above that a call minute cost allocator remains the most reasonable choice for setting per-minute inmate calling services rate caps.

57. *Rejecting Alternative Allocation Approaches Proposed in the Record.* With sufficient record evidence, the Commission would simultaneously identify the unit of sale for the service to price and choose a cost allocator. Commenters explain with some merit that when considering allocators other than costs per minute, the Commission should not rule out those allocators by considering only the implied cost-per-minute estimates those allocators produce. Instead, the Commission also should examine the costs and implied prices using the cost allocator as the unit of account. For example, if the Commission allocates costs by average daily population, the Commission should not divide these by minutes, producing a per-minute rate, to consider whether an average daily population allocator is sensible. Instead, the Commission should consider the resulting distribution of costs per incarcerated person per day. The chief line of reasoning for focusing on cost expressed in the same unit of account as the allocator is that to do otherwise mathematically favors the chosen unit of account. A per-minute cost allocator can be expected to produce per-minute costs with less variance than, for example, an average daily population allocator with costs also expressed per minute. The reverse also holds. An average daily population allocator can be expected to produce per person costs with less variance than if costs are allocated per person and then expressed per minute.

58. The Commission does not dispute the accuracy of this critique. However, the record provides no real guidance as to how the Commission would regulate prices using a call, average daily population, revenue, contract, facility cost, or direct cost allocator. For example, minimizing the variance of cost estimates for a call allocator would require estimating per-call costs, not per-minute costs. This would result in a cap on call prices of $11.10, regardless of whether the call lasted a minute or an hour. Across all contracts, the mean per-call rate is $2.754, with a standard deviation of $8.341, which sum to $11.095. A 15-minute call would cost $ 0.74 per minute. Thus, a 30-second call, say, to reach voice mail, could be charged $11.10, the same charge as would apply for a 30-minute call or even an hour-long call. However, there is essentially no discussion of the implications of taking such an approach in the record. Additionally, a per-call price of $11.10 does not result in a per-minute rate of less than the current prepaid cap of $0.21 until the 53rd minute of the call ($11.10/53 = $0.209 per minute). This alone is sufficient to rule out this approach.

59. Allocating costs using average daily population, and then applying a per-person cap set to the contract mean plus one standard deviation would result in a cap of $437.38 per person per year. Across all contracts, the mean per-average daily population rate is $281.159, with a standard deviation of $156.220, which sum to $437.379. Operationalizing an average daily population allocator to minimize variance would require setting per-person per-period charges for two reasons. First, it would be inequitable to charge the many people who can spend only a few hours or days incarcerated the same as what is charged someone who spends much longer. Second, since average daily population is not the same as the number of people who are admitted to a facility in a year, an annual rate applied to people who are incarcerated for shorter periods would grossly over recover costs. Consider a jail with an average daily population of 10. The $437.38 cap is intended to bring annual revenues of $4,373.80. But if the jail houses ten new people every two weeks, and each new group of ten also brings in annual revenues of $4,373.80, then the total revenues for the year will be 26 times that amount. The problem is avoided by charging each person a fraction of the $437.38 where that fraction equals the fraction of the year they are incarcerated. Thus, a cap would have to be applied for a relatively short time period. A daily cap would be equal to $1.20 (= $437.38/365.25) per person, and would apply day in and day out, whether the incarcerated person made any calls that day or not. This would make calling cheaper for those with high demand, but more expensive for those with low demand. If incarcerated persons were allowed to opt out on a daily basis, the daily charge would have to be increased to ensure cost recovery for providers. For example, if everyone were to opt out for 50% of their days, then the rate would have to double. However, the record provides no basis that could be used to determine the appropriate rate if occasional opting out were allowed. The record provides almost no support for any of this.

60. The record provides even less guidance as to how the Commission would regulate prices if a revenue, contract, facility, or direct cost allocator were used, but a per-minute rate cap was not set. Price cannot be set per dollar of revenue or per contract or per facility or per dollar of direct cost without specifying some unit relevant to an incarcerated person. The only approach with a solid basis in the record is a per-minute rate.

61. *Applying the Per-Minute Allocator.* The Commission defines the upper bound as the mean plus one standard deviation of per-minute contract costs, separately for prisons and larger jails. For prisons, the upper bound is $0.133, and for larger jails, the upper bound is $0.218. These estimates rely on providers' reported costs in the Second Mandatory Data Collection, with minimal corrections for anomalies and indirect costs allocated among each provider's contracts using a per-minute cost allocator. Including one standard deviation in the upper bound recognizes that providers' costs vary. The Commission presents the upper bound estimates in Table 6 below.

Table 6 – Upper Bound Estimates

	Contracts	Mean	Std. Dev.	Mean+1 Std. Dev.	Mean+2 Std. Dev.
Larger Jails	182	0.100	0.118	0.218	0.336
Prisons	129	0.092	0.041	0.133	0.174

62. The Commission finds these upper bounds likely overstate providers' inmate calling services costs for several reasons. First, providers have some incentive to overstate their costs because higher costs would lead to higher interstate rate caps and higher profits. Second, a lack of specificity in the Instructions for the Second Mandatory Data Collection, particularly those related to how providers should account for indirect costs, permitted providers to inflate reported costs further. These factors shift costs upward, resulting in higher upper bounds than would result with more accurate data. These costs are further overstated because of the treatment of costs shared between contractors and subcontractors.

F. Assessing and Ensuring the Commercial Viability Under the New Interim Interstate Provider-Related Rate Caps

63. In the Report and Order, the Commission sets new interim interstate provider-related rate caps of $0.12 per minute for prisons and $0.14 per minute for larger jails, respectively. To help evaluate the reasonableness of those caps, the Commission considers the commercial viability of contracts under the selected interim rate caps compared to revenues reported by providers in the Second Mandatory Data Collection.

64. The Commission first compares revenues and costs by provider in 2018, and then consider what would happen to revenues under interim provider-related rate caps of $0.12 per minute for prisons and $0.14 per minute for larger jails. In the first instance, the Commission takes a straightforward, but simplistic approach using minutes of use as the allocator. The Commission holds call minutes, automated payment revenues, and paper billing revenues constant and project that those new interim caps would allow providers to recover their allocated costs for 71% of their prison contracts and 99% of their contracts for larger jails. To test the robustness of this analysis, the Commission then determines the percentage of prison, and separately larger jail, contracts for which the new interim caps would allow providers to recover the revenues they earned in 2018. The Commission finds the percentages to be 74% for prisons and 65% for larger jails. The Commission's examination of the remaining contracts shows that they, on average, have lower per-minute costs than the contracts under which providers would recover their 2018 revenues, and thus all of the contracts are also likely to be viable under the new interim rate caps. Lastly, recognizing that revenues in 2018 represent an upper bound on costs, and allowing call volumes to expand because the new interim caps will lower prices to incarcerated persons (leading to more call minutes), the Commission finds that 77% of prison and 73% of larger jail contracts are projected to recover costs consistent with the revenues earned on each contract in 2018. Each of these estimates, except for the estimate that all contracts will be viable under the new interim rate caps, are conservative.

65. *Comparing Reported Revenues and Costs*. Table 7 shows the following for each provider and for the industry as a whole: Inmate calling revenues, which include amounts collected to pay site commissions; automated payment revenues; paper billing and account revenues; the sum of the preceding three types of revenues; inmate calling services costs, which for this purpose include site commissions; and profits defined as the difference between those summed revenues and inmate calling costs. Thus, profit nets out site commissions. Again, only [REDACTED] fails to recover its reported costs, incurring a surprisingly large [REDACTED] loss of [REDACTED] million on its inmate calling services operations, even when its revenues from ancillary service charges are included in its revenue total. That [REDACTED] reports losses despite being the winning bidder on [REDACTED] contracts, the industry's largest provider by most measures, and one of the industry's most sophisticated providers, suggests [REDACTED] revenues may be a more accurate estimate of its costs than are its reported costs.

TABLE 7—INMATE CALLING SERVICES REVENUES AND COSTS INCLUSIVE OF SITE COMMISSIONS BY PROVIDER IN 2018

[in $ thousands]

Provider	ICS revenues	APF revenues	PBF revenues	Total revenues	Total costs	Profits
ATN	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
CenturyLink	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Correct	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
CPC	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Crown	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
GTL	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
ICSolutions	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Legacy	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
NCIC	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Pay Tel	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Prodigy	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Securus	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Industry	1,093,192	115,757	410	1,209,359	1,181,611	27,748

Notes: ''APF'' means automated payment fee, and ''PBF'' means paper billing fee.

66. Table 8 shows the following for each provider, and across all providers, split by prisons and larger jails: Number of contracts; contract shares; the contract mean for total revenues per paid minute (that is, the mean for the sum of inmate calling revenues, including amounts collected to pay site commissions, plus automated payment revenues and paper billing revenues, all divided by paid minutes for each of the 2,900 contracts); the contract mean of costs per paid minute, again including site commissions; the contract difference per paid minute between the preceding (profit), which nets out site commissions; and the contract mean of direct costs per paid minute, excluding site commissions. In 2018, for prisons, both [REDACTED] and [REDACTED] on average incurred losses (*i.e.,* had per-minute costs exceeding their per-minute revenues); and, for larger jails, only [REDACTED] on average incurred such losses. This may be due, in part, to these providers bidding overly aggressively for some contracts and to the cost allocation approach being unable to reliably allocate indirect costs for as many as 12.7% of

contracts, due to limitations of the reported cost data. Additionally, at least three of the direct cost per-minute entries are misleading: Two carriers, [REDACTED] and [REDACTED], report zero direct costs, while GTL only reports bad debt as a direct cost. These three providers almost certainly have substantially larger direct costs and hence substantially larger direct costs per minute.

TABLE 8—INMATE CALLING SERVICES PER-MINUTE REVENUES AND COSTS INCLUSIVE OF SITE COMMISSIONS BY PROVIDER AND FACILITY TYPE IN 2018

Firm	Type	Number of contracts	Percent share of contracts	Average per-minute revenues ($)	Average per-minute costs ($)	Average per-minute profits ($)	Average per-minute direct costs ($)
ATN	Larger Jail ..	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
CenturyLink	Larger Jail ..	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Correct	Larger Jail ..	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
CPC	Larger Jail ..	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
GTL	Larger Jail ..	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
ICSolutions	Larger Jail ..	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Legacy	Larger Jail ..	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
NCIC	Larger Jail ..	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Pay Tel	Larger Jail ..	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Securus	Larger Jail ..	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Industry	Larger Jail ..	182	100	0.247	0.218	0.029	0.026
CenturyLink	Prison	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
GTL	Prison	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
ICSolutions	Prison	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Legacy	Prison	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
NCIC	Prison	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Securus	Prison	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Industry	Prison	129	100	0.148	0.137	0.011	0.010

NOTES: Direct costs are costs, excluding site commissions, recorded at the contract level in the Second Mandatory Data Collection responses. Averages are calculated across contracts.

67. *Recovery of Allocated Costs Under the New Interim Provider-Related Rate Caps.* The Commission estimates the inmate calling services revenues that providers would have earned in 2018 under the new interim caps, assuming no change in minute volumes. Table 9 presents the number and percentage of contracts for which these estimated inmate calling services revenues would exceed allocated costs or would exceed reported direct costs, first excluding automated payment and paper billing revenues, and second including these revenues (referred to as ancillary revenues in the table). The number of [REDACTED] and GTL contracts that cover direct costs as reported in the third-to-last and last columns are overstated because [REDACTED] did not record any direct costs, and GTL only recorded bad debt. On this basis, the Commission finds that providers would recover their allocated costs under 71% of prison contracts. All of the other [REDACTED] prison contracts are contracts [REDACTED] held in 2018. Based on its reported costs, [REDACTED] would incur per-minute losses ranging from [REDACTED] to [REDACTED] with a median loss of [REDACTED] per minute. If automated payment and paper billing fees are excluded, [REDACTED] contracts would have per-minute costs above the $0.12 interim cap, ranging from [REDACTED] to [REDACTED]. Of these contracts, all held by [REDACTED], [REDACTED] have per-minute revenues of less than $0.12. Providers would recover their allocated costs under 99% of larger jail contracts. The other 1% (or two contracts) were contracts [REDACTED] and [REDACTED] held in 2018. Based on their reported costs, these providers would incur per-minute losses of [REDACTED] and [REDACTED], respectively. If automated payment and paper billing fees are excluded, [REDACTED] contracts would have per-minute costs above the $0.14 interim cap, ranging from [REDACTED] to [REDACTED]. Of these [REDACTED] contracts, [REDACTED] were allocated per-minute costs below [REDACTED]. All [REDACTED] contracts with per-minute costs above [REDACTED] reported revenues below their allocated costs. The 71% and 99% figures are likely underestimates for several reasons: many providers' reported costs may be overstated; the full range of ancillary fees that contribute toward recovering inmate calling services costs may not be reported, while some costs associated with these may be included in inmate calling services costs; some contracts where subcontracting occurs likely double count costs; and minutes of use may over-allocate costs to certain contracts. Revenues from automated payment fees and paper billing fees alone covered the costs of five, or 3%, of larger jail contracts in 2018. The importance of these revenues is shown in Table 9 when comparing total costs covered by project revenues with and without ancillary revenues, as the overall industry costs covered increases from 92% (without) to 99% (with).

Table 9 – Number and Percentage of Contracts for Which Specified Revenue Estimates Cover Specified Costs

Firm	Facility Type	Contracts	Allocated Costs Covered by ICS Revenues Without Ancillary Revenues		Direct Costs Covered by ICS Revenues Without Ancillary Revenues		Allocated Costs Covered by ICS Revenues and Ancillary Revenues		Direct Costs Covered by ICS Revenues and Ancillary Revenues	
		#	#	%	#	%	#	%	#	%
ATN	Larger Jail	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
CenturyLink	Larger Jail	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Correct	Larger Jail	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
CPC	Larger Jail	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
GTL	Larger Jail	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
ICSolutions	Larger Jail	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Legacy	Larger Jail	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
NCIC	Larger Jail	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Pay Tel	Larger Jail	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Securus	Larger Jail	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Industry	Larger Jail	182	167	92	179	98	180	99	182	100
CenturyLink	Prison	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
GTL	Prison	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
ICSolutions	Prison	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Legacy	Prison	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
NCIC	Prison	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Securus	Prison	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Industry	Prison	129	63	49	129	100	91	71	129	100

68. *Contracts with Per-Minute Revenues Under the New Interim Caps.* The preceding analysis relied on the cost allocation to conservatively determine the fraction of contracts that are viable under the new interim interstate provider-related rate caps. However, the cost allocation approach in some instances is not perfect. For example, the cost allocation approach suggests that 12.7% of current contracts are loss-making, implausibly implying providers in all those cases made mistaken bids. An alternative approach to determining the fraction of the contracts that are viable under the new interim caps is to examine the fraction of contracts that would recover at least the same revenues as they would in 2018. The Commission finds 74% of prison contracts and 65% of larger jail contracts satisfy this condition. And, when the Commission examines the remaining contracts, the Commission finds they are on average likely to have lower costs than the contracts that would recover at least the same revenues, and thus are also likely to be viable. Separately, comparing revenues of the remaining contracts to allocated costs

suggests 81% of prison and 96% of larger jail contracts cover costs.

69. *Prison Contracts with Revenues Under the New Interim Caps.* Revenue analysis shows that the bulk of prisons likely would be commercially viable at rates capped at $0.12 per minute (*i.e.,* the contracts have per-minute costs less than the cap after allowing for a possible $0.02 per minute site commission allowance). In 2018, approximately 74% of prisons had per-minute revenues net of commissions of less than $0.12 per minute (hereinafter ''low per-minute revenue prisons''). The Commission's new interim caps should not impact these contracts. Further, these contracts, with rare exceptions, should be commercially viable. If that were not the case, providers would not have voluntarily accepted such contracts. That result is all the more probable since providers may supplement their call revenues through automated payment and paper billing fees not accounted for in capping rates received by providers at $0.12 per minute. While the revenue analysis includes revenues from automated payment and paper billing fees, the rate caps only apply to calling fees. Thus, providers can earn additional revenues through automated payment and paper billing fees. The remaining 26% of prisons have revenues, net of commissions, that are greater than or equal to $0.12 per minute (hereinafter ''high per-minute revenue prisons''). Thus, the new interim caps will potentially affect cost recovery for these prisons.

70. Table 10 compares high and low per-minute revenue prison contracts. For both sets of prison contracts, the Table gives the mean value for seven contract characteristics, as well the p-value from a two-sided difference in means statistical test—with a lower p-value indicating a lower likelihood that the difference in the two means is due to random error. For example, a p-value of 0.05 says that if the two means were the result of samples from two identical populations, that outcome would only be observed in 5% of cases. Apart from the variables Total Revenue Per Minute and Revenue Minus Commission Per Minute, each of the variables included is likely to be related to a contract's costs. The difference in means between the two groups for the five plausible cost-determining variables is not statistically significant at the 95% confidence level, except for minutes, which should cause the low per-minute revenue contracts to have higher, not lower, costs. The similarities along cost-determinative characteristics suggest that to the extent that a $0.12 per-minute rate cap is viable for low per-minute revenue prisons, it should also be viable for high per-minute revenue prisons. Commissions per minute may be a proxy for differences in contract regulatory environments—for example, correctional authorities that seek high site commissions may have other common characteristics that influence costs, including other services they require under an inmate calling services contract. The Commission places less weight on the facility data given that the providers acknowledged they had limited abilities to accurately report such data. Revenues per minute and revenues net of commission per minute are statistically higher for the high per-minute revenue contracts since the Commission defined the groups by whether they had lower or higher per-minute revenues. In any case, revenues do not, independent of minutes, cause costs, and the Commission controls for minutes.

TABLE 10—MEAN CHARACTERISTICS FOR PRISON CONTRACTS BY REVENUE TYPE

	High per-minute revenue contracts	Low per-minute revenue contracts	P-Value for two-sided difference in means test
Total Revenue Per Minute	$0.24	$0.12	0.00
Commission Per Minute	$0.04	$0.05	0.54
Revenue Minus Commission Per Minute	$0.20	$0.07	0.00
Facilities Per Contract	1.91	5.39	0.21
Average Daily Population	6,665	12,018	0.20
Contract Includes Urban Facilities	0.32	0.49	0.09
Minutes	15,482,499	41,681,215	0.05
Observations	34	95	.....

71. An alternative method to analyze whether a $0.12 per minute cap for prisons is commercially viable is to consider the per-minute cost allocation associated with the high per-minute revenue prison contracts. As before, 74% of prisons could be expected to recover costs since their revenues are already below $0.12. Of the remaining 26%, which the Commission labeled high per-minute revenue prisons, 27% have allocated per-minute costs below $0.12. Of all the high per-minute revenue prisons, nine contracts had costs less than $0.12 per minute and 25 contracts had costs greater than or equal to $0.12 per minute. This suggests that 81% (= 74% + (26% * 27%)) of all prison contracts could cover their costs with a rate of $0.12. To the extent that the providers' unaudited costs are overstated, or that unit costs will fall as reduced rates expand call volumes, this number would be higher.

72. *Contracts for Larger Jails with Revenues Under the New Interim Caps.* Revenue analysis shows the bulk of larger jail contracts are likely to have per-minute costs less than the interim cap of $0.14 per minute and would therefore be commercially viable at that capped rate. In 2018, approximately 65% of contracts for larger jails had per-minute revenues net of commissions of less than $0.14 per minute (hereinafter ''low per-minute revenue jails''). The Commission's new interim caps should not impact these contracts. Further, these contracts, with rare exceptions, should be commercially viable. If that were not the case, providers would not have voluntarily accepted such contracts. That result is all the more probable since providers may supplement their call revenues through automated payment and paper billing fees not accounted for in capping rates at $0.14 per minute. The remaining 35% of larger jails have revenues, net of commissions, which are greater than or equal to $0.14 per minute (hereinafter ''high per-minute revenue jails'').

73. The Commission finds that cost-determinative characteristics for high per-minute revenue jails are similar to those for low per-minute revenue jails. This implies a $0.14 per minute rate cap would ensure the vast majority of contracts for larger jails are viable. Table 11 compares cost-determinative characteristics between high and low per-minute contracts. A lower p-value indicates a lower likelihood that the difference in the two means is due to random error. The difference in means between the two groups for the listed plausible cost-determinative variables are not statistically different at the 95% confidence level.

TABLE 11—MEAN CHARACTERISTICS FOR LARGER JAIL CONTRACTS BY REVENUE TYPE

	High per-minute revenue contract	Low per-minute revenue contract	P-Value for two-sided difference in means test
Total Revenue Per Minute	$0.34	$0.19	0.00
Commission Per Minute	$0.13	$0.11	0.26
Revenue Minus Commission Per Minute	$0.22	$0.08	0.00
Facilities Per Contract	1.88	1.85	0.94
Average Daily Population	2,215	2,447	0.60
Contract Includes Urban Facilities	0.84	0.85	0.95
Minutes	7,883,827	10,895,979	0.06
Observations	64	118	

74. An alternative method to analyze whether a $0.14 per minute cap for larger jails is commercially viable is to consider the per-minute cost allocation associated with the high per-minute revenue contracts. Doing this suggests at least 96% of contracts for larger jails would likely recover their costs at a rate cap of $0.14 per minute. As before, 65% of contracts for low per-minute revenue jails could be expected to recover costs since their revenues are already below $0.14. Of the remaining 35%, 89% have allocated per-minute costs less than $0.14. Of all the high per-minute revenue jails, 57 had costs less than $0.14 per minute, and 7 had costs greater than or equal to $0.14 per minute. This suggests that 96% (= 65% + (35% * 89%)) of all larger jail contracts could cover their costs with a rate of $0.14. Again, to the extent that the providers' unaudited costs are overstated, or that unit costs will fall as reduced rates expand call volumes, this number would be higher. For example, 47% of the contracts for low per-minute revenue jails have allocated costs in excess of their revenues per minute, indicating that allocated costs are an imperfect measure.

75. *Contract Viability Allowing for Call Volume Adjustment.* The Commission's previous revenue analysis showed that 74% of prison and 65% of larger jail contracts are already operating under the new interim caps according to reported data. Since these contracts were likely to have been commercially viable prior to this Report and Order, they should still be so after the new interim caps take effect. Further, some of the remaining contracts would still be commercially viable under the new interim rate caps, because lower prices will lead incarcerated persons to increase time spent on the telephone, which in this industry will reduce per-minute costs. The Commission conservatively estimates that when the increase in demand due to lower end-user prices is accounted for, 77% of prison and 73% of larger jail contracts will earn per-minute revenues that cover their implied costs. These estimates take no account of the various factors discussed above that imply an even higher percentage of contracts would be commercially viable. For example, these numbers are understated to the extent that: (i) The providers' revenues are an overstatement of their costs; (ii) the elasticity estimates are understated; and (iii) estimates of the cost of an additional minute are overstated. Relatedly, GTL also argues that any reduced rates faced by incarcerated people as a result of the Commission's proposed caps would not lead to increased call volume. The Commission is unconvinced, and the record suggests otherwise. GTL has itself refuted this position in other submissions. While incarceration authorities sometimes place tight restrictions on call frequency and length, there is ample evidence in the record that lower prices result in greater call minutes, because high prices do more to discourage calling than these restrictions do. Further, economic theory echoes the record evidence, and predicts that providers will increase output when a price cap lowers their rates as long as the additional revenue exceeds any corresponding increase in costs. Here, not only do current per-minute rates exceed per-minute costs, but they exceed the per-minute costs of supplying additional minutes by a wide margin; thus, a rational provider will find it profitable to increase its output.

76. To obtain these estimates, the Commission uses inmate calling service revenues plus revenues for automated payment and paper billing fees net of site commissions divided by paid minutes as a proxy for contract rates. The Commission then assumes that each prison and larger jail contract with rates as just defined above the new caps recovers, through those rates, its direct costs and makes any necessary contribution to overheads to account for costs associated with the provision of inmate calling services, but earns no more than that. This is conservative, as providers could earn more than that, but are unlikely to systematically earn less than that, since that would imply they are overall making losses. However, even making this ''break-even'' assumption, the new interim caps could still allow providers to recover their costs under these contracts. This is because the new caps will lead to increased inmate calling, allowing providers to spread relatively high fixed costs over more minutes. Inmate calling services have high fixed costs (*e.g.,* installation of secure telephone equipment), and low additional costs for each minute of inmate telephone use.

77. For example, consider a hypothetical larger jail inmate calling services contract, voluntarily entered into, that charges incarcerated people $0.25 per minute with a $0.10 per minute site commission. Assume further that this results in 1,000 calling minutes. The provider would earn $150 (= ($0.25 − $0.10) * 1,000) in revenue and, given the contract's voluntary nature, the contract would presumably be commercially viable. Now suppose the provider lowered rates to be consistent with the new interim caps, charging $0.16, with the provider receiving $0.14 and with $0.02 for site commissions. Suppose further, at the lower price of $0.16 per minute, incarcerated people increase their calling minutes from 1,000 to 1,132 total minutes. This assumes a demand elasticity of 0.3, as provided in the following paragraph. Thus, a 44% (= 0.25 − 0.16/(0.25 + 0.16)/2) decline in price leads to 13.2% (= 44% * 0.3) increase in call minutes. This would generate revenues for the provider of $158.48 (= 1,132 * $0.14) compared with the revenues of $150 earned at a $0.25 per minute rate with $0.10 per minute in site commission payments. If, at the same time, each additional minute costs the provider $0.01, and the provider was originally breaking even, then the provider's costs would rise from $150 to $151.32 (= $150 + (132 * $0.01)), implying per-minute costs of approximately $0.134 (= $151.32/1,132), less than the original per-minute costs of $0.15 (= $150/1,000). Thus, the provider would earn $7.16 (= $158.48 − $151.32) more than in the original situation. If supply for this contract were competitive, then the provider winning the bid for this contract would require a price of just below $0.154 per minute (= $0.02 + ($151.32/1,132)).

78. In connection with the preceding example, the Commission estimated the call-minute volumes that would result for each contract that in 2018 had per-minute revenues greater than those allowed under the new caps, assuming a demand elasticity of 0.3. This is the low end of the inmate calling services elasticities found in the record. Using those projected call volumes, and assuming a generous additional or incremental per-minute cost of $0.01, the Commission found 77% of prison and 73% of larger jail contracts would recover as much as they had at the lower 2018 volumes plus enough to cover their additional per-minute costs. Many direct costs are independent of the need to carry additional call minutes. For example, the cost of each additional telephone installed at a facility would be a direct cost of the facility and is independent of how many call minutes originate from that telephone. Thus, the cost of $0.01 per additional minute assumed here is therefore a very conservative estimate of the cost of an additional call minute. For example, [REDACTED] operated two contracts at rates

of $0.009 and $0.0119—suggesting that under these rates the provider can cover the marginal cost of a minute of calling as well as cover their fixed costs. Similarly, six contracts in the Second Mandatory Data Collection report providers earning per-minute rates net of site commissions of less than $0.01, including the [REDACTED] contract for the [REDACTED]. Indeed, the cost of an additional minute may be *de minimis,* with the cost of both originating and terminating a call being near zero. Thus, a material majority of contracts would be able to recover their costs under the new interim rate caps. Given that the estimates presented here are based on the upper bound of costs for a contract, that the Commission leaned toward understating demand responsiveness, the true share of contracts that are cost-covering is likely larger.

Appendix B

Sensitivity Testing: Additional Statistical Analysis of Cost Data

1. The Commission analyzes inmate calling services providers' responses to the Second Mandatory Data Collection to determine whether certain characteristics of inmate calling services contracts can be shown to have a meaningful association with contract costs on a per-minute basis, as reported by the providers. In this Appendix, the Commission frequently refers to inmate calling services providers by short names or acronyms. These providers are: ATN, Inc. (ATN); CenturyLink Public Communications, Inc. (CenturyLink); Correct Solutions, LLC (Correct); Combined Public Communications (CPC); Crown Correctional Telephone, Inc. (Crown); Global Tel*Link Corporation (GTL); ICSolutions, LLC (ICSolutions); Legacy Long Distance International, Inc. (Legacy); NCIC Inmate Communications (NCIC); Pay Tel Communications, Inc. (Pay Tel); Prodigy Solutions, Inc. (Prodigy); and Securus Technologies, LLC (Securus). The Commission previously performed this analysis in Appendix B of the *2020 ICS FNPRM.* That analysis found that provider identity and the state a facility is located in were by far the most important predictors of a contract's per-minute costs. It also found that other facility and contract variables, such as the average daily populations of the facilities covered by the contract, the type of those facilities (prison or jail), and the rurality of the facilities, had virtually no additional predictive power. In comments submitted to the Commission, the finding that per-minute costs were not significantly impacted by facility size and type was criticized. This Appendix repeats the analysis from Appendix B of the *2020 ICS FNPRM* using updated data.

2. To perform the analysis, the Commission uses a recognized statistical method named least absolute shrinkage and selection operator (Lasso) to identify which, if any, variables serve as accurate predictors of per-minute contract costs for calling services. This method identifies predictors of an outcome variable—in the case the logarithm of costs per minute—by trading off the goodness of fit against the complexity of the model, as measured by the number of predictors. As used here, the Lasso model seeks to identify factors that are predictive of an inmate calling service provider's costs per minute, balancing a number of competing considerations. Lasso is especially useful in situations like this where many variables, and interactions among those variables, can potentially predict outcomes. Given that the Commission is interested in determining the potential cost effects of many categorical variables as well as their interactions with one another, the overall number of potential variables is extremely large, and estimating the effects of all variables on costs via more traditional methods (such as linear regression) is infeasible. In the Lasso model, the Commission finds the main predictors of costs per minute to be provider identity and the state where the contract's facilities are located. The Commission also finds that facility type (whether the facility is a prison or jail) is a predictor of costs per minute, although not as strong as provider identity and state. Finally, the Commission finds that a wide range of other variables have less, or essentially no, predictive power.

3. The Commission chooses the inmate calling services contract as the unit of observation for the analysis for two reasons. First, providers bid for contracts rather than separately bidding for each individual facility, which indicates that commercial decisions are made at the contract level. Second, many contracts cover more than one facility, but several providers did not report data on those facilities separately, which precludes any meaningful analysis at the facility level. As in Appendix A, jails with average daily populations of less than 1,000 are included in the totals to ensure that the sensitivity analysis is comprehensive among the total dataset of 2,900 contracts. But, because the Commission does not address jails with average daily populations of less than 1,000 in the Report and Order for purposes of arriving at revised interim rate caps based on the Second Mandatory Data Collection, the Commission does not include any results based on such jails in this Appendix. The Commission focuses on the logarithm of costs per minute as the dependent variable—*i.e.,* the Commission seeks to evaluate what factors are predictive of an inmate calling service provider's costs per minute. The contract variables that the Commission considers in the analysis are as follows:

- The identity of the inmate calling services provider;
- The state(s) in which the correctional facilities covered by a contract are located;
- The Census division(s) and region(s) in which the facilities covered by a contract are located;
- The type of facility (prison or jail);
- An indicator for joint contracts (*i.e.,* contracts for which an inmate calling services provider subcontracts with another inmate calling services provider);
- Contract average daily population;
- Contract average daily population bins (average daily population ≤25; average daily population ≤50; average daily population ≤100; average daily population ≤250; average daily population ≤500; average daily population ≤1,000; average daily population ≤5,000);
- Rurality of the facilities covered by the contract (rural, if all the facilities covered by the contract are located in a census block designated by the Bureau of Census as rural; urban, if all facilities are located in a census block not designated as rural; or mixed, if the contract covers facilities in census blocks designated as both rural and not rural); and
- Various combinations (*i.e.,* multiplicative interactions) among the above variables.

4. *Lasso and Costs per Minute.* The Lasso results indicate economically significant differences in costs per minute across different providers and states. The provider identity and state variables retained by Lasso as predictors of cost explain approximately 67% of the variation in costs across contracts. Provider identity is an especially meaningful predictor of costs; a Lasso model with it alone explains over 60% of the variation in costs across contracts. The differences in costs measured by the provider identity variable may reflect systematic differences in costs across providers, but they are more likely indicative of systematic differences in the way costs are calculated and reported to the Commission by providers. The differences in cost measured by the state variables may reflect statewide differences in costs arising from different regulatory frameworks or other state-specific factors. Lasso results also indicate differences in costs per minute by facility type (prison or jail), rurality, and region. However, these variables are not economically significant: When retained as predictors by Lasso, these variables explain less than 1% of the variation in costs that are explained by the provider identity and state variables alone.

5. A group of contracts representing a significant fraction—about 11%—of observations contained insufficient information to ascertain the rurality of facilities included in those contracts. As a result, in the baseline model that includes all contracts, the Commission interprets the effect of the rurality variables as differences from the contracts for which the Commission does not have rurality information. To ensure that this is a sound approach, the Commission uses a sample selection model to confirm that the factors that may be associated with a contract not having sufficient rurality information are not significantly correlated with costs. The Commission estimates a Heckman sample selection model where selection is for observations that contain rurality information. The dependent variable and controls in this model were chosen to be the same as the ones in Lasso. The Commission finds that the coefficient on the inverse Mills ratio is not significant at reasonable levels of significance (p-value is 0.21), allaying potential concerns about sample selectivity. The Commission also conducts the analysis using only the contracts that contain rurality information and obtain Lasso results that are similar to the results the Commission obtains with the baseline model.

6. The Commission also explores the differences in the costs reported by the top three providers by size using a double-selection Lasso model. Double-selection Lasso is a method of statistical inference that

selects control variables in two stages: The first stage runs a Lasso regressing the dependent variable on a set of common controls; the second stage regresses the explanatory variables of interest on the same set of common controls. A simple Lasso only selects predictors, without the possibility of statistical inference afforded by double selection. The Commission focuses on GTL, ICSolutions, and Securus because these firms' costs explain the bulk of industry costs. These providers supply 58% of all inmate calling services contracts, and cover approximately 78% of all incarcerated people as measured by average daily population. These shares may in fact represent an understatement of their industry share because, for example, CenturyLink, a large provider when judged by average daily population, subcontracts almost all of its contracts to ICSolutions, and, in the case of the large Texas Department of Corrections contract, to Securus. These three firms are also more suitable for making cross-firm comparisons because they do not subcontract the provision of inmate calling services to a third party, and because they are the largest three of the five providers that serve prisons, covering 111—or 86%—of all prison contracts. Of the remaining prison providers, CenturyLink supplies [REDACTED] prison contracts, Legacy supplies [REDACTED], and NCIC supplies [REDACTED]. The results illustrate how high GTL's reported costs are relative to those of its nearest peers, showing GTL's costs to be—all other things being equal—[REDACTED] greater than the costs reported by Securus and [REDACTED] greater than the costs reported by ICSolutions. These cost differences are statistically significant at confidence levels greater than 99%. When the sample is restricted to the contracts with no missing rurality information, GTL's costs are—all other things being equal—approximately [REDACTED] greater than the costs reported by Securus, and [REDACTED] greater than the costs reported by ICSolutions.

7. The results of the double-selection Lasso model also indicate that—all other things being equal—the costs of providing inmate calling services are approximately 22% greater in jails than in prisons; this difference is statistically significant at confidence levels greater than 99%. For the sample restricted to contracts with complete rurality information, this estimate is approximately 21% and significant at the 99% level of confidence.

8. The Lasso model allows the Commission to consider how a wide array of variables affect a contract's per-minute cost. However, the limitations of the available data may cause the Lasso model to understate the impact of certain variables. For example, because reported costs vary greatly across providers, Lasso may be under-ascribing importance to other variables such as size and type of facility. Commenters criticized the Commission's analysis of reported costs in the *2020 ICS FNPRM.* In addition to critiquing the shortcomings of the data used, commenters disagreed with the notion that costs were similar across facility type and size. Some commenters argued that prisons should be expected to have lower per-unit costs than jails, and that larger jails should have lower per-unit costs than jails with average daily populations less than 1,000. Given the concerns that differences in provider data filing practices impede the Lasso's ability to capture the significance of other variables, as well as the economic rationale for the presence of economies of scale in this market, the Commission finds these arguments to be persuasive. The Commission performs additional analyses to investigate differences in cross-provider costs in Appendix C. The approach the Commission uses there attempts to address provider-level cost differences that obscure the relationship between variables such as facility size and a contract's cost.

Appendix C

Lower Bound Analysis

1. Given deficiencies of the cost data submitted by providers, the removal of invalid, incomplete, and otherwise anomalous contracts performed in Appendix A is a necessary step towards determining accurate per-minute costs. In this Appendix, the Commission frequently refers to inmate calling services providers by short names or acronyms. These providers are: ATN, Inc. (ATN); CenturyLink Public Communications, Inc. (CenturyLink); Correct Solutions, LLC (Correct); Combined Public Communications (CPC); Crown Correctional Telephone, Inc. (Crown); Global Tel*Link Corporation (GTL); ICSolutions, LLC (ICSolutions); Legacy Long Distance International, Inc. (Legacy); NCIC Inmate Communications (NCIC); Pay Tel Communications, Inc. (Pay Tel); Prodigy Solutions, Inc. (Prodigy); and Securus Technologies, LLC (Securus). Using those data, the Commission then develops the upper bounds of the zones of reasonableness for the interim interstate provider-related rate caps based on a mean plus one standard deviation approach. However, the upper bounds overstate true per-minute costs by substantial margins. In addition to generally applicable grounds for overstatement, each upper bound's construction includes a number of contracts that the Commission identifies as statistical outliers, and includes all GTL contract costs as reported, despite abundant indicia that GTL's reported costs are both unreliable as a measure of GTL's actual costs of providing inmate calling services and significantly higher than its true costs.

2. In the following analysis, the Commission makes further adjustments to the submitted cost data using generally accepted statistical and econometric techniques. The Commission begins by performing an analysis of statistical outliers to determine whether certain remaining contracts in the data are well outside of the mean of per-minute costs and remove those observations revealed to be outliers by the use of these metrics. Next, the Commission performs a cost adjustment of GTL's reported per-minute contract costs, using reliable information reported for GTL's own contracts as well as the contract information of other inmate calling services providers to identify surrogate observations to use instead of GTL's reported per-minute costs. The results of this analysis allow the Commission to derive lower bounds of per-minute contract costs for prisons and larger jails. They additionally allow the Commission to address concerns raised in the record regarding expected differences in contract costs across facilities of different types and sizes.

1. Analysis of Outliers

3. As the Commission reviews in detail in Appendix A, the Commission performs an initial round of data cleaning on the contract-level dataset derived from the Second Mandatory Data Collection by removing contracts with invalid or incomplete data, excluding anomalous contracts, and making additional data adjustments. The final dataset contains 2,900 contract-level observations and is the starting point for the outlier analysis presented here. The Commission now turns to outlier detection and removal. Using conservative thresholds for both parametric and non-parametric outlier detection techniques (that is, techniques that rely on normality assumptions about the distribution of the cost data versus techniques that do not), the Commission finds and removes the data points that are well outside of the central tendency of the distribution of per-minute costs as measured by the mean and standard deviation.

4. The Commission first employs two closely related parametric techniques: The Grubbs test and the modified Thompson Tau test. Both tests detect the largest absolute deviations from the mean divided by the standard deviation. For each approach, if the data point with the largest deviation is above a critical threshold then it is considered an outlier and removed. Both tests continue to iterate through the dataset, recalculating the test statistic and comparing it to the critical value until they no longer detect any outlying observations. The critical regions for the Grubbs and Thompson Tau tests are similar but are based on a different version of the Student's t test statistic. For the Grubbs test, the Student's t is based on N–2 degrees of freedom and a tail value equal to $\alpha/2N$. For the Thompson Tau test, the Student's t is based on N–2 degrees of freedom and a tail value of $\alpha/2$. This difference results in the Thompson Tau test always calculating a lower test statistic than the Grubbs, leading to the detection of more outliers at a given confidence level but also a higher likelihood of false positives.

5. The Commission performs this analysis on the average cost per minute for each contract, and separately for prisons, larger jails, and jails with average daily populations of less than 1,000. The contract-level cost per minute is defined as: (contract direct costs + contract allocated overhead costs)/(contract total paid minutes). Larger jails have average daily populations greater than or equal to 1,000. As in Appendix A, jails with average daily populations of less than 1,000 are included in the totals to ensure that the Commission's outlier detection and removal is comprehensive among the total dataset of 2,900 contracts. But, because the Commission does not address such jails in the Report and Order for purposes of arriving at interim provider-related rate caps based on the Second Mandatory Data Collection, the

discussion of them in this Appendix is limited. To be as conservative as possible, the Commission chooses the confidence level for the critical value to be 99%. The Thompson Tau test identifies 98 total outliers: 94 jails with average daily populations of less than 1,000, 3 larger jails, and 1 prison. The Grubbs test identifies 25 total outliers: 22 Jails with average daily populations less than 1,000 and three larger jails.

6. Both the Grubbs and Thompson Tau tests assume that each observation is drawn from a normal distribution, and that outlier observations are those that would not typically occur from the same data generating process. However, if the true data-generating process leads to a right-skewed distribution, then observations identified as outliers under an assumption of normality may in fact be legitimate data points. In a right-skewed distribution, the mean is greater than the median. To ensure the outlier results are robust to normality assumptions, the Commission also employs a well-known non-parametric approach to outlier detection: The box plot. This approach does not rely on the assumption of normality and instead uses only the mean, median, and quartiles of the data. A box plot defines outlier observations as those that are more than 1.5 times the interquartile range from the upper or lower quartiles of the per-minute cost data (the upper and lower bounds). These bounds are referred to as ''Tukey's fences.'' The procedure identifies a total of 52 observations above the upper bound: 49 Jails with average daily populations less than 1,000 and 3 larger jails.

7. The Grubbs, Thompson Tau, and box plot approaches identify the same overlapping set of contracts as outliers, but with increasing restriction based on the technique. Specifically, there is no outlier identified by Grubbs that is not also an outlier for Thompson Tau and the box plot. Similarly, there is no outlier identified by the box plot that is not also an outlier for Thompson Tau. Though Thompson Tau appears to be least conservative and Grubbs most conservative, what is important is that all three approaches lead to the identification of the same nested set of outlier observations. To retain as much data as possible, and to be as conservative with the analysis as possible, the Commission excludes from the contracts data only those 25 observations identified by Grubbs as being outliers.

8. The results of the outlier analysis are presented in Tables 1, 2, and 3 below. Table 1 lists the outlier observations for each firm and facility type, while Table 2 presents the full list of contracts identified as outliers. Finally, Table 3 presents the summary statistics of per-minute costs for the group of outlier contracts.

TABLE 1—OUTLIER OBSERVATIONS BY FIRM AND FACILITY TYPE

[Number of contracts]

	ATN	Correct	Crown	GTL	Pay Tel	Securus	Total
Smaller Jails	2	5	4	2	6	3	22
Larger Jails	0	3	0	0	0	0	3
Total	2	8	4	2	6	3	25

TABLE 2—CONTRACTS CLASSIFIED AS OUTLIERS

Firm	Contract identifier	Facility type	ADP	CPM	RPM
Correct	Williamson	Larger Jail	[REDACTED]	[REDACTED]	[REDACTED]
Correct	San Luis	Larger Jail	[REDACTED]	[REDACTED]	[REDACTED]
Correct	West Texas	Larger Jail	[REDACTED]	[REDACTED]	[REDACTED]
ATN	[REDACTED]	Smaller Jail	[REDACTED]	[REDACTED]	[REDACTED]
ATN	[REDACTED]	Smaller Jail	[REDACTED]	[REDACTED]	[REDACTED]
Correct	Morgan City	Smaller Jail	[REDACTED]	[REDACTED]	[REDACTED]
Correct	Little River	Smaller Jail	[REDACTED]	[REDACTED]	[REDACTED]
Correct	Rolling Plains	Smaller Jail	[REDACTED]	[REDACTED]	[REDACTED]
Correct	Wise	Smaller Jail	[REDACTED]	[REDACTED]	[REDACTED]
Correct	Livingston WR	Smaller Jail	[REDACTED]	[REDACTED]	[REDACTED]
Crown	Graham County Jail (NCIC—Crown)	Smaller Jail	[REDACTED]	[REDACTED]	[REDACTED]
Crown	Thayer County Jail (NCIC—Crown)	Smaller Jail	[REDACTED]	[REDACTED]	[REDACTED]
Crown	Pawnee County Jail (NCIC—Crown)	Smaller Jail	[REDACTED]	[REDACTED]	[REDACTED]
Crown	Phillips County Jail (NCIC—Crown)	Smaller Jail	[REDACTED]	[REDACTED]	[REDACTED]
GTL	[REDACTED]	Smaller Jail	[REDACTED]	[REDACTED]	[REDACTED]
GTL	[REDACTED]	Smaller Jail	[REDACTED]	[REDACTED]	[REDACTED]
Pay Tel	[REDACTED]	Smaller Jail	[REDACTED]	[REDACTED]	[REDACTED]
Pay Tel	[REDACTED]	Smaller Jail	[REDACTED]	[REDACTED]	[REDACTED]
Pay Tel	[REDACTED]	Smaller Jail	[REDACTED]	[REDACTED]	[REDACTED]
Pay Tel	[REDACTED]	Smaller Jail	[REDACTED]	[REDACTED]	[REDACTED]
Pay Tel	[REDACTED]	Smaller Jail	[REDACTED]	[REDACTED]	[REDACTED]
Pay Tel	[REDACTED]	Smaller Jail	[REDACTED]	[REDACTED]	[REDACTED]
Securus	[REDACTED]	Smaller Jail	[REDACTED]	[REDACTED]	[REDACTED]
Securus	[REDACTED]	Smaller Jail	[REDACTED]	[REDACTED]	[REDACTED]
Securus	[REDACTED]	Smaller Jail	[REDACTED]	[REDACTED]	[REDACTED]

Notes: ''ADP'' is the average daily population covered by the contract; ''CPM'' is a contract's average cost per minute; and ''RPM'' is a contract's average revenue per minute, net of any commissions paid.

TABLE 3—OUTLIER ANALYSIS SUMMARY STATISTICS

	Number of contracts	Mean ($)	Median ($)	Std. dev. ($)	Minimum ($)	Maximum ($)
Smaller Jails	22	0.410	0.359	0.128	0.283	0.734
Larger Jails	3	0.782	0.512	0.656	0.303	1.529
Total	25	0.455	0.370	0.255	0.283	1.529

9. The Commission's outlier procedure identifies and removes a total of 25 observations (22 jails with average daily populations less than 1,000, and 3 larger jails). This amounts to 1.6% of observations of larger jails and 0.8% of observations of jails with average daily populations less than 1,000. The outlier procedure removes three contracts for larger jails operated by Correct. The remaining 22 observations are all jails with average daily populations less than 1,000 whose per-minute costs also fall outside of the bounds of all three outlier detection methods.

10. It is evident that the outlier contracts have average per-minute costs that are significantly above the norm. All of the larger jails have revenues per minute below their per-minute costs, suggesting the cost data are unreliable in these cases. Of the jails with average daily populations less than 1,000, 11 have per-minute revenues that are less, and in some cases substantially less, than their per-minute costs, again suggesting that their costs are unlikely to be valid. The remaining outliers also have per-minute costs that are well outside of the central tendency of the data, adding further validity to the Grubbs procedure.

1. GTL Data Adjustment

11. Though the Commission believes the contract-level cost data to be improved after removing the outlier observations, the Commission finds the costs reported by certain contracts that are not identified as outliers to be outside of what is reasonable given comparable contracts in the data. Specifically, GTL's per-minute costs for its prison contracts, as calculated using the data GTL reported, are significantly higher than per-minute costs calculated based on data submitted by providers operating similarly sized facilities. Likewise, both GTL and [REDACTED] are high-cost providers for larger jails. [REDACTED]'s average costs per minute for larger jails drop to a lower level after the removal of the three larger jail contracts in the outlier analysis. However, [REDACTED] only has two such contracts while GTL has 62. As such, while [REDACTED]'s inconsistent larger jail contracts should be explored, they do not have nearly as significant an effect on overall costs per minute as do GTL's contracts. GTL, [REDACTED], and [REDACTED] are also the highest-cost providers of inmate calling services for smaller jails, but those contracts are not the primary focus of this analysis.

12. To illustrate the large discrepancy between GTL's per-minute costs for prison and larger jail contracts and those of all other providers, the Commission presents the histograms in Figure 1 below. Rather than a normal distribution of per-minute costs across contracts, the histograms appear bimodal due to GTL's costs. GTL's average per-minute costs for prisons and larger jails are about [REDACTED] as large as those of all other providers. In fact, for prisons, GTL's least costly contract is still higher than any other provider's most costly contract.

Figure 1—Cost per Minute (CPM) Distributions for Prisons and Larger Jails

[REDACTED]

Notes: ''CPM'' is the cost per minute. Dark red areas are where the Non-GTL and GTL bars overlap.

13. Given the large discrepancy between GTL's costs and those of all other providers, the Commission finds it implausible that GTL's actual cost of providing inmate calling services to prisons and larger jails is as high as its reported data suggest. Therefore, in order to address GTL's costs, the Commission implements a *k*-nearest neighbor matching algorithm to match each GTL contract to multiple other contracts by non-GTL providers based on similar contract characteristics. More formally, the multivariate *k*-nearest neighbor regression is a non-parametric method that uses the Euclidian distance between continuous variables to determine the ''closeness'' of observations. It is a well-established approach to data imputation issues, where missing or unreliable observations need to be replaced with plausible values from the same dataset. The Commission implements the *k*-nearest neighbor approach to find contracts similar to GTL's and then adjust GTL's per-minute costs based on the per-minute costs of those other contracts. In their attempt to address outliers, the report of The Brattle Group utilizes a data censoring technique known as winsorization to replace all per-minute cost observations above $0.50 with the next highest values in the cost distribution. The Commission believes a combination of outlier removal and cost adjustment using *k*-nearest neighbor regression to be an improvement over winsorization. Whereas winsorization replaces a set percentage (or number) of observations above a predetermined threshold, the Grubbs procedure relies on the variation in the data to determine observations likely drawn from a different population distribution. Likewise, *k*-nearest neighbor relies on a multivariate measure of the ''closeness'' of contracts to determine the adjustment to GTL observations, making fewer assumptions and utilizing more information in the contracts.

14. The Commission performs the analysis with $k = 3$. That is, the Commission finds the three nearest neighbors to each GTL contract. The matching is done on the following variables: Average daily population, total inmate calling services minutes of use, total commissions paid, and facility type. The Commission has also performed the analysis with the addition of other variables such as revenues, geography, and rurality, and obtained similar results. In the case of encoded categorical variables such as geography, the Commission forced the algorithm to make a match to ensure that the distance measure was not attempting to minimize distance between unrelated states/regions based on how they were coded in the dataset. Though the resulting adjusted per-minute costs were largely unchanged, this is not the preferred specification as forcing a match on any given dimension will invariably weaken the match on the other covariates. Additionally, while the Lasso analysis set forth in Appendix B pointed to provider identity as the dominant predictor of a contract's per minute costs, the Commission does not match on provider identity. The Commission finds no economic rationale for why certain providers should have higher costs than their competitors for comparable facilities, nor do comments filed with the Commission make this argument. Furthermore, as explained in Appendix B, the importance attributed to provider identity by the Lasso model is most likely the result of asymmetric provider data filing practices, rather than actual differences in costs of provision. A neighbor to a specific GTL contract is the contract that is closest to the GTL contract along these dimensions. For example, if a GTL contract had an average daily population of 100, 15,000 total minutes, and paid $3,000 in site commissions, then another contract with an average daily population of 110, 16,000 total minutes, and paid site commissions of $3,400 would be a nearer neighbor than a third contract with an average daily population of 600, 100,000 minutes, and paid site commissions of $18,000. Matching was done on these four variables, as economic rationale and comments submitted to the Commission argue that each of the four is important in determining a contract's cost of provision. Numerous commentators argued that average daily population and facility type are important to a contract's per minute costs. Total minutes of use is included because inmate calling contracts have high fixed costs. As such, a contract's per minute costs will depend in part on minutes of use, as higher minutes of use allow fixed costs to be spread across more minutes, reducing a contract's per minute costs. Total commissions paid is included because, as first concluded in the *2020 ICS FNPRM,* site commissions may represent negotiations between providers and facility authorities in which providers agree to incur additional costs related to the provision of inmate calling services in exchange for not having to pay site commissions. The Commission creates two adjusted per-minute costs for GTL. The first takes a weighted average cost per minute of each nearest neighbor, weighted by each neighbor's inverse distance from GTL. That is, of the three nearest neighbors, the Commission put more weight on the neighbors that are more similar to GTL according to the Euclidian distance measure. The second approach is more conservative and relies on the maximum cost per minute of all nearest neighbors. The Commission has run the matching on various values of *k* and find the results are robust to the choice of *k*. Even at $k = 6$, the Commission obtains reasonable results for the maximum per-minute cost of the six nearest neighbors. Though as expected, when adding more neighbors, the maximum per-minute cost of the new group of neighbors continues to increase. As this is not a classification analysis, there is no methodology or metric for choosing the optimal *k*. However, the Commission finds $k = 3$ to be reasonable. The Commission's choice is further supported by the use of $k = 3$ in the existing literature. Table 4 presents summary statistics for GTL's original per-minute costs for non-outlier prison and larger jail contracts, as well as the weighted and maximum costs per minute that result from the nearest neighbor matching algorithm.

TABLE 4—GTL MATCHING SUMMARY STATISTICS

	Number of contracts	Mean ($)	Median ($)	Std. dev. ($)	Minimum ($)	Maximum ($)
Pre-Matching						
Larger Jails	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Prisons	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Post-Matching Weighted						
Larger Jails	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Prisons	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Post-Matching Maximum						
Larger Jails	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Prisons	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

15. Prior to the adjustment, GTL's per-minute costs are both high compared to other providers and essentially flat across facility types. There is no statistically significant difference in per-minute costs between GTL's larger jails and prisons. This is highly unusual, as the Commission would expect firms to exhibit economies of scale by spreading their fixed costs over more call minutes, thereby reducing their per-minute costs on larger contracts. For comparison, the average larger jail contract has 9.3 million minutes of use while the average prison contract has 34.6 million minutes of use. For example, [REDACTED] After performing the *k*-nearest neighbor adjustment, GTL costs also exhibit economies of scale, and the difference in per-minute costs between GTL prisons and larger jails is statistically significant at the 1% level.

16. The Commission can now estimate the effect that the GTL cost adjustment has on the overall distribution of per-minute costs in the contract-level data. Table 5 presents the average per-minute costs across all non-outlier prison and larger jail contracts after adjusting GTL costs.

TABLE 5—ALL CONTRACTS POST-MATCHING SUMMARY STATISTICS

	Number of contracts	Mean ($)	Median ($)	Std. dev. ($)	Minimum ($)	Maximum ($)
Post-Matching Weighted						
Larger Jails	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Prisons	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Post-Matching Maximum						
Larger Jails	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Prisons	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

17. Even when using the conservative approach of replacing GTL's per-minute costs with the highest costs of the three nearest neighbors, the overall per-minute cost of prisons and larger jails drops substantially. This is unsurprising as not only are GTL's costs high, but GTL also operates [REDACTED] prison contracts and [REDACTED] larger jail contracts. With the adjusted GTL observations, the full contracts data now indicate a decreasing per-minute cost of operating larger facilities. The reason is twofold: first, because GTL has a larger market share in the provision of inmate calling services for prisons than for larger jails, even a uniform reduction in its costs per minute across facility types would exert greater downward pressure on the average costs of prisons compared to larger jails; and second, because other firms do exhibit returns to scale, the results of the nearest neighbor matching procedure highlight this important aspect of the data. Hence the procedure adjusts GTL per-minute costs for each facility type to reflect this market reality.

18. Finally, to better visualize the GTL data adjustment, the Commission presents overlaid histograms of GTL and non-GTL per-minute costs for prison and larger jail contracts after performing the *k*-nearest neighbor matching procedure in Figures 2 and 3. These are overlaid histograms rather than stacked bar charts. Therefore, the dark red color represents the intersection of GTL and non-GTL contracts, and the total number of contracts at any cost bin is the sum of the GTL and non-GTL bars. [REDACTED]

Figure 2—CPM Distributions for Prisons with *k*-Nearest Neighbor Matching

[REDACTED]

Notes: ''CPM'' is the cost per minute. Dark red areas are where the Non-GTL and GTL bars overlap.

Figure 3—CPM Distributions for Larger Jails with *k*-Nearest Neighbor Matching

[REDACTED]

Notes: ''CPM'' is the cost per minute. Dark red areas are where the Non-GTL and GTL bars overlap.

2. Analysis of GTL ''Neighborhoods''

19. To further examine the nearest neighbor results, the Commission explores the matches for each of GTL's [REDACTED] non-outlier contracts. Aside from the choice of contract characteristics on which to perform the matching, the approach is non-parametric and relies only on the data to find the nearest neighbors of each observation. Nevertheless, the Commission wants to understand whether a single firm is dominant in the matches or if there is variation in the neighbors found. Even if the matches are overwhelmingly to a single firm, the legitimacy of the procedure is not in doubt as it is only a reflection of the data. However, the results would be less robust if an argument could be made for that firm also having unreliable cost data. In Table 6 below, the Commission presents the total number and percentage of time that each firm matches with a GTL contract, categorized by type of facility. The Commission notes that within the total dataset of 2,900 contract observations, GTL's smaller jail contracts only matched with other providers' smaller jail contracts.

TABLE 6—PROVIDER MATCHES TO GTL BY FACILITY TYPE

	Smaller Jail		Larger Jail		Prison		Overall	
	Number of matches	Percent	Number of matches	Percent	Number of matches	Percent	Number of matches	Percent
Securus	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
ICSolutions	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
CPC	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
NCIC	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Legacy	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Pay Tel	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
CenturyLink	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Correct	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
ATN	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Crown	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Prodigy	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

20. The numbers in parentheses represent the percentage of all non-outlier and non-GTL contracts that each firm has, thereby allowing for a comparison of the frequency of nearest neighbor matches to the overall frequency in the data. Unsurprisingly, given the large market share of each, Securus is a frequent match to GTL. Of the [REDACTED] GTL contracts included in the analysis, [REDACTED] of them (19.7%) include zero Securus contracts in their neighborhood; [REDACTED] (34.8%) include one Securus contract in their neighborhood; [REDACTED] (29.4%) include two Securus contracts in their neighborhood; and [REDACTED] (16.1%) include three Securus contracts in their neighborhood. By neighborhood, the Commission refers to the set of three matched contracts for each GTL contract. On average, a GTL contract's neighborhood is comprised of [REDACTED] (47.3%) Securus contracts. As Securus comprises roughly 40% of all non-GTL contracts in the data, the results are reasonable and suggest that Securus does not have an outsized influence on the matching relative to its size in the market. After Securus, the providers whose contracts constitute the largest number of neighbors to GTL contracts are ICSolutions, CPC, and NCIC, with the average neighborhood consisting of [REDACTED] contracts from each provider, respectively.

21. That no firm plays an outsized role in the nearest neighbor matching holds across the different types of facilities. [REDACTED] In general, the smallest firms in the market tend to be under-represented in the matching, likely because scale economies make the bigger players look more similar along multiple dimensions of a contract, even within a particular facility type.

22. The results of this analysis indicate that GTL is being matched to every other firm in the data at least some of the time. Though its nearest neighbors are usually other large providers, that is in no way surprising. The variation in the match data supports the validity of the results, while shedding additional light on the contracts that look closest to GTL's for the purposes of the data adjustment procedure.

3. Determining Lower Bound for Interim Rate Caps

23. With confidence that the outlier and GTL data adjustment procedures are valid and robust to a variety of assumptions, the Commission can now construct the lower bounds for the zones of reasonableness. As with the upper bound approach, the Commission defines the lower bound as the mean plus one standard deviation of per-minute contract costs, separately for prisons and larger jails. These estimates rely on the full contract-level data excluding the identified outliers and replacing the original GTL cost data with the per-minute cost estimates derived from the nearest neighbor adjustment procedure. The Commission presents the lower bound estimates in Table 7 below.

Table 7 – Lower Bound Estimates

Lower Bound – Weighted GTL Adjustment					
	# of Contracts	**Mean ($)**	**Std. Dev. ($)**	**Mean+1 Std. Dev. ($)**	**Mean+2 Std. Dev. ($)**
Larger Jails	179	0.065	0.015	0.080	0.095
Prisons	129	0.052	0.012	0.064	0.076
Lower Bound – Maximum GTL Adjustment					
	# of Contracts	**Mean ($)**	**Std. Dev. ($)**	**Mean+1 Std. Dev. ($)**	**Mean+2 Std. Dev. ($)**
Larger Jails	179	0.070	0.019	0.089	0.108
Prisons	129	0.058	0.015	0.073	0.088

24. As with the previous results, the Commission presents lower bound estimates derived from a weighted average GTL adjustment as well as more conservative estimates based on the maximum of GTL's nearest neighbors. As both approaches are valid, the Commission selects the weighted average results as the estimates of the lower bound for the zone of reasonableness. For prisons, the lower bound is $0.064, and for larger jails, the lower bound is $0.08. These are the most plausible, lowest estimates of per-minute interim rate caps across all contracts in the data.

4. Maximum GTL Costs Support the New Interim Provider-Related Rate Caps

25. The Commission has established the lower bounds of the zones of reasonableness as being $0.064 for prisons and $0.080 for larger jails based on an analysis that removes outlier observations and adjusts unreliable GTL per-minute cost data. Given GTL's size and presence in the inmate calling services market, the Commission now determine the maximum per-minute costs that GTL could hypothetically incur that would still support the interim provider-related rate caps. That is, the Commission asks what GTL's highest average per-minute costs would need to be, separately for its prison and larger jail contacts, such that the overall per-minute cost plus one standard deviation across all

calling services contracts would be no higher than $0.12 per minute for prisons and $0.14 per minute for larger jails. The Commission refers to this as the critical cost threshold for GTL, as it is the cost that must be exceeded for the provider-related rate caps to no longer be supported by the analysis.

26. To determine GTL's critical cost threshold, the Commission presents a critical cost analysis to support the new interim provider-related rate caps of $0.12 per minute for prisons and $0.14 per minute for larger jails. The analysis calculates GTL's threshold per-minute costs that would bring the overall average cost per minute across all calling services contracts, plus a buffer, to $0.12 per minute and $0.14 per minute for prisons and larger jails, respectively. The Commission examines a buffer of both one and two standard deviations from the mean. A buffer of one standard deviation reflects the approach to rate-setting, while a two standard deviation buffer is an even more conservative assumption because it requires per-minute costs to be even lower in order to remain under the interim rate caps. As such, GTL's threshold per-minute cost derived from this analysis will ensure that the rate caps are set at a level that allows the majority of firms to recover their costs.

27. The Commission relies on the per-minute cost data from the contract-level dataset described in Appendix A after removing the 25 identified outliers. To determine the critical cost thresholds, the Commission optimizes over the set of GTL prison and larger jail contracts to find the cost per minute that sets the overall cost per minute plus a buffer across all prison contracts to $0.12 and across all larger jail contracts to $0.14. The Commission performs four constrained optimizations: Two each for prisons and larger jails with two different buffers (1 and 2 standard deviations). The Commission presents the results in Table 8.

TABLE 8—GTL CRITICAL COST THRESHOLDS

[$]

Facility type	Per-minute rate cap	1 Std. dev. buffer	2 Std. dev. buffer
Prison	0.120	0.117	0.094
Larger Jail	0.140	0.153	0.117

28. Even with a large buffer of two standard deviations from the mean (which would allow the vast majority of firms to recover costs with certainty), GTL's average per-minute costs for prisons and larger jails need only be at or below $0.094 per minute and $0.117 per minute, respectively. These thresholds are still $0.041 per minute and $0.053 per minute higher than the average per-minute costs of all non-GTL prison and larger jail contracts. Furthermore, after applying a conservative *k*-nearest neighbor matching algorithm that sets GTL's contract costs to the maximum of its three neighbors, GTL's per-minute costs are $0.063 and $0.078 for prisons and larger jails, respectively. These cost estimates are well below the threshold values necessary to support the interim rate caps. As such, with reasonable high-end estimates of GTL's costs, the analysis indicates that the interim rate caps would allow nearly all firms to recover their costs of providing inmate calling services as reported in response to the Second Mandatory Data Collection.

Appendix D

Analysis of Site Commission Payments

1. The Commission permits a $0.02 per minute interim allowance for reasonable correctional facility costs for prisons and larger jails where site commission payments are part of a negotiated contract. The Commission bases its decision on two separate and independent grounds. First, this allowance is based on estimates of the portion of site commission payments that are legitimately related to inmate calling services based on the approach set forth in Appendix D of the *2020 ICS FNPRM,* which the Commission has updated below with corrected cost data consistent with the record. Second, this allowance is based on record evidence reintroduced by Pay Tel and the National Sheriffs' Association supporting a $0.02 allowance.

2. To improve comparability between contracts that do and do not involve payment of a site commission, the Commission removed invalid, incomplete, and anomalous contracts from the cost data submitted by providers in response to the Second Mandatory Data Collection using the process described in Appendix A. The resulting data do not specify the costs, if any, that correctional facilities incur that are directly related to the provision of inmate calling services. In the absence of direct information on the level of those costs, the Commission estimates the costs correctional facilities incur by comparing the relative costs per minute to providers for contracts with and without site commissions, as shown in Table 1. As the Commission concluded in the *2020 ICS FNPRM,* the Commission continues to find that it is reasonable that the higher costs per minute for contracts without site commissions reflect, at least in part, give-and-take negotiations in which providers agree to incur additional costs related to the provision of inmate calling services in exchange for not having to pay site commissions. In the context of Contractually Prescribed site commission payments, facilities may seek that providers pay a site commission as part of a request for proposal. In other cases, a correctional facility may not seek a site commission payment but may indicate that offers to make such payments will be a factor in the bid evaluation process. In either case, bidders' choices about whether to offer a site commission payment and at what level are informed by their discretionary business decisions about which strategies are more or less profitable to pursue. Consequently, it is reasonable to conclude that providers and correctional facilities have at least some give-and-take during the negotiation process, which, at least in part, contributes to higher costs for contracts that do not provide for site commission payments compared to similarly situated providers operating under contracts that do provide for such payments.

TABLE 1—SITE COMMISSIONS AND PER-MINUTE COSTS

Facility type	Site commission	Mean ($)	Std. dev. ($)	Mean + std. dev. ($)	Number of contracts		
					Below	Above	Total
Larger Jails	No Commission Paid	0.100	0.042	0.142	11	1	12
	Commission Paid	0.100	0.121	0.221	167	3	170
	All Larger Jails	0.100	0.118	0.218	179	3	182
All Jails	No Commission Paid	0.097	0.061	0.158	260	13	273
	Commission Paid	0.093	0.056	0.150	2,325	173	2,498
	All Jails	0.093	0.057	0.150	2,583	188	2,771
Prisons	No Commission Paid	0.097	0.038	0.135	38	2	40
	Commission Paid	0.089	0.042	0.131	82	7	89
	All Prisons	0.092	0.041	0.133	120	9	129
All Facilities	No Commission Paid	0.097	0.059	0.155	298	15	313

TABLE 1—SITE COMMISSIONS AND PER-MINUTE COSTS—Continued

Facility type	Site commission	Mean ($)	Std. dev. ($)	Mean + std. dev. ($)	Number of contracts		
					Below	Above	Total
	Commission Paid	0.093	0.056	0.149	2,408	179	2,587
	All Facilities	0.093	0.056	0.150	2,708	192	2,900

3. The bottom three rows of Table 1 (for All Facilities) show a $0.004 difference in mean costs per minute between contracts without site commissions ($0.097) and contracts with site commissions ($0.093). The difference in mean costs per minute between contracts without site commissions and contracts with site commissions is $0.008 for prisons ($0.097 − $0.089) and $0.004 for jails ($0.097 − $0.093). For larger jails, there is no difference in mean costs per minute between contracts without site commissions and contracts with site commissions ($0.10 − $0.10).

4. These differences between mean costs per minute for contracts that do and do not provide for payment of site commissions are lower than the estimates from the *2020 ICS FNPRM.* However, the Second Mandatory Data Collection did not require the reporting of data on the costs, if any, that facilities incur that are directly related to the provision of calling services for incarcerated people. Because the absence of such data prevents the Commission from more accurately determining the portion of site commissions directly related to the provision of inmate calling services, the Commission declines to reduce the $0.02 allowance at this time.

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